

TRAVEL AGENCY COMMISSIONER, AREA 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

www.travel-agency-commissioner.aero

DECISION

In the Matter of:

Skylinks Travel Bureau

Hannover House

Independence Drive

P.O. Box 560

Blantyre

Malawi

(IATA Numeric Code: 61-2 0012-3)

Applicant,

vs.

Agency Administrator

IATA

International Air Transport Association

33, Route de l'Aéroport

P.O. Box 416

1215 Geneva 15 Airport

Switzerland

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 Area Two, appointed in accordance with the provisions of Resolution 820d.

Parties

2. The Applicant is Skylinks Travel Bureau, an IATA Accredited Agent in Blantyre, Malawi, with an Approved Location in Lilongwe. The Applicant is an IATA Accredited Agent of long standing. At the hearing before the undersigned held in Blantyre on 10th August 2007, the Applicant was represented by Mrs Rita Savjani, Managing Director and Mr James Chikaonda, Marketing Manager. Mrs Thandi Ndovi, a consultant on the Applicant's staff also assisted.

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') Southern Africa, which area includes Malawi.

4. The Billing & Settlement Plan ('BSP') is an industry-wide system whereby IATA Accredited Agents centrally report, account for and remit their sales of passenger transportation, made on behalf of airlines participating in the BSP. The BSP Management, a division of IATA under the control of the Agency Administrator, is charged with overseeing the operation of the BSP and with coordinating certain activities with the different BSP actions, airlines, agents, processing centre, settlement bank, etc.

5. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area Two, Europe, Africa & the Middle East, is Geneva, Switzerland. The IATA regional field office that services Malawi, is located in Johannesburg, South Africa.

6. 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. Those resolutions are set out in the Travel Agent's Handbook.

7. At the hearing, the Respondent was represented by Mr Peter Museku, Manager Accreditation – Africa, from the Johannesburg office. The Respondent called as witnesses Mr Grant Ochieng Onyango, Kenya Airways Country Manager – Malawi and Mr Ian Kwepi, Accountant at Kenya Airways.

Contractual Considerations

8. The contractual instrument in this matter is the Passenger Sales Agency Agreement (IATA Resolution 824), signed by the Applicant at the time of accreditation. Under that Agreement, IATA acts for those of its Members that appoint the travel agent signatory as their sales agent.

9. Incorporated into the Agreement are several documents, including IATA Resolution 814 – 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. Among the regulations set out in that publication is Resolution 832 – Reporting and Remitting Procedures.

10. 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.

11. Per the Travel Agent's Handbook, Kenya Airways is a Member of IATA and has appointed the Applicant as its sales agent, by the process of general concurrence foreseen in the Passenger Sales Agency Rules (Resolution 814, § 3). A contractual relationship is accordingly established between Kenya Airways and the Applicant.

12. It was discovered in the course of this review that the version of the Travel Agent's Handbook (January 2007 edition) published by the Agency Administrator places Malawi under the Passenger Sales Agency Rules contained in Resolution 800. However, upon full implementation of the BSP in Malawi, in early 2005, Resolution 800 was replaced and superseded by Resolution 814 in Malawi.

13. In the event, this error by the Respondent was not a material issue in the review proceeding since both Resolutions 800 and 814 operate in conjunction with Resolution 832 – Reporting and Remitting Procedures, and it was Resolution 832 that was relevant to the review.

14. The significance of Resolution 814 is that its introduction simultaneously gives rise to the setting up of an Agency Programme Joint Council ('APJC') for the country concerned, as well as the dissolution of the Agency Investigation Panel. IATA Geneva informed all Accredited Agents in Malawi in April 2005 of the impending switch to Resolution 814. Reports of meetings of the APJC-MW held in February and in May 2005, produced by the Respondent, reflect that in fact the switchover duly took place on time and that representatives of the national association of travel agents, TAAM, were appointed to and are serving on APJC-MW. The current edition of the Travel Agent's Handbook does not to reflect the true state of affairs and needs to be corrected.

