

**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)

---

BPB/ma/14xi08

**DECISION**

**In the Matter of:**

**All Travel Services (Pty) Ltd**

37 Lakefield Avenue

Benoni, 1501 Gauteng

South Africa

(IATA Numeric Code: 77-2 3528 1)

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 All Travel Services (Pty) Ltd, (t/a All Travel Services) with registered head office in Lakefield, Benoni, South Africa and has been an Accredited Agent on the IATA Agency List for 14 years, without previous incident.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines that 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 231 or so Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') Southern & Eastern Africa, which includes South Africa. The BSP is an industry centralised sales reporting and settlement system, a characteristic of which is its use of Standard Traffic

Documents ('STDs'), provided by the Respondent to Accredited Agents for issuance on behalf of all BSP Airlines. 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 office which exercises management responsibility for the BSP Southern & Eastern Africa, is situated in Johannesburg.

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 administered by the Agency Administrator, an IATA official or his authorized 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 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 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 are Resolution 814 – Passenger Sales Agency Rules (in effect in South African in 2007), the BSP Manual for Agents (Attachment 'I' to Resolution 850) and Resolution 850m-Issue and Processing of Agency Debit Memos ('ADM's). The Agreement and Resolutions 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. The January 2007 edition of that publication applies to the review proceeding giving rise to this decision.

8. The requirements applicable to Accredited Agents for the safe custody and protection of Traffic Documents in their custody are set out in detail in Resolution 814, §5. That section also lays down the requisite procedure for reporting breaches of Traffic Document security (§5.6) and the consequences of failure to do so. Similarly, the BSP Manual for Agents, at Chapter 12, addresses the topic of safe custody and care with respect of Traffic Documents whilst they are in the possession of the Agent.

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.

### Hearing

10. A hearing was conducted before the undersigned in Rosebank, Johannesburg on 30<sup>th</sup> July 2008. The Applicant was represented by Mrs Michelle Smith, Director and Ms Wendy Henn, Financial Director. Ms Diane Potgieter of ASATA, the Applicant's trade association, was also present at the Applicant's request. The Respondent was represented by Mr Sunil Chopra, acting Regional Director Africa, with Mr Janaurieu D'SA, Regional Country Manager Southern Africa and Mr Abdulrazak Khalfan, Hub Leader Africa IDFS. Mr James Kumwenda, then the designate and now the Regional Director, IDFS Africa, was present as observer.

11. When, after the hearing, it became apparent to the undersigned that the hearing had not uncovered sufficient evidence on which a decision could be safely based, it was supplemented by a fact finding visit, in an endeavour to cast light on certain matters that were still unclear. During that visit several of the people actually involved in the action under review, but who had not been present at the hearing, were interviewed.

### Summary of the Facts

12. Under the rules prevailing up to 31<sup>st</sup> May 2008, Accredited Agents in South Africa could issue paper or electronic STDs for passenger transportation over the lines of BSP Airlines. From 1<sup>st</sup> June 2008, the paper STDs were withdrawn from Accredited Agents and replaced by electronic STDs in that BSP.

13. To replenish stocks of paper STDs, an Accredited Agent was required, as the need arose, to fax or e-mail to the Respondent's Johannesburg office a completed Stock Replenishment Order Form stating serial numbers of the STDs in hand and the replacement quantity desired. The Respondent would control the order and decide the quantity of STDs to be sent. It instructed the security warehouse to prepare the order which was thereafter picked up by Skynet who would deliver it to the travel agent, against the travel agent's signature.

14. On 26<sup>th</sup> February 2007, the Applicant's management faxed such an order form to the Respondent for one box (i.e. 250 STDs). The resulting order, in the form of a package, reached the Applicant, apparently on 7<sup>th</sup> March but that date may not be correct. Concerning the actual delivery, the Parties' respective recollections of the events are significantly at odds.

15. On the one hand, the Applicant's director asserts she opened the package on 7<sup>th</sup> March and seeing that 66 tickets of the 250 STD pack were missing, she acted the same day, by sending a fax to the Respondent reporting the short delivery and seeking the Respondent's advice. Having received no response, the Applicant further asserts that a staff member sent a repeat of the first message, some days later, again without receiving acknowledgement from the Respondent. There the matter was apparently left to lie.

