

## **DECISION 2009-03-28**

### **Travel Agency Commissioner Area 2**

Helene Cedertorn  
Karlavägen 30  
172 76 Sundbyberg  
Sweden

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#### **The Matter:**

Request for Review of decision by British Airways to terminate appointment as its agent

#### **Applicant:**

Travel Syndicate Ltd  
5<sup>th</sup> Floor, Warwick House, 25-27 Buckingham Palace Road, London, United Kingdom  
Represented by:  
Bajul Shah, legal counsel of XXIV Old Buildings and Richard Mumford, legal counsel and partner of asb law

#### **Respondent:**

British Airways  
Represented by Chris Haynes, Head of Commercial Law  
Waterside PO Box 365, Harmondsworth UB7 OGB, United Kingdom

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#### **Background, formalities:**

In a letter the 17<sup>th</sup> of February 2009 British Airways cancelled Travel Syndicate`s appointment to act on its behalf effective from 31<sup>st</sup> of March 2009.

Travel Syndicate Ltd requested a Travel Agency Review the 23<sup>rd</sup> of February 2009 of the mentioned decision, based on IATA Resolution 820e section 1.1.8.

The parties met at a hearing, chaired by the Travel Agency Commissioner, the 26<sup>th</sup> of March 2009. Present at the hearing were from Travel Syndicate Ltd;

Nigel Taylor, Managing Director, Belinda Taylor, shareholder, Richard Mumford legal counsel and partner of asb law and Bajul Shah, legal counsel of XXIV Old Buildings.

and from British Airways;

Chris Haynes, Head of Commercial Law, John Godsall, Revenue Protection Co-ordinator and Jerry Foran, Manager Product Delivery.

The documentation and evidence submitted by the parties was reviewed at the hearing, as well as the contractual relationship between the parties. The parties were not been able to reach an agreement.

## **The Applicants arguments in summary**

The decision to terminate the appointment of Travel Syndicate Travel Ltd is not based on facts. There have been ticketing irregularities the period 2006-2008, and meetings between the parties on this topic, but there has been no irregularity after 31 May 2008. During June 2008 British Airways and Travel Syndicate met and agreed to continue the cooperation. Travel Syndicate made promises to ensure ticketing rules were upheld and also to have regular contacts with British Airways to discuss ticketing practices. No irregularities have been raised by British Airways during this period. Travel Syndicate has itself raised concerns with British Airways, for example one instance when a corporate customer came across a questionable fare, and another when a traveller informed Travel Syndicate that he would not use one "leg" of a ticket. In these cases a solution has been found in good faith. As late as in 4<sup>th</sup> of Feb 2009 there was an email correspondence in a matter regarding masking of credit card number, all in a cooperative manner.

Travel Syndicate Ltd has worked hard to promote British Airways and the British Airways/American Express Card. The annual volume of British Airways tickets sold is approx 6 MGBP and volume of total sale of other tickets is approx 5 MGBP. The sale of British Airways tickets therefore represents a large proportion of tickets sold by Travel Syndicate Ltd, and as corporate customers require that Travel Syndicate Ltd is able to sell British Airways tickets the impact of the termination will be even worse than the actual proportion of tickets sold.

There is one alleged irregularity after May 2008 in the material eventually submitted by British Airways. It concerns a traveller who bought a ticket at a package rate that should not be used for corporate customers. The ticket was however not issued by Travel Syndicate - it was issued by another agent. Travel Syndicate could not be blamed for the acts by another agent. Correct information was provided to the other agent and it was that agent who issued a ticket at the package rate. In any case there is no proportion in terminating the appointment as British Airways' agent due to this alleged violation. The incident must be seen in proportion to the total volume of tickets sold.

The decision by British Airways came out of the blue and it is not proportionate in relation to the alleged violation of the ticketing rules.

### The Applicant has submitted the following documents:

British Airways letter dated the 17th of Feb 2009 to remove TSL authority to issue tickets on behalf of BA.

A letter from Mr Taylor to Mr Godsall in response to the initial termination letter.

