

**TRAVEL AGENCY COMMISSIONER, AREA TWO**

29, Route de l'Aéroport, P.O. Box 833

CH-1215 Geneva 15 Airport, Switzerland

Office phone: +41 22 799 3900, office fax: +41 22 799 3902

E-mail: [agency.commissioner@bluewin.ch](mailto:agency.commissioner@bluewin.ch)

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BPB/ma/08ix08

**DECISION**

**In the Matter of:**

**Global Tours GmbH**

Neue Börse

Selnaustrasse 32

8001 Zurich

Switzerland

(IATA Numeric Code: 81-2 1098 6)

Applicant,

vs.

**Agency Administrator**

**IATA**

International Air Transport Association

Route de l'Aéroport 33

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 Global Tours GmbH, with registered office in Zurich, Switzerland which has been an IATA Accredited Agent for ten 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. 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 Switzerland. 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 Two, Europe/Africa/Middle East, is Geneva, Switzerland. The country field office for Switzerland, which exercises management responsibility for the BSP Switzerland, is in Geneva.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference. They lay down the rules, regulations and procedures governing business relations between IATA Accredited Agents and IATA Members. The programme is directed by the Agency Administrator, an IATA official, or his recognized representative, as defined in Resolution 866-Definitions of Terms used in Passenger Agency Programme Resolutions.

#### Contractual Considerations

6. The Passenger Agency Conference is composed of 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 required to apply and abide by Conference Resolution requirements.

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 818 – Passenger Sales Agency Rules and the BSP Manual for Agents (Attachment 'I' to Resolution 850). The Agreement and Rules mentioned above are updated and republished annually by the Respondent in the Travel Agent's Handbook, which is accessible to IATA Accredited Agents via an IATA website.

8. The provisions of §1 of Resolution 820e, - Reviews by the Travel Agency Commissioner, allow an Accredited Agent to seek review by the Agency Commissioner in circumstances described in the body of that paragraph. Specifically, per §1.1.10, 'an Agent who considers that the Agency Administrator has not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment' may seek a review. The Applicant has relied on that provision to bring its request and the undersigned has accepted to conduct a review.

#### Hearing

9. By consent of the parties, the undersigned has reached his conclusions and based his decision on the documents submitted by the parties. To a limited extent, the documentary evidence has been supplemented by explanations of internal IATA practice.

#### Facts

10. In early March 2008, the Applicant booked and issued a BSP Airline's ticket for return travel in Business Class to the United States, to begin in early May. The fare used was subject to minimum advance booking conditions. In mid-April, the Applicant rebooked the travel bringing forward the departure date to 25 April. There being no space available in Business Class, the revised booking was made in Economy Class. Although the reservation

on the BSP Airline's computer was changed, the Agent did not revalidate or reissue the (paper) ticket it had originally issued. Subsequently, space in Business Class did become available but as it would have involved an increase in fare, the passenger elected to stay with the Economy Class booking. However, when the passenger checked in for the outbound flight, notwithstanding the state of his reservation, he was placed in Business Class but not asked to pay any fare difference. In late June, the BSP Airline concerned sent an Agency Debit Memo through *BSPLink* for a fare difference of CHF668- on the above transaction.

11. Upon receipt of notice of the impending ADM the Applicant sought to dispute it but the BSP Airline maintained that it was owed monies and did not act to withdraw the ADM. Shortly thereafter, the Applicant's bank account was debited by the Respondent for the BSP Billing, which contrary to the Applicant's wishes, included the disputed ADM amount.

12. The Applicant contends that the ADM should have been withdrawn from the BSP Billing process when it was disputed and that the Agency Administrator's representative, the BSP Manager, did not follow correct procedure in that he did not take proper action.

13. Resolution 818, Attachment 'A', §1.7.12.3 requires that a disputed ADM be 'recorded as disputed, and will not be included in the Billing'. §1.7.12.4 amplifies that requirement by providing that a duly disputed ADM '... shall be suspended from the BSP process and settlement of the dispute shall be for resolution between the Agent and the Airline concerned.'

#### Considerations

14. The Passenger Agency Conference has not included in the remit of the Agency Commissioner jurisdiction over commercial disputes between Accredited Agents and BSP Airlines that are typically conveyed by ADM action. In consequence, the rights and wrongs of the above dispute do not form part of the present review proceeding.