16. On the other hand, the Respondent states that it was unaware of the purported deficiency until August 2007, after the first two of the missing STDs were honoured for carriage by an IATA Member, Eva Air, giving rise to a claim for payment by that airline. There was an exchange of communications between the Parties as a result of which the Respondent raised an ADM against the Applicant, on behalf of Eva Air, an IATA Member.

Under protest, the Applicant settled that ADM. However, several more ADMs, all issued by South African Airways, were subsequently received by the Applicant in respect of STDs missing from the March package, which had been honoured for carriage by the airline. The Applicant formally disputed all of them.

17. When, after exchanges with the Applicant, the Respondent concluded that indeed some missing STDs were not properly accounted for, it advised the Applicant to report the occurrence to the police and to file a Missing Traffic Document Report, per the laid down procedures (i.e. BSP Manual for Agents, Chapter 12). That was all done on 24<sup>th</sup> August 2007.

18. When the Applicant disputed the ADMs presented by SAA, they were thereupon extracted by BSP Management from the BSP Billing process, as required by the Respondent's rules (i.e. Resolution 832, §1.7.14), applicable in BSP Southern Africa at the time. (Note: identical procedures are in place today by virtue of Resolution 818g, Attachment 'A', §1.7.12).

19. The Applicant sought review in this matter; firstly, because it claims that in not acting on the two March communications concerning the anomalous STD delivery that it asserts were sent, the Respondent failed to follow correct procedure; and secondly, by issuing an ADM on behalf of EVA Air, the Respondent did not follow correct procedure. It was the Applicant's assertion that the above two alleged courses of conduct by the Respondent were to the Applicant's direct and serious detriment.

### Findings

20. A year and a half after the package of STDs reached the Applicant, by whatever convoluted route, notwithstanding the questioning of the main actors involved and examination of records and other documents relating to the matter, contradictions remain unresolved as to some of the facts. In particular, the events surrounding the actual delivery of the package of STDs and what happened to them, either en route to or after the Applicant received them, have not been established beyond reasonable doubt.

21. Although a package of STDs came into the Applicant's possession at some time in March, possibly on the 7<sup>th</sup>, it was not delivered to the Applicant in accordance with the prescribed procedure. The contradictions between the Skynet delivery man's account of the delivery and the Applicant's recollection of events are stark and remain unexplained. There is, however, no doubt in the mind of the undersigned that the signature on the Skynet waybill submitted in evidence by the Respondent is not that of an employee or of any person known to the Applicant.

22. Furthermore, the delivery time recorded on that waybill cannot be correct since it was out of working hours, when the premises of the Applicant were under independently operated electronic surveillance. As the sensor alarm was not triggered, the conclusion has to be drawn that there was nobody on the Applicant's premises, either before or at the time the waybill was purportedly signed.

23. Whereas the Applicant has not been able to substantiate its claim that it communicated by fax to the Respondent, twice in March 2007, on the subject of an under-delivery, the Respondent has demonstrated, with independent authentication, that no such

faxes were ever received by it. Of the two versions of the events surrounding the delivery, the undersigned finds that preference must go to that of the Respondent since it is the more consistent of the two and not open to the criticism of being self-serving.

24. The storage, control and delivery arrangements in place in BSP Southern & Eastern Africa, in March 2007, for paper STDs were inspected and the operating procedures examined by the undersigned. Reflective of the potential face value of the STDs being delivered, the system was carefully structured, with in-built checks and precautions. It appears to have taken account of all possible contingencies, except seemingly, the one that has given rise to the present review. Were the delivery man, inadvertently or otherwise, to hand the package of STDs to a stranger, without the travel agent's knowledge, then the travel agent would have no way of knowing that a delivery had been effected, behind its back as it were, the more so if the travel agent had not been alerted of impending delivery. In consequence, the point of delivery (POD) copy of the waybill, bearing a spurious signature, could be turned in by Skynet, to the Respondent, by way of proof of delivery, without provoking any questions.

25. It is not established that advance notice of impending delivery by the Respondent was given to the Applicant in this instance. It was not the practice for Skynet to leave a copy of the waybill with the recipient, although that document does include a consignee copy. Had that been the practice, the spurious signature appearing on the waybill might have come to the Applicant's notice earlier, or its very absence might have caused red lights to flicker in the system. *Ex post facto* detection of the suspect signature might also have been forthcoming from examination of the signature on the deliveryman's clipboard sheet for the Benoni route of 07 March 2007. However, Skynet following several pressing requests from the Respondent and the undersigned, has not produced it.

