

29, Route de l'Aéroport, P.O. Box 833
CH-1215 Geneva 15 Airport, Switzerland
Daytime office phone: +41 22 799 3900, daytime office fax: +41 22 799 3902
E-mail: agency.commissioner@bluewin.ch

BPB/ma/09xi07

DECISION

In the Matter of:

Travel Group Peru/A Radius Company

Av. 28 Julio 674 Miraflores

Lima - 18

Peru

(IATA Numeric Code: 91-77782-5)

Applicant,

vs.

Agency Administrator

IATA

International Air Transport Association

703 Waterford Way

(NW 62nd Avenue)

Suite 600

Miami, Florida 33126

U.S.A.

Respondent.

Introduction

1. The Review giving rise to this decision has been made on the authority of IATA Resolution 820e, in which the powers and duties of the Travel Agency Commissioner are set out. The undersigned is the acting Agency Commissioner for Area One, appointed in accordance with the provisions of Resolution 820d.

Parties

2. The Applicant is Travel Group Peru, an IATA Accredited Agent with registered office in Lima, Peru. The Applicant has been on the IATA Agency List since 1980. At the hearing, the Applicant was represented by Mr Guru Sharma, its Managing Director and CEO.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines which have delegated certain functions to IATA. IATA exists by virtue of a Canadian Act of Parliament (Statutes of Canada 1945, Chap. 51, as amended in 1975) and is the worldwide association of airlines that operate internationally. It performs common services for its 265, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in Peru. The BSP is an industry centralised sales reporting and settlement system. The Agency Administrator has particular responsibility for the management of these activities.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area One, the Americas, is Miami, Florida. The country field office for Peru, which exercises management responsibility for the BSP Peru, is situated in Lima.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference which lay down the rules and regulations governing business relations between IATA Accredited Agents and IATA Members.

6. At the hearing, the Respondent was represented by Ms Diana Larrañaga, Assistant Director, Agency Services – Area 1 and by Ms Adriana de Carbonel, IATA Country Manager, Peru.

Contractual Considerations

7. It is relevant to note that the Passenger Agency Conference is composed of all those IATA Members who appoint a delegate to it. Per the IATA Articles of Association, it is a sovereign body within IATA and its Resolutions are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. The IATA Secretariat is similarly bound and is not empowered to alter or overrule a Conference Resolution.

8. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA acts for those of its Members that appoint the travel agent signatory as their sales agent. Incorporated into that agreement is Resolution 808 – Passenger Sales Agency Rules and the BSP Manual for Agents (Attachment 'I' to Resolution 850). The Agreement and Rules mentioned above are published in the Travel Agent's Handbook, a progressively updated publication, furnished by IATA annually to all IATA Accredited Agents, using an electronic medium. Also included in that publication is Resolution 832 – Reporting and Remitting Procedures. The January 2007 edition of that publication applies to the review proceeding giving rise to this decision.

9. The provisions of Resolution 820e, - Reviews by the Travel Agency Commissioner, at § 1.1.10, allow an Accredited Agent to seek review by the Travel Agency Commissioner on grounds that the Agency Administrator has allegedly not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. The Applicant has relied on that provision to bring its request for review and the undersigned has accepted to conduct a review.

Facts

10. As an IATA Accredited Agent the Applicant reports and routinely remits its airline sales through the BSP Peru. Under that BSP, remittances are made weekly to a designated bank, against a BSP Billing sent electronically via *BSPLink* to each Accredited Agent.

11. For the BSP Billing Period 24-30 September 2007, the Applicant was invoiced USD49,494.70, electronically. On 10th October, the Applicant caused to be remitted to BSP Clearing Bank the amount of USD44,494.70, which represented a short payment of USD5,000.00.

12. Per Resolution 832, the BSP Clearing Bank is required to report on the Remittance Date to the BSP Management all travel agent payment discrepancies in the current settlement.

13. On 11th October, the Applicant received the Respondent's telephone call and letter notifying him of the short payment and calling for immediate settlement of it.

14. In the same letter the Respondent cited Resolution 832, § 1.7. and following, as its authority to notify the Applicant of two instances of irregularity being recorded for failure to pay on time (in Peru, six instances of irregularity in a 12 months period would give rise to the Agent being declared in default). The letter also cited Resolution 832, § 1.7.1 as the authority for levying a USD 50,00 administrative charge.