Two letters from asb law to BA legal dep - dated 11 March and 27 of March.

Witness statement by Nigel Taylor dated March 2009, accompanied by an Exhibit with copies of email correspondence between TSL and BA from Oct-Nov 2008 and Feb 2009, and documents with information on BSP volume of sales of British Airways tickets and other tickets and development of volume of billing on American Express/British Airways Cards during 2008.

## **The Respondents arguments in summary**

British Airways has not taken lightly the decision to terminate. There has been various alleged ticketing irregularities raised in meetings June 2004, May 2006, summer 2007 and May 2008. After the meeting in May 2008 the parties agreed that Travel Syndicate should speak to the Revenue protection Officer of British Airways on a monthly basis, which British Airways acknowledges it did. In a letter dated 10 June 2008 British Airways advised Travel Syndicate that it had suffered a revenue loss of somewhere in the region of 200,000 GBP. British Airways terminated its Sales and Marketing Agreement with Travel Syndicate in the summer of 2008. British Airways warned that further irregularity could result in termination of Travel Syndicate's appointment as British Airways agent. By letter 3 July 2008 British Airways advised that its concerns had not been adequately dealt with and, in particular, Travel Syndicate had not responded in respect of British Airways estimation of loss of revenue nor how this could be remedied.

From May 2008 British Airways has found one ticket irregularity dated the 18<sup>th</sup> Jan 2009, and this is the immediate reason for the decision to terminate. It concerned a customer of Travel Syndicate and the traveller was interviewed at the airport by Mr Godsall. The traveller had purchased a ticket at a package rate, but the hotel leg was fictitious. The agent should not sell tickets at this tour package rate to a corporate traveller. Even if Travel Syndicate was not the issuing agent, it was its customer, and Travel Syndicate arranged the booking for the traveller. This is a problem not only with Travel Syndicate; also other agents do the same.

Contractually British Airways has a right to withdraw its appointment of an accredited agent, according to resolution 824 Section 13.1.1, which forms part of the contractual relationship between the parties.

The Commissioner should affirm that intervention is not merited, there have been procedural irregularities associated with British Airways conduct, it has acted in good faith in seeking to resolve the disputes by way of dialogue and, ultimately, it has terminated Travel Syndicate's appointment legitimately under the terms of the Passenger Sales Agency Agreement.

### The Respondent has submitted the following documents:

A written submission accompanied by Appendix containing letters from BA to TSL dated 10 June and 3 July 2008, other correspondence in the matter from Feb-March 2009 and a list of alleged ticketing irregularities, including the above mentioned irregularity the 18<sup>th</sup> of Jan 2009.

## **Rules of interest**

### The TAC Office and TAC Review

The Office of the Travel Agency Commissioner (hereafter referred to as TAC) is created by Resolution 820d. In Attachment A of this resolution it is described that the TAC is an independent arbiter appointed jointly by the International Air Transport Association the Universal Federation of Travel Agency Associations and the World Travel Agency Associations Alliance, to conduct reviews and act with respect to decisions and/or actions affecting Agents and applicants under the IATA Agency programme.

The procedures under which the TAC operates are contained in IATA Resolution 820e. In accordance with section 1.1.8., the Commissioner shall review and rule on cases initiated by an Agent who considers that its commercial survival is threatened by a Member's individual decision preventing it from acting as an Agent for, or from issuing Traffic documents on behalf of, such Member.

It shall be noted that the TAC does not have authority to overrule resolutions, or change the material content of any rules. The Passenger Agency Conference (consists of representatives from the IATA Member Airlines) has the power to implement any rules or procedures it so wish. It is the process for implementation and execution of the rules that could be reviewed by the Travel Agency Commissioner.

#### The PSAA and other resolutions of interest

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as PSAA) in accordance with IATA Resolution 824. The PSAA becomes effective between the Agent and the Carrier upon the appointment of the Agent by such Carrier in accordance with the Sales Agency Rules in effect in the country of the Agent's Location.

