

DECISION 2009-08-24

Travel Agency Commissioner Area 2

Helene Cedertorn
Karlavägen 30
172 76 Sundbyberg
Sweden

The Case:

Request for Review of Decision by the Agency Administrator the 24th of June 2009 regarding Notice of Default

The Applicant:

Tristar Travel Agency
23 Drogheda Street, Balbriggan, CO Dublin, Ireland
Represented by Mr. and Mrs. Walsh

The Respondent:

Agency Administrator, United Kingdom
International Air Transportation Association, IATA
Represented by Mr. Odele, Country Manager UK & Ireland

Background, formalities etc:

By letter to the Applicant dated the 24th of June 2009 the Respondent gave Notice of Default, as remittance relating to the sales period 2009/5 had not been received by the Clearing Bank as requested. According to the letter the remittance for the period 2009/5 was still outstanding. (Note that the default decision under review concerns two locations under IATA codes 36-2 0105 6 and 36-2 0317 1.)

Tristar Travel Agency requested Travel Agency Commissioner Review in a letter dated the 25th of June 2009 in the above matter, under the provisions of Resolution 820e Section 1-1.1.10.

The Respondent maintained its position in a letter dated the 26th of June. The Respondent however now states that full payment was received the 22nd of June. The Respondent has, at the request of the undersigned, also provided information that a bond for reinstatement purposes, calculated in accordance with the Irish local financial criteria, would amount to Euro 6,345.00.

The Applicant has provided additional documentation, in a fax the 1 July 2009, in support of its version of the series of events.

The Respondent has in a letter 19 July maintained its position.

The undersigned granted interlocutory relief the 2nd of July 2009, subject to certain requirements one of which was that the Applicant should present a Bank Guarantee

or Insurance Bond of the amount of 6,345.00 Euro. The Applicant submitted such bond and was reinstated as accredited agent the 10th of Aug 2009.

The Applicant's arguments in short summary:

Travel Agency Commissioner Review is requested under the provisions of Resolution 802e §1.1.10. IATA has placed the two Tristar Travel Agencies in default, without due process and without adequate grounds.

Tristar is a family run business with two branches, the first license was received 1988 and the second branch was opened in 1994. During this time all BSP Payments have been paid in time and Tristar has never, to its knowledge, contravened any rules or regulations of IATA. Tristar has been the victim of a bureaucratic error. At no time were the airlines' monies at risk. When Tristar itself discovered on the 16th of June that the bank had failed to remit, the error was corrected by electronic transfer the same day (i.e. one day before settlement day).

That Tristar inadvertently settled the April, Balbriggan Branch, BSP twice and thereby underpaid the May BSP Billing by a few hundred Euro is not adequate reason, effectively to put Tristar out of business. In any event the shortfall was immediately set right and nothing is outstanding to BSP. The procedures foreseen in the Passenger Sales Agency Rules were not followed by IATA as the requisite legal notices were not sent. Tristar learnt of the default from a third party which had been so notified by IATA, and who is no longer a principle of IATA. Tristar is concerned as to which other unauthorized organizations that have been advised. This surely is not the way the Agency Administrator is supposed to treat an IATA accredited agent.

IATA ignores the fact that Tristar contacted Georgia Pappas on the 12th of June and offered to pre-pay the BSP to avoid any problems, this offer was rejected. IATA states that the balance of 496.69 Euro was received on the 22nd of June, whereas there is confirmation that the balance had been sent to the Remittance Settlement Section on the 18th of June. This was confirmed on the 18th of June by Karolina Rissenen at IATA.

IATA was already the 22 June aware that the underpayment was less than five hundred euro, and this was a clerical error, and yet it still chooses to put two businesses at risk.

The Respondent's arguments short summary:

The grounds for request for review is pursuant to Resolution 820e, Section 1, subparagraph 1.1.10 – where an agent considers that the Agency Administrator has not followed correct procedure as delegated by the Passenger Agency Conference.

The facts of this case are as follows:

1. The direct debit for 16 June 2009 for EUR 7,716.45 BSP settlement was processed according to the bank mandate held by IATA but was rejected by the agent's bank.
2. On 18 June 2009 the IATA Service Centre in Madrid confirmed by email to the agent the direct debit rejection and formally requested immediate settlement; the

email included a notice advising that the payment should be completed within 24 hours in order to avoid being placed into default.

3. Payment for EUR 7,219.76 was received from the agent on 18 June 2009 (short payment of EUR 496.69).

4. The agent was advised of the short payment on 18 June 2009 and requested to pay the balance.

5. On 22 June 2009, the agent was placed into default with notifications made to GDSs & Airlines in compliance with the requirements of Resolution 818, Attachment A, paragraph 1.10.