15. Finally, the Respondent advised that the Applicant's bank guarantee in favour of the Respondent, currently in place, would be extended for a further twelve months. As a general precautionary measure, Accredited Agents in Peru have been required to put up a bank guarantee, until such time as the prevailing economic climate has improved to the point that such a precaution is no longer needed. The Regional Assembly for Latin America & Caribbean recently determined that the improved situation favoured discontinuation of that measure. Bank guarantees introduced under the precautionary measure will thus expire on 31st December 2007.

16. The Applicant contests the Respondent's actions, on the grounds that the short payment was the result of an erroneous misreading of a 4 for a 9 in the BSP Billing. Copies of bank statements were produced to show that at the material time, the Applicant's bank accounts contained a comfortable cushion of cash.

17. The Applicant considered the Respondent's requirements were disproportionate to the small amount of harm which might have been done. In any event, no airline lost anything from the incident.

Review Approach Taken

18. The hearing was conducted by teleconference, on 7th November 2007, linking up Geneva, Miami and Lima. Prior to that teleconference, an exchange of written communications between the parties and the undersigned had taken place. Those communications established that there was no disagreement on the outlined facts, as set out above. It followed that the outcome of the review would turn on the applicable IATA regulations.

Considerations

19. The efficient and economical operation of the BSP implies strict fiduciary discipline on the part of Agents reporting and remitting through it. The Applicant acknowledges this.

20. There is no dispute that the underpayment of USD5,000 was unintentional. The billing figures generated by the BSP*Link* System are, by default, shown in font size 8 on the computer screen. Reading such small print is conducive to errors. However, knowing this to be the case, it is within the power of an agent to magnify the font size to a readily legible version. He would be well advised to do so in future.

21. The Applicant enjoys a sound financial record and standing and nothing in the matter under review reflects adversely on or places in doubt that standing.

22. The Respondent's staff are under strict orders with respect to reporting and remitting discrepancies to apply the IATA Resolutions immediately and to the letter. Experience has demonstrated that with regard to protecting the BSP Airlines' monies, it is better to be safe than sorry.

23. Errors will happen from time to time and the Travel Agency Commissioner review machinery helps serve to identify the cause for such errors and to assess the gravity of their consequences. It also permits the parties to draw lessons from the experience, in order to diminish the risk of recurrence.

Findings

24. An error of transcription was committed by the Applicant which led to an insufficient remittance being made in the first instance. It was immediately corrected, upon receipt of notice from the Respondent.

25. The Respondent's actions were the correct ones to take in the circumstances. All the requisite precautions were taken in a timely manner.

26. As a result of this review it emerges that the Applicant's error was due to clerical inadvertence and not for any financial reason. That finding warrants examining possible precautionary measures that might be taken, in the wisdom of hindsight, to ensure the remedy is proportionate to the shortcoming committed.

27. The inherent danger of an Agent misreading BSP Billing small print on a computer screen has been illustrated on several occasions this year. It would probably help Accredited Agents to be alerted to the risk and advised how, if they wish, they can enlarge the font size to be sure they have read the billing data correctly.

Decision

28. The administrative charge of USD50 for the extra work generated is confirmed.

29. The recording of two instances of irregularity was procedurally correct. That decision of the Respondent is confirmed, with the proviso that it will be deemed to have been recorded as at 1st January 2007, with the result that it will expire by its terms, on 31st December 2007.

30. The discontinuation after 31st December 2007 of the current blanket bank guarantee in favour of the Respondent will apply to the Applicant, in the same way as it applies to other Accredited Agents in Peru.

31. In the event that the Respondent concludes, as a result of a review of the Applicant's audited accounts, that grounds exist for re-imposing a financial guarantee under the Applicant's published rules for that practice, that conclusion will supersede and replace the ruling in the preceding paragraph.

32. The undersigned reserves the right to oversee that the terms of this decision are duly executed and to decide on any matters of procedure that may arise from such execution.
33. The parties are not liable to pay any fee or costs to the undersigned in respect of the present decision.
34. Per Resolution 820e, § 4.1, the Applicant may, if it considers itself aggrieved of this decision, seek review by arbitration in accordance with the provisions of Resolution 808, § 12.

Decided this 9th Day of November 2007, in Geneva.

Brian Barrow
Acting Agency Commissioner, Area One

NOTE: to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 9th November 2007, with the original signed copy being sent by registered post.