

DECISION 2011-05-17

A2-2011-01

Travel Agency Commissioner Area 2

Helene Cedertorn
Nybohovsbacken 34 B Stockholm
Sweden

The Matter:

Request for Review by the IATA Agency Administrator

Review initiated by:

The Agency Administrator
International Air Transportation Association
Spencer House, 23 Sheen Road, Richmond, Surrey TW9 1BN, United Kingdom
Represented by:
Philip Forest, Country Manager UK & Ireland
Elena Ciuperceanu, Manager Passenger Services UK & Ireland

Agent:

News Travel Ltd t/a Email flights
223 Kenton Road, Kenton, Middlesex, United Kingdom HA3 0HD
Represented by: Vishnu Chandnani, Managing Director
Legal Counsel: Ian Skuse, solicitor at Piper Smith Watton

Formalities etc:

In an e-mail the 22 of March 2011, with six attachments, the IATA Agency Administrator (hereafter referred to as IATA) requested Travel Agency Commissioner Review of the Agent News Travel Ltd (hereafter referred to as News Travel or the Agent). The request was initiated under IATA Resolution 818g Attachment A section 1.8. Prejudiced Collection of Funds, and Resolution 820e, and primarily based on allegations that the Agent had provided wrong shareholder information in its application to become an IATA Accredited Agent and allegations of ticketing mal practices.

In an e-mail the 23 of March IATA sent copies of some correspondence between the parties and two financial statements (year ending 31 Aug 2010 and 31 Aug 2009).

The Agent sent a short response in an e-mail the 30th March 2011 with a four page attachment, requesting more details from IATA on the allegations relating to ticket malpractices. The Agent also provided information on the shareholder issue in the same e-mail.

IATA responded, primarily to the shareholder issue, in an e-mail the 31rd of March.

The Agent responded to the shareholder issue in an e-mail dated the 7th of April with 7 attachments.

IATA gave its final written statement, with three attachments, in an e-mail the 18th of April.

The Agent gave final written statement in an e-mail the 8th of April with a letter, a Witness Statement and four appendices.

A hearing was held at Park Inn, Heathrow, UK the 5th of May 2011. The participants at the hearing were (including the undersigned as chairman):

For IATA:

Philippe Forest, Country Manager UK & Ireland, representing the role of IATA Agency Administrator and Elena Ciuperceanu, Manager Passenger Services UK & Ireland, representing the role of IATA Agency Services Manager.

Experts called by IATA from British Midland International (hereafter referred to as BMI); Barbara Hunter, General Manager Distribution and Customer Services, Sanjay Parmar, Reservations Manager and Juliet Hutchin, Head of Loyalty.

For News Travel:

General Manager of the Agent Vishal Chandnani, solicitor Ian Skuse and solicitor Katherine Goatly from the lawfirm Piper Smith Watton.

At the hearing the Agent submitted a bundle with copies of all its previous submissions and some documents were also showed in original.

The parties were able to provide further explanations and clarify their positions at the hearing, but no agreement was reached. The chairman sent short summary minutes to the parties the 10th of May, and both parties have provided their comments on the minutes.

The position of IATA in short summary

IATA was alerted by two airlines about malpractice and possibly fraudulent activity by staff of the Agent, involving bookings taken as an IATA licensed agent and subsequently converted into Airline redemption tickets. While bookings seem to have been made at customer's request on a number of airlines (South African Airways, Thai Airways and possibly other airlines belonging to Star Alliance) the airline affected is British Midland (hereafter referred to as BMI) whose Diamond Club mileage was used to issue the tickets (due to fly on Alliance partners). IATA was immediately concerned by the financial exposure and possible implications on the agency ability to meet the BSP settlements, currently standing at an average of £230,000/ month.

Furthermore the agency was accredited by IATA in July 2009. On its Application form for the IATA license, dated 20/04/2009 it states that a Mr Vishal Chandnani owns 100% of the company shares, while the information extracted from Companies House website and from

a credit rating agency showed clearly that the agency 50,000 shares were owned by Mr Vishal Chandnani (35,000) and a Mr Karisma Dhirjlal Shah (15,000). The agency has not notified IATA of any changes of shareholding since accreditation. According to Res 818g Section 2.1.14 "all material statements made in the application have to be accurate and complete".

BMI initially estimated that there were at least 150 tickets issued according to the procedure described below: if the agency would offer to pay back the airline (as it has been purported to do) they are looking at approximately £600,000. This is far higher than the agency average monthly sales and it raised the clear possibility that the Agent might not be able to pay the BSP Billing and default. - This is covered by the provisions of Res 818g Attachment A section 1.8. "Prejudiced collection of funds".