6. On 22 June 2009 the balance of EUR 496.69 was received.

With regard to the agent's remarks concerning change of bank account, the requirements are specified in Resolution 818 paragraph 1.6.1(c), whereby the agent shall give IATA 30 days' notice by registered mail. Additionally, the Irish direct debit scheme requires that an original signed copy of the direct debit mandate is submitted by the debiting party to the client bank. These requirements were not fulfilled by the agent.

Following the failure of the agent's Direct Debit, IATA made a demand for immediate payment as required by Resolution 818, that "...the deadline for the clearing bank's receipt of the payment is the close of business on the first day it is open for business following the day of the Agency Administrator's demand" (Attachment 'A' – Section 1, paragraph 1.7(c)).

Although part settlement of this demand was received on 18 June 2009, full settlement was not received until 22 June 2009, four working days subsequent to the settlement date. In these circumstances IATA is obliged to apply the provisions of Resolution 818 regarding overdue remittance (Attachment A, paragraph 1.7.5). This states "if payment is not received on demand, the Agency Administrator shall immediately notify the Agent, and shall take Default Action with respect to all Locations of the Agent in accordance with Paragraph 1.10". This action is required irrespective of full settlement having been received in the intervening period. This is not therefore a case of IATA using a minor clerical error to make life difficult for an agent, but the mandatory compliance action required by the IATA members with regard to terms of settlement. IATA has no discretion in the strict application of the resolutions as handed down by its members through the Passenger Agency Conference.

In view of Resolution 820e, paragraph 2.7 coupled with the obligations of the agency administrator to follow resolutions, IATA submits that the application made by the agent for review on the ground that IATA the Agency Administrator has not followed correct procedure be dismissed in accordance with Resolution 820e paragraph 2.1.1.

Series of events

I have been able to, based on both parties' description and evidence brought forward, establish the following series of events:

12 June 2009: - As Tristar was about to change its bank it contacted IATA and offered to pay the BSP settlement in advance, in the event the payment would not be paid as normal. IATA advised Tristar to wait until the 16th of June as this would be the date the payment would show. Tristar was told that if normal bank payments were not put through, then Tristar could do a bank transfer and this would suffice. In an e-mail the same date IATA provides to Tristar details of bank account number for payments due to the BSP Ireland, and some additional information relating to direct debit mandate.

16 June 2009: -Tristar noted that the amounts due were not deducted from the bank account as normal and made arrangements for the balance to be transferred to the account as advised by IATA. A copy of the bank confirmation of a transfer of 7,219.76 Euro was forwarded to IATA by fax. A confirming e-mail was also sent to IATA this date at 16:26, stating the amount and the bank transfer reference number.

18 June 2009:

At 14:13 - IATA sent an e-mail to Tristar informing Tristar that the direct debit was rejected, and that the total amount of 7 716.45 Euro for BSP Payments relating to sales 2009/5 with due date 17th of June was outstanding. – In the message it is also advised that the total amount should be completed in 24 hours, in order to avoid a default process. Furthermore it is stated that confirmation of payment should be sent to a specific fax number.

At 14:50 – Tristar sent an e-mail to IATA requesting a call as soon as possible.

At 15:03 – An e-mail from IATA confirmed that a customer representative would contact Tristar shortly. - The parties thereafter had a phone conversation.

At 15:48 – IATA sent an e-mail confirming the amount to be outstanding as 496.69 Euro.

At 16:39 - Tristar arranged for a bank transfer of the amount of 496.69 Euro to IATA (amount available at receiving account the 22 June), and copies of the transfer arrangements were sent to IATA.

At 16:48 - IATA confirmed via e-mail that the documentation from Tristar have been forwarded to the Accounts Department.

At 17:14 – IATA stated via e-mail that the “proof of payment” have been forwarded to the Remittance and Settlement Department.

22 June 2009: -Communication was sent from IATA to BSP Airlines informing that Tristar Travel Agency, Balbriggan Co. Dublin (IATA No 36-2 0105 6) and Tristar Travel Agency, Skerries Co. Dublin (IATA No 36-2 0317 1) were in default due to non settlement of outstanding amounts for the sales period 01-31 May 2009. Tristar was informed of this action by a third party, and tried to contact IATA with no success.

23 June 2009: -IATA confirmed to Tristar by phone that it was placed in default.

24 June 2009: - IATA sent Notice of Default by letter to Tristar Travel Agency.

Rules of interest

The review:

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 1.1.10. This section 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 procedures 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 case:

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as the Agreement) 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 contained in the Travel Agent’s Handbook (hereafter referred to as the Handbook) as published from time to time under the authority of the Agency Administrator. The Handbook is local and varies by country and incorporates, amongst other things, the Sales Agency Rules. IATA Resolution 818 contains the Sales Agency Rules applicable in Ireland. - The Sales Agency Rules, or in other words Resolution 818, are consequently to be considered part of the contractual relationship between the individual agent and the IATA Members.

