

DECISION 2009-07-22

Travel Agency Commissioner Area 2

Helene Cedertorn
Karlavägen 30
172 76 Sundbyberg
Sweden

The Case:

Request for Review of action by the Agency Administrator relating to recovery of paper ticket stocks

The Applicant:

Grindrod Travel
Represented by Mr. Ken Tweedie, Managing Director
4th Floor, Grindrod, 106 Victoria Embankments, KwaZulu-Natal, Durban, 4001, South Africa

The Respondent:

Agency Administrator, South Africa
International Air Transportation Association, IATA
Represented by Mr. Janaurieu, Regional Country Manager Southern Africa
Sandown Mews, East Block, Ground Floor, 88 Stella Street, Sandown, Johannesburg, South Africa

Background, formalities etc:

By e-mail the 14th of April 2009 Grindrod Travel requested Travel Agency Commissioner Review based on Resolution 820e section 1.1.10. The Applicant had received ADMs relating to fraudulent use of paper tickets. The paper tickets were collected by SAFLOG the 26th of June 2008, as instructed by IATA. The Applicant claimed not to be responsible for the fraudulent use of the paper tickets.

The Respondent provided information in an e-mail the 24th of April that an investigation was ongoing, but yet not finalized. However the Applicant was permitted to short pay the disputed amount.

The undersigned decided, as long as the Applicant did not have to pay the disputed amount, to wait until the investigation was finalized before determining if a review should be granted. After some additional correspondence the Respondent replied in e-mails dated 3rd and 17th of June 2009, stating that the investigation was final and that the conclusion was that the Respondent had followed due process when recovering the paper ticket stocks.

The Applicant was asked to consider the response from the Respondent, and let the Commissioner know if it found that it still had a credible case for review, and submit any evidence in support of its position.

The Applicant withheld its position and submitted copies of certain documents in an e-mail dated 23rd of June.

The undersigned granted Travel Agency Review in the matter the 25th of June, and underlined that it is only the acts of the Agency Administrator that could be reviewed in this situation, not the ADM disputes with individual airlines, in accordance with IATA Resolution 820e.

The Respondent was asked by the undersigned to provide some additional information, and this was provided by e-mail the 3rd of July.

The parties have agreed to that an oral hearing is not necessary. As the evidence presented is written and not in itself disputed (only the interpretation thereof), and the positions of the parties are clear, I find that the review could be based on written submissions, with no oral hearing.

The Applicant's arguments in short summary

Travel Agency Review is requested in accordance with resolution 820e section 1.1.10.

Proof of the ticket stock collection during June 2008 is attached, as well as a signed affidavit from Wendy Jenkins, Branch Manager of Grindrod Travel in Johannesburg, confirming that the stock had been physically checked and handed over to SAFLOG, as requested by IATA.

After receiving instructions from IATA, Wendy Jenkins confirmed the stock of paper tickets that was being held on the premises. This was verified by Shireen Khan (Financial Supervisor). The tickets were packed and sealed with a copy of the stock report inside the box, as instructed. The duly completed packing lists were sent to IATA via SAFLOG website. See attached stock report for 2nd June 2008 and email confirming the ticket stock and numbers.

The boxes were secured while in the possession of the Applicant, (see the sworn affidavit signed and witnessed by South African Police stating that the tickets were secure and handed to SAFLOG on the 26th June 2008).

The ticket stock was collected and signed for on 26 June 2008 (see signed collection documents attached including email from SAFLOG). This was signed again by Wendy Jenkins. The ticket stock was also physically checked and signed for by Jabu, the SAFLOG representative.

Grindrod Travel was never made aware of ANY irregularities or discrepancies relating to the ticket stock until early January 2009, when it was advised that some of the ticket stock had been used fraudulently. At no stage the Applicant received any communication from IATA that tickets had been issued fraudulently or in fact the ticket stock had been blacklisted.

IATA has confirmed that the ticket stock was declared and collected by SAFLOG and sent to France. It was highlighted that SAFLOG was unable to verify that the contents of the boxes

from all Agents worldwide (see signature from Jabu confirming the stock was intact), however they were able to confirm that the boxes were undamaged. According to IATA the tickets were reported missing and blacklisted but Grindrod Travel was not advised of the missing or blacklisted tickets. Also, SAA confirmed that the ticket numbers had been altered to avoid detection once blacklisted, and that they were also unable to read the bar codes.

The Applicant has provided written proof that the ticket stock was checked and collected by SAFLOG on the 26th June 2009 and all the fraudulent tickets were issued after the cutoff date of 31st May 2009, from which date no paper tickets were to be issued by South African Agents. The Applicant dispute that the ticket stock was missing when collected from the office in June 2008 by SAFLOG and it will not accept any liability for missing stock of tickets.