The fact that the travel agent makes the bookings via their GDS as an IATA licensed agency, takes payment from the customer according to the booking itinerary and then converts them into redeemed mileage tickets amounts to "attempt to circumvent the reporting and settlement requirements (..), with the result that BSP airlines ability to collect for STDs sold is seriously prejudiced" - as stated in 1.7.7.2 Res 818g, Attachment A, Section 1.

It can be further argued that the agency has used the IATA licence to gain unlawful profit, as the customers may not have been booking high value tickets if they were not licensed and the bookings were made, in the first instance on the IATA license, via the GDS. Additionally, the agency has allowed for fraudulent practices to be allegedly perpetrated by its staff. BMI have now informed the London Metropolitan Police (Fraud team) and have registered a formal case with them.

Based on the above considerations and the provisions of Res 818g as stated, IATA took the decision to suspend the IATA license from the BSP process and remove the STDs.

With regards to use of Travel Agency Automated Reservation Systems reference is made to the Resolution 824 Passenger Sales Agency Agreement, Art. 15 Indemnities and waiver; section 15:3 the Agent further agrees to indemnify and hold harmless the Carrier, its officers and employees for all loss, injury or damage, whether direct, indirect or consequential, resulting from the negligent or unauthorized use of the system or any part thereof by the Agent, its officers, employees or contractors (including independent contractors) or any other person acting on the Agent's behalf.

The issue regarding the shareholder information in the application dated the 20th of April 2009 to become an IATA Accredited Agent is a side issue to the ticketing malpractices, and was only noticed because airlines turned to IATA with questions relating to the Agent and IATA started to investigate. IATA always verifies information of this kind against public registers if available. Also according to the last Annual Return (received for filing at the Companies House the 28th March 2011 – see page 36 of the submission by the Agent) the date for the transfer of the share was 22 May 2009, and also this date is after the date of the

application to become an IATA Accredited Agent. This alone could be grounds for termination of the Passenger Sales Agency Agreement (PSAA), but IATA leaves it to the Commissioner to decide on this matter. The UK Company Law places clear responsibilities onto Company Directors regarding the accuracy and timeliness of filing changes with the Registrar, and Mr Chandnani, as owner and director of News Travel cannot blame its company accountants for failing to do so.

There are more than 200 bookings that could be under review but for Data Protection reasons these could not be shared with IATA or the TAC. Only the airline and the Agent could review the data. IATA is not either required to review all bookings; it is enough under IATA Res 818g Attachment A section 1.8.1 that the Agency Administrator receives written information, which can be substantiated, leading to the belief that BSP Airlines' ability to collect monies for STDs may be prejudiced, for the suspension of the Agent.

The investigation by British Midland Airways Limited, in co-operation with a number of airline partners in the Star-Alliance, have uncovered, so far, over 200 bookings (many for multiple passengers) which fall in two categories:

a) 185 bookings made by genuine passengers, with the IATA license of News Travel Limited, by using the agency systems available, to fly on various airlines. These passengers were charged the applicable fares plus taxes, according to the itinerary, class of travel, airline etc and they should have been ticketed and reported through the BSP system as normal. Instead, new bookings were made for them (for the same itinerary), most probably without the passengers knowledge, and were redeemed for value against existing frequent traveller Diamond Club accounts with BMI. The Diamond Club holders were most probably unaware and had nothing to do with the actual passengers flying and their accounts and were not debited with the redeemed miles (presumably not to start them querying of their account being debited for flights they never took). To illustrate the practice, BMI have provided further examples from Thai Airways (TG) and Lufthansa (LH) to add to the one provided by South African Airways.

b) Bookings grouped by BMI into "friends and -favors", which were purely redeemed flights against frequent traveller mileage of Diamond Club accounts, most probably the beneficiaries were not charged for, and for this category the airline has provided a single example, for a passenger named Mr Vishal Chandnani, who flew out on 29 Jan 2011 on a business class ticket, booked on Austrian Airlines/ Lufthansa itinerary and redeemed against the frequent traveller Diamond Club account of a Mr Ralph, whose account has not been debited and who is most probably unaware.

The vast majority of bookings are in the a) category as above and all of them should have been ticketed and reported by the IATA license holder, via BSP, directly to those airlines.

The estimated loss of sales (caused by this practice) that should have been ticketed and reported via BSP, is up to GBP 1 million (the actual loss to BMI, which will be debited by

those airlines carrying the passenger at pre-agreed rates within Star Alliance, may be lower). The airline could not provide more examples due to passenger data protection rules, especially as more than one carrier is involved.

News Travel Limited has acted in breach of the provisions of Res 818g, 1.7.7, "Accounting Irregularities" (various), Res 824 art 15, "Indemnities and Waiver", 15.2 and 15.3 and that their IATA license should not be reinstated until it makes good for losses incurred by the airline(s) and/or passengers, as may be the case.

