

Cancellation of transport card and refusal to refund money stored on the card

Legislation	Ombudsmen Act 1975
Agency	Auckland Transport
Ombudsman	Leo Donnelly
Case number(s)	392327
Date	29 June 2017

Summary

1. A complaint was made against Auckland Transport (AT) about its cancellation of an 'AT HOP' card used by commuters on Auckland's public transport system. AT cancelled the card because the complainant had failed to 'swipe-off' the card on three occasions within two weeks, and it refused to refund the \$100.00 that remained stored on the card. The card had not been registered and AT's policy in this regard was recorded in its Terms of Use.
2. The Ombudsman noted that this policy was not advertised, and affected unregistered card-holders only, because holders of registered cards were warned when they failed to tag off during this period. The Ombudsman concluded that although AT had the power to cancel cards when a customer failed to meet the Terms of Use (the need to tag on and off), most card-holders had no knowledge of the rights and obligations attached to the use of the card in this respect. Further, in this case, the complainant had been able to prove to AT that the money remaining on the card was his.
3. The Ombudsman formed the opinion that AT had acted unreasonably in this instance and recommended that it apologise to the complainant and refund him \$100.00.

Background

4. This complaint was made by an international traveller who had come to New Zealand, purchased an AT HOP card but did not register it, and failed on three occasions within a period of two weeks to 'swipe-off' the card on getting off the bus.
5. AT cancelled the card, despite the complainant having a credit of \$100 on the card which he proved he had paid, and it refused to refund him any of this money.

Investigation

6. The Ombudsman commenced an investigation into the reasonableness of AT's decision to cancel the card and its refusal to refund the \$100.00 to the complainant.
7. The Ombudsman found that the Terms of Use of the card authorised AT to take such action. However, the Terms of Use were not advertised; they included a power to change the terms without notice; and they contained other possible, and less drastic, measures that could have been taken instead of cancellation.
8. Without searching AT's website, which set out the current Terms of Use, a card-holder would have no knowledge of these details.
9. Furthermore, AT had not considered exercising any less drastic power in its decision to cancel the complainant's card and to refuse to refund him his money.
10. The Ombudsman also noted that only unregistered card-holders cards were affected by AT's policy on this issue (since AT warned holders of registered cards when there was a failure to tag off).
11. During the course of the investigation, AT advised the Ombudsman that the cancellation policy had been discontinued.

Outcome

12. In the particular circumstances of this case, the Ombudsman formed the opinion that the power to cancel the card had been exercised unreasonably and he recommended that AT:
 - Refund to the complainant the \$100 that was on the card;
 - Apologise to the complainant for not having refunded this at the outset; and
 - a. Advise the complainant that the practice had since stopped.
13. AT accepted the recommendation.