The Applicant has submitted copies of the following documents:

Letter to SAA from Grindrod Travel dated the 9th of April 2009

Sworn Affidavit by Wendy Jenkins before the South African Police in June 2009

Two document whereby Wendy Jenkins certifies the content of the boxes collected by SAFLOG, countersigned by the name "Jabu"

A system generated e-mail from SAFLOG to Wendy Jenkins dated the 2 June 2008 confirming that packing lists were completed in the system.

The Respondent's arguments in summary

The Paper Ticket Stock Retrieval process was centrally coordinated and managed by the IATA Head Quarters in Geneva. IATA managed the process through its assigned sub-contractor SAFLOG. This included the collection of the packages, the shipment of the packages to Europe, an audit process for verification of the stocks and finally the destruction of the documents.

IATA instigated a global stock recovery project to retrieve, account for and audit paper ticket stock from all travel agencies participating in the IATA BSPs around the world. After audit, the stock would be destroyed and certified with a notarized destruction certificate in controlled and secure circumstances by the logistics provider SAFLOG. Agents were required to declare stock and complete packing lists based on the tickets they were submitting for collection which was all of their remaining paper ticket stock that they had on their premises on/after 1 June 2008 since from this date only electronic tickets were able to be issued. Full communication and instructions were given to the agents on how to proceed.

Assuming all the procedures were followed to IATA's best knowledge and belief, the sequence of events was as follows:-

Grindrod Travel declared stock and the boxes were collected (stage 1). They were shipped intact to SAFLOG warehouse in France. This was stage 2 of the process. At no time during these stages were SAFLOG able to verify the contents of boxes from ANY agent worldwide during the pick-up and delivery phase, logistically it would be impossible. When the tickets were audited by SAFLOG during the phase 3 audit stage these tickets were reported as missing from the box and they were blacklisted. Bear in mind the time frame from phase 2 to phase 3 varied because of the physical distances travelled but once received they were held in secure warehouses. SAFLOG has advised that it checked the pick-up status of the box that was containing these tickets. The box was reported "OK", i.e. not "Damaged" during the

pick-up phase. In addition they have confirmed that once with SAFLOG care, boxes could not be tampered.

Subsequent to this process SAA lifted paper tickets purporting to be from this stock of tickets with altered ticket numbers. With the bar code it was possible to identify the actual ticket numbers and check the document on the blacklist. All of the tickets were found blacklisted as part of the phase 3 audit process, which means they were missing from the box.

It proves that the project was robust and that IATA was justified in going to these lengths to retrieve and subsequently audit the tickets. The documents were blacklisted but the numbers were altered to avoid detection.

In summary due process was duly followed by IATA and as considered by the Agency Administrator. In accordance to the ADM dispute process, where an airline has not activated the online dispute functionality in BSPLink, the BSP/IATA on recognizing that there is a dispute between and Agency and Airline can withdraw an ADM from the Remittance & Settlement process for the parties to settle outside the BSP. This can only be done if the dispute is communicated between the parties within the timeframe stipulated in the Resolutions.

The Respondent has submitted copies of the following documents:

Copies of the instructions that were sent to the agents in relation to the collection of the paper tickets dated 15 April, 28 April, 9 May and 20 May 2008.

The Review - Rules of interest

The authority and duties of the Travel Agency Commissioner are set out in IATA Resolution 820e. In this matter the Applicant has requested a review on the basis of Resolution 820e section 1- 1.1.10. and it states:

“...the Commissioner shall review and rule on cases initiated by:

- 1.1.10 an Agent who considers that the Agency Administrator (as defined) has not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent’s direct and serious detriment in order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible fact.”

The Travel Agency Commissioner does not have authority to overrule resolutions, or change the material content of any rules. The Passenger Agency Conference has the power to implement any rules or procedures it wishes. It is the process for implementation and execution of the rules or procedures that could be reviewed by the Travel Agency Commissioner based on section 1.1.10. As noted under the above section “Background and Formalities” the review in this situation does not include a review of the acts by any IATA Member Airline, only the acts of the IATA Agency Administrator.

The Case - Rules of interest and conclusions

To become an Accredited Agent an Agent signs a Passenger Sales Agency Agreement (hereafter referred to as the PSAA) in accordance with IATA Resolution 824. In this

contractual relationship the Director General of IATA represents the IATA Members (or in other words the IATA Airlines) and acts for and behalf of these.

The Agreement stipulates that terms and conditions governing the relationship between the Carrier and the Agent are set forth in the Resolutions (and other provisions derived therefrom) contained in the Travel Agent's Handbook ("the Handbook") as published from time to time under the authority of the Agency Administrator. The Handbook incorporates the Passenger Sales Agency Rules, the Billing and Settlement Plan, local standards as may be provided for under the Sales Agency Rules, as well as other applicable IATA Resolutions and rules.