Facts

15. Malawi is one of seven countries served by the BSP Southern Africa. The BSP was first extended to that country several years ago and was declared fully implemented there in May 2005. Initially, there was a BSP Management representative in Malawi, charged with dealing with issues and problems on the spot. In December 2005 that function was transferred to the IATA regional office in Johannesburg along with the corresponding functions of five other countries. Today, Johannesburg exercises control over and responsibility for IATA Agency Programme activities in Malawi.

16. As an IATA Accredited Agent, the Applicant reports and routinely remits its airline sales through the BSP Southern Africa. In that connection, the Applicant reported nine credit card sales transactions made on Kenya Airways flights effected over the period May and October 2006 and January and February 2007. It is not disputed that the transactions were indeed reported centrally at the requisite time, through BSP channels.

17. On 27th March 2007, Kenya Airways raised ADM # 6370600052 listing the nine above transactions, by Traffic Document number. That ADM claimed that MKW 1,659,498 (i.e. about USD 11,290) was due to the airline as "*Cash for cc sales not paid*

to airline". No other explanation appeared on the ADM which specified that settlement was to be made in the BSP Billing Period "2007042". At the hearing, Mr Onyango asserted that the ADM was issued following telephone exchanges between the Applicant and Kenya Airways, which explained the bundling of all nine transactions on the same ADM. The Respondent could not recall those telephone conversations and had no record of them.

18. The Applicant received the ADM via the electronic BSPlink systems some days later and called the Respondent's Johannesburg office, on 4th April, seeking explanation of Ms Karen Damon how payment on the reported credit card transactions had failed to go through the system. She was unable to help. Having had no news, the Applicant e-mailed Ms Damon on 25th April reminding her of the problem. The Applicant simultaneously requested Kenya Airways' permission to short-pay the BSP Billing received by the amount on the ADM, pending the outcome of its inquiries into the still unexplained failure in the system. That request was rejected the same day. Instead, the Applicant was told by the airline to settle in full and then submit an Agency Credit Memo "*once you prove that the money was paid to KQ*".

19. However, the Applicant nevertheless proceeded to short-pay the BSP Billing by deducting the amount in the contentious Kenya Airways' ADM. It was thereupon called to order by the Respondent's Johannesburg office and instructed to settle immediately or face being declared in default under the provisions of Resolution 832. The Applicant was simultaneously informed that two instances of irregularity had been recorded against it and that penalty was broadcast to IATA Member airlines by the Respondent on 11th May 2007, in a routine bulletin.

20. The hearing focused initially on what could have happened to the missing nine credit card transactions. The meaning of the message sent by ADP, the BSP data processor, to Ms Karen Damon of BSP Management was probed. That message, ostensibly sent in response to Ms Damon's inquiry on behalf of the Applicant, was relayed by her to the Applicant on 20th May, (i.e. six weeks after the matter was first raised). It read "*Kenya Airways (KQ 706) credit card transactions were configured in our system to be reported to Card Clear on April 1st 2007. All the previous transactions (like in this case) were reported directly to the airline, so you should contact directly with them on order to know why these transactions were not reported.*" Read in isolation, this ambivalent message was not helpful.

21. As Kenya Airways was pressing the Applicant for payment precisely because they had not been paid by BSP and did not know where the credit card transaction receipts were, or if they even existed, at all, ADP's advice was of little use to the Applicant.

22. The facts became clearer after extensive examination of them at the hearing. The Applicant explained that in early 2006 it had been informed by a representative of Galileo Southern Africa ('Galileo'), that consequent upon the installation of new Galileo software, travel agents would no longer be required to report credit card transactions directly to each issuing airline individually, but would report them to the BSP data processing centre, as part of the centralized BSP Sales Transmittal. This was good news for the Applicant who proceeded to do just that, from May 2006. With regard to other

BSP Airlines, the Galileo guidance was sound, but as Kenya Airways had not yet signed a merchant agreement with Card Clear, the old procedure of reporting directly to Kenya Airways in fact remained in place and should have been followed. Kenya Airways actually signed the requisite merchant agreement with Card Clear in April 2007, so coming into line with other BSP Southern Africa Airlines.

