

**Brian P. Barrow**

A1/2008/05

**TRAVEL AGENCY COMMISSIONER, AREAS ONE & TWO**

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BPB/ma/03v08

**DECISION**

**In the Matter of:**

**Travel Unlimited**

2 Trafalgar Road

Kingston 10

Jamaica

(IATA Numeric Code: 85-6 5142 5)

Applicant,

vs.

**Agency Administrator**

**IATA**

International Air Transport Association

703 Waterford Way

(NW 62<sup>nd</sup> 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 Agency Commissioner for Areas One & Two, appointed in accordance with the provisions of Resolution 820d.

**Parties**

2. The Applicant is Travel Unlimited, an IATA Accredited Agent with registered office in Kingston, Jamaica. The Applicant has been on the IATA Agency List for 18 years.

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 and to him. 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 operating internationally. It performs common services for its 231, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan

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(‘BSP’) in Jamaica. 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 field office responsible for Jamaica is the IATA Service Centre Americas – Central America, located in Santo Domingo, Dominican Republic.

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.

#### Contractual Considerations

6. 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. All IATA Accredited Agents are similarly bound. The IATA Secretariat is required to apply Conference Resolutions as instructed and is not empowered to ignore, alter or overrule them.

7. 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.

8. 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

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

10. For the third BSP Billing Period of December 2007, the Applicant was invoiced for J\$552,203.00. On the morning of 2<sup>nd</sup> January, the Applicant paid in that amount by cheque delivered to the Respondent’s designated bank, the National Commercial Bank (NCB). In the late afternoon of 4<sup>th</sup> January, the NCB which is also the Applicant’s bank, informed the

Applicant by telephone that the cheque had not been processed as the cheque deposit voucher was made out to the wrong account number (the BSP cheque deposit vouchers do not bear a pre-printed IATA bank account number). The Applicant thereupon issued a corrective instruction, in writing, which the NCB executed.

11. 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.

12. When it became aware, on 4<sup>th</sup> January of the late payment, the Respondent sent the Applicant a notification by e-mail of two instances of irregularity being recorded for failure to pay on time (in Jamaica, six instances of irregularity in a consecutive 12 months period would give rise to the Agent being declared in default). Because of an address deficiency, delivery of that e-mail was delayed.

13. The Respondent also requested the Applicant to furnish immediately for one year an irrevocable bank guarantee in favour of the Respondent, in the amount of J\$2,548,915.23. That request was placed in abeyance pending the outcome of the Travel Agency Commissioner's review.

14. The Applicant points to that the evidence that shows it had taken all the necessary measures to pay on time but that in error made under pressure of a staff absence through sickness situation, the Applicant's owner had entered on the cheque deposit voucher an inapplicable account number to be credited, for which she apologized. The Respondent does not challenge the truth of the Applicant's account of events but is bound by strict rules to follow a certain course of action, notwithstanding the fact that the payment had been effected before the Respondent was able to notify the Applicant of the irregularity. It is established from account records of the NCB, that there were sufficient funds in the Applicant's account to meet its BSP commitments in full, on time.

#### Review Approach Taken

15. By agreement of the parties, the hearing was waived and, instead, the undersigned was asked to conduct the review based on the documents submitted by the Parties. Those documents established that there was no disagreement on the facts, as set out above. It followed that the outcome of the review would turn on the applicable IATA regulations.

#### Considerations

16. The efficient and economical operation of the BSP necessitates strict fiduciary discipline on the part of Agents reporting and remitting through it. The Applicant acknowledges this and has apologized for the error that contributed to its late payment.

17. It is not disputed by the Respondent that the late payment was the result of an erroneous account number entry on the cheque deposit voucher. The late payment did not and could not bring any advantage to the Applicant.

18. The Applicant enjoys a sound financial record and standing with no previous incidence of remittance discrepancy. Nothing in the matter under review reflects adversely on or places in doubt that good financial standing.

19. 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.

### Findings

20. An error was committed by the Applicant which led to late remittance being made. The error was corrected before notice of its occurrence was received from the Respondent.

21. The Respondent's actions were the correct ones to take in the circumstances, implemented in strict conformity with the rules, as required by the Respondent's senior management.

22. This review establishes that the Applicant's late payment was entirely attributable to human error which was self-corrected, and did not stem from any financial cause.

23. The Applicant's financial standing and unblemished record with regard to its BSP fiduciary obligations, taken into consideration with facts that emerged during the review, show that there is no compelling reason to require the Applicant to provide the requested one year bank guarantee.

24. The requirement for providing a temporary bank guarantee is motivated by the prudent desire to protect the BSP Airlines from risk of loss. Such a risk has not been identified or asserted in this case.

### Decision

25. The recording of two instances of irregularity is procedurally correct. That action of the Respondent in that respect is upheld.

26. The Respondent is entitled to bill the Applicant for the interest foregone as a consequence of the delayed remittance and for the additional work generated to correct matters.

27. The request by the Respondent for a temporary bank guarantee is not upheld and should be immediately cancelled.

28. This decision is made without prejudice to the outcome of the Respondent's periodic financial review of the Applicant's audited accounts. Should that review ever show that grounds exist for 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.

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

30. 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 3<sup>rd</sup> Day of April 2008, in Geneva.

Brian Barrow  
Agency Commissioner, Areas One & Two

**NOTE:** to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 3<sup>rd</sup> April 2008, with the original signed copy being sent by registered post.