For South Africa Resolution 818g contains the Passenger Sales Agency Rules where rules relating to safe custody of, and responsibility for, Standard Traffic Documents will be found. The relevant section has changed since the 2008 version, but in the old version as well as the new version the Agent has the responsibility for the safe custody and care of Standard Traffic Documents assigned to it, or in its care. The previous version provided detailed instructions on custody and care of the documents, but the later is less detailed. However, as mentioned both versions hold the Agent liable for security and maintenance of documents assigned to it.

The deadline for electronic ticketing was 31st of May 2008, after this date the Agents were not allowed to issue IATA paper tickets. To address the recovery of paper ticket stocks still in the custody of the Agents, four letters dated 15 April, 28 April, 9 May and 20 May 2008 were sent from the IATA Agency Administrator to the Agents. The letters provide detailed information and instructions to the Agents to ensure that no tickets were accidentally issued, and to ensure safe recovery of the paper tickets. It was clearly described that the Agents are responsible for the paper ticket stocks safe custody and care whilst in the Agent's possession, and this is all in line with the Passenger Sales Agency Rules as outlined above.

IATA had contracted a third party named SAFLOG to execute the recovery project. The consequences of Agent's failure to cooperate were, according to the above mentioned letters, that such behavior could lead to default actions by IATA. It was also stated that after pick-up the ticket ranges would be immediately audited against IATA's records and the Agent's packing list, and that any differences may lead to blacklisting or other actions. The Agents were instructed to, amongst other things, report number of tickets in a SAFLOG system and to ensure that the tickets were picked up by a person verified to be a representative of SAFLOG in accordance with certain procedures.

The Respondent has not provided any specific evidence, or specific arguments, claiming that the Applicant in this particular case has failed to comply with the instructions. The Respondent claims that IATA has followed due process when recovering the paper ticket stocks, and argues in general that SAFLOG has confirmed that tickets were missing and that the boxes could not be tampered with once in SAFLOG's care. -This does not answer the question if the responsibility for the paper tickets at a certain stage no longer rests with the Applicant, but should be placed on the Agency Administrator. If so the Agency Administrator has potentially failed to follow correct procedures, as it when acting on behalf of the Member Airlines must ensure any obligations arising out of the PSAA is honoured in relation to the Agent.

As I have mentioned before it is clearly so that when in the Agent's possession the tickets are handled at the risk of the Agent. I can sympathize with the statement by the Respondent that it would be impossible for SAFLOG to verify the content of the boxes at the pick-up phase from a pure logistic perspective. On the other hand the whole procedure has been in the hands of IATA, the Agent has simply had to comply and follow the routines as decided by IATA, at the risk of being defaulted. This must be seen as an obligation arising out of the contractual relationship between the Agent and the IATA Member Airlines.

At the point of time when IATA was informed of the missing documents by SAFLOG (Nov 2008 according to information from IATA), the boxes had been in the care of SAFLOG for a considerable period of time. It is not possible, based on the information available in this case, to know exactly when the tickets have been lost or stolen. The Applicant has provided copies of documents where an employee of the Agent certifies that all the tickets were in the boxes collected by SAFLOG, this document is also countersigned by a person from SAFLOG named Jabu. The Respondent has not disputed the authenticity of this document or that "Jabu" was a representative of SAFLOG.

Altogether I find that the IATA Agency Administrator Agent in this situation assumed the responsibility of the ticket stock from the point in time when handed over to SAFLOG, as the tickets no longer were in the possession of the Agent. (Note that SAFLOG in this situation acted as a third party contracted by IATA, and consequently any failure by SAFLOG will be at the risk of the Respondent.) As there is no evidence that the Applicant or its employees have in any way been involved in the fraudulent use or theft of the ticket stocks, the Agency Administrator of IATA, acting on behalf of its member Airlines, should ensure the Agent is not held liable for costs relating to the fraudulent use of the lost tickets.

This constitutes a situation where the Agency Administrator has failed to follow correct procedure in accordance with Res 820e section 1.1.10., and the Applicant has suffered direct and serious detriment as a consequence of the failure.

Decision

The Agency Administrator has allowed the Agent to short pay the amount in dispute as for now and this relief shall, consistent with my interpretation of the IATA Resolutions in this particular situation, remain in force. The Agency Administrator, acting on behalf of the Member Airlines, shall make any arrangements it finds necessary to ensure the Agent is not held liable for any fraudulent use of tickets detailed in the packing list that was certified by the Applicant and countersigned by the representative of SAFLOG, as described above. The Agent shall of course cooperate in good faith.

If new circumstances arises that are not known to this date, future fraudulent use of the tickets concerned may result in a new decision by the IATA Agency Administrator. It shall be noted that such a situation would also include a right for the Applicant to request a review of the new circumstances by the Travel Agency Commissioner.

Decided in Sundbyberg 2009-07-22

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the parties.
Sent this date by e-mail to Mr. Janaurieu and Mr. Tweedie

Note:

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