26. Chief among the inherent weaknesses in the Respondent's then applicable delivery system for STDs was that it was constructed on the assumption that delivery would always be made into the hands of the recipient travel agent. Should that not happen, as in the present instance, a hiatus was created that exposed the system to abuse. Unless the consignee has duly acknowledged receipt, evidenced by an authorized signature, it would be unsafe to hold it solely liable for the consequences of a defective delivery, whatever the cause. The Respondent devised and oversaw the delivery system. It follows that any weaknesses in that system were attributable solely to the Respondent.

27. The comportment of the Applicant and the Respondent, both in March 2007, when the delivery was made, and in August 2007, when the first of the missing STDs turned up, fraudulently, on another continent, convince the undersigned that neither of them realized the fact of under-delivery until the later date. Had the Respondent had an inkling of the irregularity in March, it would, to protect its own vital interests, have promptly raised the alarm and initiated a review by the Agency Commissioner of the Applicant (per Resolution 814, §5.6.2). As a matter of record, the damage containment drill for missing STDs was initiated at the Respondent's suggestion, in August 2007, when it finally became clear to both Parties that rogue STDs were out in the market place. The Applicant, however, appears to have recognized the full implications of the situation only when ADMs raised by SAA began to be presented. Similarly, had the Applicant focused in March 2007 on the fact that potentially valuable STDs were unaccounted for and thus constituted a serious financial threat to it, the Applicant would surely have taken far more vigorous self-protective measures

than merely sending routine faxes and then seemingly forgetting about the matter. That those faxes did not arrive at the Respondent's office cannot be attributed to the Respondent.

28. A second weakness in the control aspects of the STD replenishment system lay in the fact that whereas, by way of precautionary measure, the travel agent had to provide, under double signature, full serial number particulars of all STDs remaining on hand, in justification for the indent, there was no countervailing duty on the Respondent to check those data, even randomly, against its own computer generated records, to ascertain integrity. Had such a check been in place, the March under-delivery would have become apparent to the Respondent, at the latest, when the next STD stock replenishment indent was made by the Applicant, on 16<sup>th</sup> June 2007, wherein the listing given clearly reflects the deficiency arising from the March delivery.

29. That the laid down stock control and delivery procedures were followed, *grosso modo*, does not appear to be in doubt. However, as reflected in the facts of the instant review, those procedures did not ensure impermeable protection of the STD delivery process. Did those inadequacies work to the Applicant's serious and direct detriment? That could be argued to be the case should the Applicant be held responsible for the financial consequences that stemmed from those weaknesses. The STD delivery system formerly in place in BSP Southern & Eastern Africa operated without major incident, serving the needs of around 1500 Accredited Agents satisfactorily for many years. Apparently, only in this one instance were the system's inherent weaknesses revealed.

30. The weaknesses in STD replenishment delivery system in place in March 2007 have been considered above. In the matter under consideration, the system's lack of an effective mechanism for ensuring that the person taking delivery was indeed one authorized by the Accredited Agent to whom the STDs were destined, resulted in a breakdown of security. Not only was the person who signed the waybill unknown to the Applicant but both the time and manner of the delivery raise questions which have not been satisfactorily answered. The Respondent's rules with regard to Accredited Agents' responsibilities for safe custody and care of STDs whilst in its possession (*viz.* BSP Manual for Agents, Chapter 12, §12.3 and Resolution 814, Attachment 'A', §5). are based on the assumption that proper delivery has been duly effected, at which point in time, the recipient Agent becomes liable for the consequences of failing to implement the irregularity reporting provisions.

31. It has not been demonstrated in the course of this review that the Applicant received the STDs in a manner that permitted it to detect the under-delivery at the time of receipt. It has not been shown that the package of STDs was intact at the moment it came into the Agent's possession. In fact, because of the role of the mystery signatory of the waybill, there are strong grounds for suspecting that such was not the case. Although the Applicant did not sign for the package of STDs and thus cannot be held strictly liable for not ensuring the Respondent was warned at the time of the deficiency, it is nevertheless the case that the package did, eventually, pass into the Applicant's possession where it was available for inspection and reporting action. Whatever the action that was taken by the Applicant in March 2007, it proved ineffectual and to that extent the Applicant's comportment on that score is not above reproach.