Res 818 Attachment A Section 1.6.1 (c) states:

“1.6.1(c) When the Agent intends to change its bank(s), or its bank accounts(s), the Agent shall give IATA 30 days’ advance notice by certified/registered mail, or certified letter with return receipt, as appropriate;”

Of interest is also some parts of Res 818 Attachment A Section 1.7:

“1.7 IRREGULARITIES AND DEFAULT

The provisions of this Paragraph govern failures by Agents to adhere to the reporting and remitting procedures set out in Paragraphs 1.2 to 1.6 inclusive, for which an Agency can be served with Notices of Irregularity, or be declared in default, as appropriate. Agents may also be liable for charges arising from them. The circumstances for this may include:

- *Overdue Sales Transmittals*
- *Incomplete Sales Transmittals*
- *Late Reported Transactions*
- *Unreported Transactions*

- *Overdue Remittance or Cheque*
- *Dishonoured Remittance or Cheque*
- *Accumulation of the above Irregularities”.....*

“1.7(c) *for the purpose of this Paragraph, where the Agency Administrator issues:*

- *a demand for payment or*
- *immediate payment, or*
- *a demand for immediate reporting and/or*
- *accounting and settlement,*

the deadline for the Clearing Bank’s receipt for such from the Agent is the close of business on the first day it is open for business following the day of the Agency Administrator’s demand;

1.7(d) *A notice of irregularity or declaration of default shall be in writing and set out the specific circumstances giving rise to the irregularity or default.”*

Furthermore this matter requires knowledge of the following section of Res 818 Attachment A:

“1.7.5. Overdue or Dishonoured Remittance

1.7.5.1 *if the Clearing Bank does not receive a remittance due by the Remittance Date, or immediately on receipt by the Agent of a delayed Billing, a remittance in respect of a shortage as provided for in Subparagraphs 1.6.2.1(b), (c) and (d), or if an instrument of payment received by the Clearing Bank to effect such remittance is dishonoured on or after the Remittance Date, the Clearing Bank shall immediately so advise the Agency Administrator who shall thereupon demand immediate payment from the Agent including any Clearing Bank charges incurred and shall then:*

1.7.5.1(a) send to the Agent a Notice of Irregularity in respect of the Location concerned”..... “A Notice of Irregularity sent pursuant to this Subparagraph shall count as two listed instances of Irregularity for the purposes of the lists provided for in Subparagraph 1.7.8,

1.7.5.1(b) if payment is not received on demand, the Agency Administrator shall immediately notify the Agent, and shall take Default Action with respect to all Locations of the Agent in accordance with Paragraph 1.10,”

And finally I find it of interest to mention also the following section of Res 818 Attachment A:

“1.10 DEFAULT ACTION

The provisions of this Paragraph govern the procedures if Default Action is required to be taken in accordance with the provisions of Paragraph 1.7, when the procedures prescribed below shall be followed:

1.10.1 *the Agency Administrator shall immediately advise all BSP Airlines that the Agent is in Default at all Locations or at the Location concerned.”*

“1.10.2 the Agency Administrator on declaring an Agent in Default shall immediately take the following action:

(i) advise the Agent in writing that Default Action has been invoked and withdraw from the Approved Location(s) concerned all STDs, and cause the removal of all CIPs supplied by BSP Airlines,”.....

“(iii) notify the Clearing Bank, the local representatives of BSP Airlines participating in the BSP concerned, and the ticketing system suppliers, of the Default Action;”

Conclusions and reasons for decision

In this matter it is quite clear that the Applicant did not give 30 days' advance notice, as required by Res 818, when changing bank, and it did not pay the full amount due the 17th of June. The main question is if this should result in a default action, but the review also aims at investigating if the Respondent complied with the stipulated procedures when taking the default action.

I note that the resolutions do not foresee every situation that may occur. The contracting parties must therefore be seen as two parties with contractually defined roles and responsibilities, as well as two parties with a general obligation to act with certain care towards each other. This is of special importance in long term relationships built on trust and mutual dependency, such as the relationship between an Accredited Agent and the IATA Airlines. Unlike contractual relationships where the parties are free in relation to its principal IATA's mandate is governed by the IATA Resolutions, but nevertheless the IATA Agency Administrator clearly represents the Airlines towards the Accredited Agents, and the Agents must consequently be able to relay on information and/or instructions provided from IATA.