23. The Applicant's misdirected reporting of the nine transactions in contention was compounded by the fact that ADP, the BSP data processing centre, at no point queried the anomalies or alerted either the Applicant, Kenya Airways or BSP Management that it was in receipt of irregular and thus unprocessable credit card sales material from the Applicant. In fact, the nine anomalous transactions came to light only when Kenya Airways conducted its routine post-flight matching exercise of coupons received against payments made. That, perforce, was several months after the event.

24. The second point of focus during the hearing was why, notwithstanding Kenya Airways' instruction in the ADM that it was to be settled in "2007042" i.e. the second BSP Billing of April 2007, the processing centre in fact included the debit in the first BSP Billing of that month. The significance of that premature inclusion appears to have escaped the notice of all concerned at the time, as evidenced in the Respondent's letter of irregularity sent on 2nd May 2007 and the parties' subsequent comportment, up until the hearing.

25. When the error was finally uncovered at the hearing, it was acknowledged by both the Respondent and by Kenya Airways that the BSP Billing itself was indeed at fault in that it prematurely included the ADM amount. Accordingly, it was recognized that the Applicant had not 'short-paid' the ADM amount since the withheld part of the payment was made good before the due date of the BSP Billing which should have contained the debit.

26. With regard to the procedure that could have been applied at the time the dispute first arose, the BSP Manual for Agents at §7.5 – Disputed Billings states "For applicable local procedures consult Chapter 14 – Local Procedures/Information". The Chapter 14 applicable to BSP Southern Africa is, however, silent on BSP Billing disputes. A prescribed procedure for handling disputed BSP Billings is, however, set out in another IATA publication the 'Settlement Systems Service Provisions – Passenger', at § 6.15.3.7. That procedure recognizes the principle that a billing error involving a significant amount may be placed in abeyance by the BSP Management. The amount involved here was undeniably significant.

Findings

27. The guidance given by Galileo unintentionally misled the Applicant in respect of Kenya Airways which retained on-going direct reporting requirement until April 2007. The BSP data processor, the only party in a position to detect and recognize the repeated reporting errors committed over a time span of several months and to flag them, does not appear to have done so. The Respondent was not in a position at the hearing to confirm whether or not the data processor, with whom the Respondent is in a contractual relationship, has a duty to identify such reporting errors and to prompt corrective action to them, but common sense would dictate that should be done, in the interests of all the customers concerned.

28. As reflected in the documentation, the guidance given by the Respondent's Johannesburg office to the Respondent as to possible courses of action open to it upon being presented with the contentious ADM was passive. Too much time elapsed between the Applicant's initial and timely query and follow-up, during which no communication passed from the Respondent to the Applicant. When ADP's equivocal message was passed on to the Applicant by the Respondent help or advice were not offered. The possibility of invoking the ADM dispute procedure as a means of staving off protested debit action was not mentioned. Understandably, the Applicant had good reason to feel aggrieved in the circumstances.

29. Had the matter not been referred to a review proceeding, the enigma of the missing credit card transactions could well have continued, undisturbed until it ran into the ground. As it is, the review proceeding has inserted an element of impetus and external focus on the problem. The missing documents represent an unsatisfactory state of affairs from everybody's viewpoint and useful lessons are to be drawn from the communications failure.

30. The undisputed explanation offered by the Applicant for the misreported credit card transactions is found to be credible. The control system of the BSP has failed to detect, alert or correct the misreports. To compound that state of affairs, the documents sent to the data processor are still adrift in the system, to this day. Unless and until they are found, the Applicant is deprived of the means to recoup from the ticket purchasers the value of the tickets which it has in the meantime been forced to pay to Kenya Airways out of his own pocket, under threat of collective default action if it failed to do so. This is surely also a highly unsatisfactory situation for BSP, for ADP and for Kenya Airways since it makes the Applicant a victim.

31. At the hearing, the Respondent agreed, at the suggestion of the undersigned, to initiate immediate and insistent inquiries with its contractual partner, ADP, to locate and return to the Applicant, without delay, the strayed credit card sales documents sent to it, with a view to enabling the Applicant to try to recover the monies from those credit card holders who are still contactable. That willingness to help put right a wrong that is to the Applicant's financial disadvantage is appreciated by the Applicant and the undersigned. It was noted that ADP has in the meantime transferred its BSP processing to Madrid.