32. The other ground for review raised by the Applicant concerns the issuance of an ADM by the Respondent on behalf of an IATA Member airline. The Applicant could, under the Respondent's published procedures, have disputed the ADM and refused to pay it but it

did not do so. Instead, under protest that it had not sighted supporting accounting evidence for the debit, it allowed it to be processed through the BSP. Although the undersigned can find no authority for the Respondent to issue an ADM, an action which per Resolution 850m, §1.1, is the sole prerogative of a BSP Airline, it appears that on this occasion the Respondent was acting for and on behalf of the Member airline concerned, which itself had no standing in BSP Southern & Eastern Africa but which had been harmed by a fraudulently issued STD traceable to that BSP. Such a discretionary action by the Respondent's BSP Management secured a cost-effective remedy to a problem that the Applicant went along with, at the time. The alternative course would have been for EVA Airlines itself to debit the Applicant, outside the BSP circuit, to recover what was rightfully due to it. In these circumstances, it has not been sustained that the Respondent in acting outside correct procedure did so to the Applicant's direct and serious detriment.

### Decision

33. The Applicant's petition that the Respondent in issuing an ADM for EVA Air did not follow correct procedure, as delegated by the Passenger Agency Conference, to the Applicant's direct and serious detriment, is rejected. That ADM could have been disputed and neutralised at the time by the Applicant, but for reasons best known to the Applicant, it was not. Furthermore, even if there had been detriment shown, it would not have been serious. The ADM has been settled and that matter is ruled as closed.

34. As to the Applicant's assertions on the shortcomings of the STD delivery in question, it is clear that the Respondent's former STD control and delivery system in BSP Southern & Eastern Africa contributed significantly and materially to the failure to ensure that delivery of STDs to the Applicant, in March 2007, was executed without fault. For that reason, on this count, the Applicant's petition that the Respondent did not follow correct procedure to the Applicant's direct and serious detriment is upheld. However, just how serious that detriment would be, in monetary terms, would depend on the claims, if any, by the BSP Airlines, (excluding EVA Air), that honoured any of the missing STDs, between 7<sup>th</sup> March 2007 and the cut-off date which is not later than the blacklisting action of 26<sup>th</sup> August 2007.

35. Should any ADMs be presented through the BSP or should equivalent debit notices be raised outside the BSP, in connection with usage of the missing STDs before they were blacklisted, the Respondent's major part in creating the circumstances that gave rise to those claims would need to be taken into account in deciding how settlement of the bill should be apportioned between it and the Applicant.

36. Conversely, the inability of the Applicant to substantiate its claim that it alerted the Respondent to the missing ADMs before the Respondent brought the matter to the Applicant's notice, renders it an accessory, albeit an unwitting and unwilling one, to the events that followed. For that reason, the Applicant shall be liable to pay not more than one quarter of the cost of making good the revenues foregone by airlines by honouring the fraudulently issued STDs in question. Moreover, in the circumstances it would be proper to afford the Applicant reasonable time, of say twelve months, during which it would progressively meet those obligations with the BSP Airline(s) concerned, bilaterally and outside the payment machinery of the BSP.

37. Neither the Applicant nor the Respondent is liable to pay any fee or costs to the undersigned in respect of the present decision.

38. If the Applicant is aggrieved by the present decision it is entitled under Resolution 820e, §4.1, to seek review of it by arbitration, that Resolution. Although, as it currently stands the resolution does not afford the same right to the Respondent, that is due to change, following a recent decision by the Passenger Agency Conference, to take effect as soon as government approval provisions will permit. In application of the discretionary powers vested in the Travel Agency Commissioner, per Resolution 820e, §3.2, the Respondent, if aggrieved by this decision, is hereby afforded the right to seek review by arbitration of the present decision, should it elect to exercise it.

Decided this 14<sup>th</sup> day of November, in Geneva.

Brian Barrow  
Travel Agency Commissioner

Note: To ensure timely receipt by the Parties, an electronic copy of this decision has been sent in advance, with the original signed copy following in the post.