The Notification of Change of Bank:

It is established that the Applicant the 12th of June asked if it could pre-pay the amount due 17th of June as it had concerns that there would be problems with the direct debit. The Respondent instructed the Applicant to wait until the 16th of June and gave instructions on how to make the payment. - The parties hereby seem to have agreed on how to handle the situation.

The Applicant did not provide notice of the change of bank with the stipulated 30 days notice, (and it did not arrange for a direct debit in time). There is however no specific rule in Res 818, or elsewhere, under which this situation in itself is an immediate reason for any default action. – In this situation it is the possible effects of the breach of the rule that may result in a Notice of Default (as for example overdue or dishonoured remittance under Res 818 Attachment A Section 1.7.5.).

The Late Payment:

The day before due date (16th June) the Applicant complied with the instructions it had received from the Respondent and paid the amount it thought was due, however the amount was short paid. - This failure to settle the full amount due is at the full responsibility of the Applicant at this point of time. - As instructed the Applicant sent all the documentation of the bank transfer to the Respondent. I thereby note that the

Respondent already the 16th of June did have information showing the incorrect amount.

The 18th the Respondent contacted the Applicant and the initial e-mail stated that the full amount was not paid as the direct debit was rejected, and that the amount should be paid within 24 hours in order to avoid default process. After some correspondence it was however clarified that the amount due was 496.69 Euro. The Agent immediately arranged for the payment of this amount, well within the 24 hour deadline, and sent all the documents evidencing the bank transfer to the Respondent. - I note that the documentation clearly shows that the money sent will not be received at the receiving bank until the 22nd of June. - The Respondents confirmed receipt of the documentation in two e-mails dated the 18th of June, and in these e-mails there are no indications that the payment is not accurate. On the contrary it is stated that "proof of payment" have been forwarded to the Remittance and Settlement Department.

If the Respondent had not accepted the payment as valid for some reason, as if it found that it was not enough that it was transferred within the deadline, but that the actual amount also should be received by the Clearing Bank within the time frame as the wording of Res 818 Attachment A section 1.7(c) possibly indicates, it should have notified the Applicant of this immediately when the documentation from the Applicant was received. At this point of time it would still potentially be possible for the Applicant to make other arrangements within the deadline.

The Applicant thereafter hears nothing until it gets information from a third party that it has been placed in default the 22nd of June. The Notice of Default dated the 24th of June states that the remittance due from sales relating to the period 2009/5 had not been received by the Clearing Bank, and that the amount was still outstanding. This statement has later shown not to be correct. - The 22nd of June all amounts were fully paid as described above. As the Respondent correctly states a default action may however be required irrespective of full settlement having been received in the intervening period, so the question still remains if it was correct procedure to impose a default action on the Applicant.

-The resolution states that if payment is not received immediately on demand, the Agency Administrator shall immediately notify the Agent and take Default action (Res 818 Attachment A 1.7.5.(b)). As outlined above I find that the Applicant did pay on demand in accordance with the instructions it had previously received and provided evidence of the bank transfer within the timeframe. The default action was consequently not correct.

Furthermore the Respondent did not properly comply with the resolutions as it took default action the 22nd of June, and informed the BSP Airlines and GDSs of this action this date but the Agent was not informed until the 24th of June. This is not in line with the stipulations of immediate notification to the agent, and could potentially deprive an agent of its contractual rights. As already mentioned the default decision also was based on inaccurate information.

In situations of late payments the Agency Administrator shall send a Notice of Irregularity to the location concerned, this counts as two listed instances of Irregularities for the Location for the purpose of the list of Irregularities that should be kept by the Agency Administrator (Res 818 Attachment A Sections 1.7.5.1. and

1.7.8.). I find that the Applicant did fail to settle the full amount on the due date, and that this should result in such a penalty for the Applicant.

Decision

The decision by the Respondent to give Notice of Default and take the default actions as stipulated in Res 818 Attachment A section 1.10 shall be revoked. The Respondent shall arrange for the bond submitted by the Applicant to be returned immediately, and ensure that proper communication is sent to relevant parties and possible other practical matters are handled in accordance with what is here decided.

The Applicant is hereby given a Notice of Irregularity, due to late payment of amounts due the 17th of June 2009 relating to BSP Payments the sales period 2009/5. This notice will be recorded by the IATA Agency Administrator as two instances of irregularity, and dated the 24 of June 2009. Note that accumulation of four notices of irregularity during 12 consecutive months would result in an Accredited Agent being declared in default.

Decided in Sundbyberg 2009-08-24

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the parties. Sent by e-mail this date to: Mr. Odele and Mr. and Mrs. Walsh

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