The Witness Statement of the Agent makes IATA even more worried. Mr Chandnani is experienced in travel but still has no control. The ticketing malpractices, as well as the erroneous information relating to the shareholder, shows lack of control. The lack of control is worrying as the Agent handles credit card payments and personal details of travellers. In this review the commercial relationships between the Agent and individual airlines are out of scope.

It is not permitted to accept bookings for travellers and charge them in GBP and allow an Agent in India to issue the tickets in Rupees instead. All booking made by customers with News Travel (either directly or via its call centre in India) and for which News travel has received payment from customers should have been ticketed and reported correctly, via BSP UK, in GBP, by either New Travel as an IATA licensee or by UK based consolidators holding an IATA license.

The airlines on which the customers made bookings and paid for, have not received the correct value of the itinerary they have carried the passengers on (but a forfeit amount agreed with BMI within Star Alliance).

Although the tickets are now electronic, the responsibility of News Travel towards its customers, to check the tickets issued, to make sure that all information regarding name, itinerary, value and form of payment are correct, before sending it to the customers, remains unchanged. IATA considers that it is not permitted to change class of booked tickets without consulting the traveller.

Moshin Travel is not an IATA Accredited Agent anywhere in the world.

IATA would like to see samples of the invoices paid to the consolidators/agents in India as well as Mr Chandnani's ticket, fare amount, his payment method and proof of payment.

The Agent is responsible for others utilizing its IATA Accreditation number under the PSAA (Passenger Sales Agency Agreement).

The Agent should stay suspended and the Agent should cooperate fully with the airlines to put systems in place to ensure better control. All bookings must go through an UK IATA Registered Agent. The Airlines have not received the full value of the tickets sold or the correct air fare. As an IATA Accredited Agent News Travel has a duty to control the tickets.

The control has failed when News Travel gave access to all systems to the Indian call center. The controls now described by the Agent are still not enough. Even though there are no formal claims from the airlines at this stage the Agent needs to work together with the airlines to ensure this is all investigated and that proper controls are in place. The TAC could order that the Agent shall stay suspended and work with the airlines and report findings within a defined period of time.

The BMI representatives have made the following statement: BMI uses call centre outsource provider Ventura and an insider at the call centre has been receiving flight booking requests from the New Travel call centre in India. All bookings were linked to emailflights, there was no other source of bookings. The airline accepts that it has some responsibility as the likely scenario includes that someone in their customer service has worked together with the Indian customer service of the agency. Diamond Club Points were used for the payment of the tickets. Credit cards, which appeared to be "normal" but have shown to be linked to only one address in the US, were used for payment of taxes. 236 inaccurate bookings have been found so far and of these 185 falls into the category of bookings with genuine passengers that paid for the tickets, but Diamond Club Points were actually used for the ticketing. 27 falls into the category of "Friends and Favors" and for these only Diamond Club Accounts of others than the travellers were used for the tickets, but the travellers have not paid for the tickets. The only example of the last practice described in the TAC Review is a booking in the name of Mr Vishal Chandnani. - It is not possible at this stage to know who has actually taken the money, or who has benefitted from the irregular bookings.

The position of the Agent in short summary

The Agent wishes to be transparent and has no wish to hide anything. The Witness Statement is a true and accurate recollection of what has happened.

The Minutes of a company meeting dated 26 March 2009 recorded on the headed paper of the company's accountant, M. Parmar & Co confirms the agreed sale of the 15,000 ordinary shares held by Miss Karisma Shah to Mr Chandnani on that date. A copy of the Stock Transfer form executed on 26th March 2009 confirms the transfer of Miss Karisma Shah's shares. An invoice from M. Parmar & Co dated 30th March 2009 includes charges for finalising the shares from Miss Karisma Shah to Mr Chandnani dated 30 March 2009. A letter from M. Parmar & Co dated 4 April 2011 confirms that Mr Chandnani became the 100% shareholder from 26 March 2009 and that this was correctly reflected in the IATA application. The file accounts for 31 August 2010 confirms that Mr Chandnani was the owner of the entire shareholding in the company. Accordingly, it is Mr Chandnani's position that he was the 100% shareholder of the company at the date of the IATA application, and has remained so ever since. There has been no intention to mislead anyone with regards to the shareholder information. The Directors of the company are responsible for the filings to the Company Registrar, but it is clear in this case that the accountants have not handled this accurately and they have not done what they were paid to do. A transfer of shares is

effectuated by registration in the Statutory Books of the company, according to UK Company Law. Mr Chandnani has always been the sole shareholder and IATA has not been prejudiced.