32. Kenya Airways stressed at the hearing its sympathy for the Applicant's quandary and its preparedness to do all within its power to help the Applicant elucidate the mystery of the still missing audit coupons and CCCF coupons.

33. As agreed at the hearing, for good order's sake, the Applicant submitted to the Respondent a letter disputing the BSP Billing. In consequence, the Respondent has withdrawn the two instances of irregularity earlier ascribed to the Applicant and has undertaken to correct the record publicly. The undersigned finds that such a corrective course of action goes a long way to repairing any damage that might otherwise have been done to the Applicant's good name and reputation for financial probity. In the intimate business community of a small country, such as Malawi, an individual's personal reputation takes on particular importance. It is reassuring to see that Skylinks

Travel Bureau's financial integrity is not placed in question; nor has its good name been sullied by this incident.

34. Under IATA's policy of zero tolerance for Agent shortcomings, the minor and understandable fault of the Applicant of sending Kenya Airways' credit card sales directly to BSP brought down upon the Applicant the full brunt of IATA disciplinary measures. However, by the same token, the Respondent, too, committed a number of errors, ranging from the disconnect between the published contents of the Travel Agent's Handbook and the application of Resolution 814 in Malawi these past two years, the premature inclusion of the ADM in the BSP Billing, failure thereafter to notice that the billing was wrong, the absence of a BSP Billing dispute procedure from a publication readily available to the Applicant, the lack or non-operation of a discrepancy detection mechanism in the BSP machinery to uncover misreported credit card transactions, the seemingly half hearted response by the Respondent's Johannesburg office to the Applicant's legitimate request for assistance in what was an exceptional situation. It did not help that Malawi is distant from Johannesburg and that postal and telegraph problems between the two countries tend to frustrate effective communications. The Respondent needs to be more sensitive to this last factor.

35. Doubtless, these identified shortcomings will be addressed and made good. They serve to show that human error spares nobody and that perhaps the exercise of more tolerance and understanding would help avoid incidents.

36. The undersigned accordingly finds that the Applicant's grounds for requesting a review to be substantiated. However, the Respondent's corrective actions initiated in the meantime are not only appropriate recognition of fault it committed but also demonstrate the Respondent's good faith in this dispute.

Decision

37. Per Resolution 820e, § 3.2 in making his decision the Travel Agency Commissioner has the discretion to set such conditions as are consistent with and may be reasonably applied under the Passenger Sales Agency Agreement and the Passenger Sales Agency Rules.

38. The Respondent is invited to consider the shortcomings outlined in § 34 above and to take corrective action to eliminate fault or prevent recurrence, whichever is appropriate.

39. To the extent that blame is to be assigned, it is shared by the parties. That the credit card sales were improperly reported, although excusable, was strictly speaking the Applicant's fault. That nothing was done to call the Applicant's attention to the shortcoming lies at the door of the BSP and its data processor. That inaction compounded the damage done and lost valuable time.

40. However, the Applicant's initial refusal to pay the improperly included debit in BSP Billing 2007042 turned out not to be a sanctionable act and no fault lies with the Applicant on that count.

41. Because so much time has passed since some of the tickets were issued, it is by no means sure that the Applicant will be able to contact all the purchasers concerned, some of whom have left the country in the meantime, to take the action necessary to recover the money it had to pay to BSP on their behalf, under threat of IATA collective disciplinary action. It is accordingly decided that half the amount of any monies that remain unrecovered from the purchasers by the Applicant as at 31st December 2007, are to be paid to the Applicant by the Respondent. That payment is to be made within 15 days against a documented invoice to be presented by the Applicant to the Respondent, for the attention of Mr Peter Museku in Johannesburg.

42. 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.

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

44. 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 814, § 12.

Decided this 17th Day of August 2007, in Geneva.

Brian Barrow
Travel Agency Commissioner, Area Two

NOTE: to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 17th August 2007, with the original signed copy being sent by registered post.