15. Moreover, the Conference has not assigned to the Office of the Travel Agency Commissioner the power of review of alleged violations of ADM issuance and dispute rules that it has adopted. When confronted with an alleged infringement of these rules by a BSP Airline an Accredited Agent is thus without remedy in the Agency Programme.

16. Resolution 818, Attachment 'A', §1.7.12, neither specifies who shall record the coming into existence of an ADM billing dispute, nor does it state who shall suspend a disputed ADM from the BSP Billing process. However, in practice, the first action could be effected only by the BSP Airline itself or by the BSP Manager and the second action, only by the BSP Manager.

17. The Respondent's representative has indicated that although the BSP Manager has access to the *BSPLink*, a service provided by the Respondent to facilitate the application of the requirements of the applicable Passenger Agency Conference resolutions, he is not under instruction to conduct a continuous surveillance of what is going on in that system. As yet, there is no functionality in *BSPLink* to alert the BSP Manager of the occurrence of an ADM dispute. So long as that remains the case, as evidenced by the present proceeding, ADM procedural disputes will continue to slip through and so, risk tarnishing the even-handed image of the BSP.

18. Before *BSPLink* was introduced, communications on ADM disputes were not channelled along the pre-set electronic paths now provided by *BSPLink* (e.g. the use of 'dispute button') and it is understood that it was not unusual for a BSP Manager to be included in the communications loop of evolving ADM disputes.

19. The undersigned accordingly concludes from the context of Resolution 818, Attachment 'A', §1.7.12, that it falls to the Agency Administrator to take the requisite action to record an ADM dispute and to take the disputed item out of the BSP Billing process.

20. That conclusion is strengthened when one takes into consideration Resolution 818, 'A', §1.7.11(xvi) which makes it grounds for an Agency Commissioner review if an Accredited Agent persistently fails to settle amounts properly owing against Agency Debit Memos. Awareness of such systematic failures calls for a much wider knowledge of a given Agent's pattern of ADM disputes behaviour than is available to an individual BSP Airline. The BSP Manager, on the other hand, has ready access to that information.

### Findings

21. The Agency Administrator did not carry out the requisite recording and transaction suspension procedures in respect of the disputed ADM.

22. Although the amount debited by the Respondent from the Applicant's bank account, without the agreement of the Applicant, constituted 'direct' detriment, it did not amount to 'serious' financial detriment. However, the debit was made without the Applicant's agreement and contrary to its wishes, which raises an important point of principle. Had correct procedure been followed by the Respondent, unauthorised debit action could not have occurred.

23. The disputed amount should not have been included in the BSP Billing in the first place. But it was and per Resolution 818, Attachment 'A', §1.7.12.5 it is difficult to see how it could then be taken out once the process was in train. Instead, the Respondent did the next best thing by placing the disputed sum in escrow, at a later date, pending resolution of the difference between the Applicant and the BSP Airline.

### Decision

24. Until relatively recently, BSP procedures permitted a BSP Manager to take a conciliatory role between parties to such disputes. With the monies now held in escrow, it might have been considered practical to revive that practice for the occasion. However, the Plan Manager has in this case already pronounced his views on the rights and wrongs of the commercial dispute and is perceived by one of the parties as being biased on the matter.

25. Taking into account the discretionary powers that are vested in the Agency Commissioner by virtue of Resolution 820e, §3.2, the undersigned would be prepared to name a neutral expert to rule what the applicable procedure should have been at check-in and if a fare difference is collectable. However, that would be done only with the specific concurrence of the Applicant and the BSP Airline.

26. An alternative course might be for the Respondent to persuade the BSP Airline to consult with the Applicant, with a view to reaching a bilateral settlement of their difference,

as should have happened had proper procedure been observed in the first place. In that consultation, neither the Respondent nor the undersigned would play any part, other than the Respondent paying over the monies in question in accordance with the terms of the agreement reached.

27. The parties are hereby instructed to elect one of the actions per §25 or §26 above, and each is to notify the undersigned by 15<sup>th</sup> September, 2008 of their preference. If they elect the same course of action, the undersigned will thereupon take appropriate steps to set it in train. Otherwise, the election will be made by the undersigned who will communicate it to them.

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

29. 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 818, §12.

**DECIDED** this 9<sup>th</sup> day of September, 2008, 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 9<sup>th</sup> September 2008, with the original signed copy following by registered post.**