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BPB/ma/23xii07

DECISION

In the Matter of:

Domiruth Travel Service, S.A.C.

Av. Petit Thouars 4305 Miraflores

Lima - 18

Perú

(IATA Numeric Code: 91-5 0236 4)

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 Domiruth Travel Service, S.A.C. Perú, an IATA Accredited Agent with registered head office in Lima, and nine branch locations across Perú. The Applicant has been on the IATA Agency List since 1984. At the hearing, the Applicant was represented by Mrs Claudia Medina Samaniego, its Director Administration & Finance, who is also one of the three family members who own the travel agency.

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 Perú. 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 Perú, which exercises management responsibility for the BSP Perú, 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, Perú.

Contractual Considerations

7. The Passenger Agency Conference is composed of all those IATA Members (i.e. airlines) 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 Perú. Under that BSP, remittances are made weekly to a designated bank, against a BSP Billing sent electronically via *BSPLink* to each Accredited Agent. The Applicant has elected to report and remit centrally to BSP through its head office location, as is permissible under BSP procedures.

11. For the BSP Billing Period 05-11 November 2007, the Applicant was invoiced USD584,090.00, electronically. On 21 November, the Applicant caused to be remitted to BSP Clearing Bank the amount of USD583,809.41, which represented a short payment of USD280.59.
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 22 November, the Applicant was informed by the Respondent's telephone call of the short payment which was made good immediately.
14. In a letter sent the same day, the Respondent cited Resolution 832, § 1.7, as its authority to notify the Applicant of two instances of irregularity being recorded for failure to pay on time (in Perú, 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 to cover the additional work generated.
15. Whilst protesting *pro forma* the Respondent's course of conduct because of the harshness of its consequences for her, the Applicant recognizes that the letter of the law has been applied impartially.
16. A recent take-over of what is now the Applicant's ninth branch location resulted in a slight time gap in adjusting the new branch's reporting drill with the requirements of the Applicant's head office procedures which are coordinated with *BSPLink*. That computer malfunction has since been addressed and repaired.
17. The Applicant's relevant bank statements reflect an adequate balance on the Remittance Date in question.

Review Approach Taken

18. The hearing was conducted by teleconference, on 21 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. It is common ground shared by the parties that the efficient and economical operation of the BSP necessitates strict fiduciary discipline on the part of Agents reporting and remitting through it.
20. There is no dispute that the underpayment of USD280.59 was unintentional. 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.

21. 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.

22. 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

23. The Applicant's explanation which is not disputed, is accepted. The incident in question was not so much a financial irregularity in the sense envisaged in Resolution 832 as a reporting glitch encountered in the bedding down process which accompanied the integration of a brand new branch location into the Applicant's existing multiple branch network.

24. The value of the single late remitted transaction was less than 0.4% of the Applicant's BSP Billing for the week in question and it is accepted by the Respondent that there was no treasury impediment to payment, which was made upon demand.

25. The Respondent's actions taken in the wake of discovering the short payment were the correct ones. The rules require that precautionary measures taken promptly, and they were.

26. From hindsight, it emerges that this incident was a regrettable one which is unlikely to be repeated now that the new branch's reporting system has been integrated with that of the other eight.

27. The Applicant's faultless financial record as an Accredited Agent since 1984 is to be taken into account and should not risk being spoilt by a freak incident that caused no financial harm to any BSP Airline.

Decision

28. The Respondent's administrative charge of USD50- for the extra work generated is confirmed.

29. Procedurally, although the recording of two instances of irregularity is correct and should stand, the exceptional circumstances surrounding the incident warrant back dating that recording to 01 January 2007. In consequence, the Applicant's tally of incidents of irregularity under IATA rules will revert to zero, as from 31st December 2007.

30. The parties are not liable to pay any fee or costs to the undersigned in respect of the present decision.

31. 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 24th Day of December 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 3rd January 2008, with the original signed copy being sent by registered post.