– Accordingly Resolution 824, as well as other resolutions as in this case Resolution 818 (Passenger Sales Agency Rules - Europe), becomes part of the contractual relationship between the Carrier and the Agent upon appointment by the Carrier (or Member with another term used in other resolutions).

Resolution 818 section 3.5.1. stipulates that a Member airline may cancel the appointment of an Agent to act for it. In Resolution 824 section 13.2 it is stated that notice of termination shall be made in writing and take effect no sooner than the last day of the month following the month in which the termination is given, unless otherwise specified in the Sales Agency Rules.

#### **Reason for decision**

It is clearly so that British Airways has a right to cancel the appointment of Travel Syndicate as its agent, based on the contractual terms as laid down in IATA Resolutions 824 and 818.

- However the IATA Member Airlines have accepted that the agent has a right to have this decision reviewed by the Travel Agency Commissioner, based on Res 820e section 1.1.8 adopted by the Member Airlines, in a situation where the commercial survival of the agent is threatened. In this case it is obvious, and it is not either challenged by British Airways, that the commercial survival of Travel Syndicate Ltd is clearly threatened by the decision to terminate the appointment as British Airways' agent.

In order to make a review in a situation where the Agent's commercial survival is threatened, the TAC must be able to verify that the airline has some sort of fact based reason for its decision; otherwise the review will have very little substance. This does not mean that the TAC should assess the commercial aspects of the reason for termination, but merely that there should be a factual reason.

In this particular case there is a history of serious ticketing irregularities during the years 2004/2006 until May 2008 and the parties have had several meetings on this topic. British Airways sent a letter 10 June 2008 stating that any further irregularity would result in the immediate withdrawal of the appointment as British Airways agent. However during the summer 2008 the parties seemed to agree to continue the relationship, and British Airways acknowledges that Travel Syndicate did have regular calls to address potential issues, during what calls no issues were raised by British Airways.

In this situation one would expect that British Airways, when terminating the appointment, should have provided details on the immediate reason for the termination, especially as the letter sent the 10 June 2008 was clear that any irregularity would result in the termination of the appointment. The confirmation letter of the decision to terminate did not provide for any information on the immediate reason, and the initial statements to the TAC did not either provide for any details – only general allegations of ticketing irregularities with no specific incident specified.

The incident that caused the decision to terminate was only presented to the agent the 23<sup>rd</sup> of March 2009. I cannot assess the incident as such, this is in the hands of British Airways as a commercial decision, I can only reflect upon the fact that the information was provided at a very late stage.

In summary British Airways has the right to terminate the contractual relationship, the termination letter has been sent in writing and the effect of the termination is within the stipulated timeframe. However, using the discretion of my office, I find that the fact that the agent was given proper information on the immediate reason for the termination at a late stage, with the consequence that the agent has been unable to understand the exact reason for the termination or defend itself in this very serious situation, is reason for extension of the deadline from which the termination shall be in effect. This to give the agency a possibility to make arrangements for its business, as it now is fully aware of the situation and knows that it is not due to any misunderstanding British Airways has terminated the appointment.

I therefore order British Airways to let Travel Syndicate stay as their appointed agent, and act on its behalf for an additional month, until 30<sup>th</sup> of April 2009. If there are any ticketing irregularities causing British Airways loss of revenue or other costs, these should of course be compensated by Travel Syndicate Ltd, in accordance with due procedures that could include raising of ADM:s or other actions by British Airways.

### **Decision**

The decision by British Airways the 17<sup>th</sup> February 2009 to remove the British Airways ticketing authority for Travel Syndicate Ltd is hereby changed, and the effective date for the termination shall be the 30<sup>th</sup> of April 2009.

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Decided in Sundbyberg 2009-03-28

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the British Airways and to Travel Syndicate Ltd.

Copy will be sent this day to the IATA Agency Administrator by e-mail.

Sent this date by e-mail to British Airways and the Representatives of Travel Syndicate Ltd.

**Note:**

**The parties may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 818, section 12.**