

Brian P. Barrow

A1/2008/09

TRAVEL AGENCY COMMISSIONER, AREAS ONE & TWO

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/03vi08

DECISION

In the Matter of:

Ematur

Rua México 148, gr. 401

Centro, CEP 20009-900

Rio de Janeiro, RJ

Brasil

(IATA Numeric Code: 57-5 0210 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 Ematur Empresa de Admin. de Turismo Ltda., an IATA Accredited Agent with registered head office in Rio de Janeiro, Brasil.

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 230, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in Brasil. 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 Brasil, which exercises management responsibility for the BSP Brasil, is situated in San Paulo.

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 (i.e. airlines) who appoint a delegate to it. Per the IATA Articles of Association, it is a sovereign entity 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 not empowered to alter, overrule or ignore a Conference Resolution.

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 2008 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 passenger transportation sales through the BSP Brasil. Under that BSP, remittances are made weekly to the Settlement Bank, against a BSP Billing sent to each Accredited Agent. Payment is effected by manual transaction as direct debiting of Agents' bank accounts by BSP Management is not the practice in Brasil.

10. For the BSP Billing, which fell due on 5th March 2008, the Applicant was invoiced for the amount of R\$10,915.50. On the Remittance Date, the Applicant paid into the BSP Clearing Bank its cheque for R\$10,195.50. That gave rise to a short payment of R\$720. On the following day, the BSP Clearing Bank noticed that the amount received did not correspond to the BSP billing amount. Upon being apprised of its error on 6th March, the Applicant immediately paid in the missing R\$720.

11. In a letter sent on 10th March, the Respondent requested the Applicant to furnish a bank guarantee in favour of IATA in the amount of R\$25,000, with a validity of one year.

Review Approach Taken

12. The parties agreed, per Resolution 820e, §2.3, to waive hearing in favour of the undersigned acting on the documentary evidence and submissions presented by the parties. That documentation established that there was no disagreement on the facts, as outlined above. It followed that the outcome of the review would turn on the applicable IATA regulations.

Considerations

13. It is recognized that the efficient and economical operation of the BSP necessitates strict fiduciary discipline on the part of Agents reporting and remitting through it.

14. There is no dispute that the involuntary underpayment was due to an accidental inverted transcription in the payment order. The Applicant's bank records for and following the Remittance Date show an ample cushion to meet its BSP obligations. 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.

15. The Respondent's field staff are under strict orders with respect to reporting and remitting discrepancies to apply the IATA Resolutions immediately and to the letter. The prime function of the BSP is to safeguard the BSP Airlines' monies.

Findings

16. The Applicant's explanation is not disputed and is also accepted by the undersigned. The incident in question was not a financial irregularity in the sense envisaged in Resolution 832 but the result of a transcription error, which the Applicant corrected immediately it came to notice.

17. The Respondent's actions taken as a consequence of becoming aware the short payment were procedurally correct, based on a strict interpretation of Resolution 832, §1.7.5. The rules require that precautionary measures be taken promptly, and they were.

18. The Applicant's financial record as an Accredited Agent is to be taken into account. There was a simple human error that neither threatened nor caused financial harm to any BSP Airline.

Decision

19. The recording of two instances of irregularity by the Respondent made per Resolution 808, §1.7.5.1(a) is in accordance with correct procedure and stands.

20. The Respondent's request that the Applicant provide a bank guarantee is not warranted on the facts and is hereby cancelled, without prejudice to the outcome of any future financial review of the Applicant by the Respondent which may indicate a different course of action being decided by the Respondent.

21. The parties are not liable to pay any fee or costs to the undersigned in respect of the present decision.
22. For good order's sake and per Resolution 820e, §4.1, it is noted that 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 3rd Day of June 2008, in Geneva.

Brian Barrow
Travel Agency Commissioner, Areas One & Two

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