The Indian Call Center Operations has been working for approximately 12 months since the online site started to work. The online bookings are handled on pre-authorisation of the credit cards, but ultimate payments are charged after manual controls. This will now change into a fully automated system. The Agent uses its own merchant account at Barclays to accept payments from cardholders. The automated fraud controls will be made by a system named "Three D Secure" going forward. There will be no manual intervention after this.

All customer bookings are taken by the Agent under its Barclays EPDQ system for payment to BSP or consolidators. All fares are available in the system and the bookings are queued to consolidators. If there are better fares found at the consolidators (net fares) these fares will be used. Mr Chandnani believed that Moshin Travel was a genuine consolidator introduced by the ICC as a source of tickets. For the Moshin Travel bookings, the customer paid the Agent and payments were made to ICC and thereafter ICC pays the Indian consolidator (Moshin Travel). It would be impossible for the Agent to manipulate the airline's Diamond Club Accounts in order to ensure the account balance was not affected by the redemption of points used for the tickets as neither the Agent nor the ICC has access to the airline's internal systems. It seems that there was inside help from the airline call center to a third party to achieve this.

The card details are not possible to view in full by the Agent or by the call center. Now all access to the online back office is closed for the Call Centre in India. All ticketing elements of the bookings are withdrawn from India.

News Travel has not benefitted from the use of the Diamond Points; News Travel has paid the ICC for the Moshin Travel tickets and there has been no unusual marginal profit increase.

The legal entity name of ICC is "emailflights". It is a totally separate legal entity from Mr Chandnani's and he has no ownership interest in the entity. It is a family member named Dolly Daryanani who owns the company. The names of the team leaders mentioned in the Witness Statements are Neil and Fred (with other Indian names). Neil is now dismissed. ICC/emailflights is not IATA Accredited.

Moshin Travel was advised to be a retail agent in India and the contact with this agent was initiated by the team leader of ICC named Neil. The arrangement with Moshin Travel was only between ICC and Moshin Travel.

All customers/travellers booking online at E-mailflights get the information that the tickets are not refundable. The same T&Cs are used for all tickets and this is common practice in the online industry. This means that a ticket may be changed to another class if found cheaper at a ticket reseller selling tickets at net fares. The carrier is however never changed without contacting the traveller.

The ticket described in section 19 (on page 13 of the Witness Statement) has yet not been paid. It is an internal ticket used by Mr Chandnani.

News Travel has not contacted the police because it is for the customer service center in India to decide if they wish to do so. The company insurance held by News Travel most likely only applies if the fraud is internal, and not in this situation.

Also the airline is implicated by the problems with ticketing. Fifty percent of the Agent's business is now suspended because of the suspension of the IATA license and this cannot go on for a long period of time. There are always risks of fraud and the Agent is willing to take any recommendations on board and fully cooperate with IATA and member airlines. News Travel is one of the victims and has had no financial benefit from the malpractices. - There should be an immediate reinstatement of the License and the Agent is fully prepared to assist IATA and the carriers with their own investigations.

The Review

IATA has suspended the Agent and requested TAC Review under the rules of Resolution 818g Attachment A section 1.8. (Prejudiced Collection of Funds). Under this rule IATA shall, in order to take action, have written information that could be substantiated, leading to the belief that BSP Airlines' ability to collect monies for STDs may be prejudiced (see same section 1.8.1.). IATA has also claimed that the situation and the behavior of the Agent falls under Res 818g Attachment A section 1.7.7.2 (after 1 June 2011 section 1.7.8.2.). This means that under circumstances which lead the Agency Administrator to believe that the Agent is attempting to circumvent the reporting and settlement requirements of the same section 1, with the result that BSP Airlines' ability to collect for STDs sold is seriously prejudiced, the Agency Administrator shall take certain actions and also request Travel Agency Commissioner Review. Furthermore IATA claims that the Agent is in breach of its obligations under the Resolutions with regards to the information regarding shareholders in the application. IATA also claims that the shareholder issue shows a general lack of control. IATA has also commented on other ticketing practices of the Agent that have been revealed during the TAC Review, and that IATA claims are inaccurate.

The shareholder information in the application form

The TAC Review has shown that the information regarding the shareholder in the application form to become an IATA Accredited Agent was likely reflective of the true ownership. The ownership of the shares was however not accurately registered at the Companies House. The accountants of the Agent seem to have failed to file the change and this is, as IATA rightfully states, at the responsibility of the directors of the Agent. There are however no indications that the Agency has had any reason or intention to mislead IATA. - In my opinion this failure to register correctly is not in itself enough grounds for immediate removal of the Agent from the Agency List. (Only if the Agent did not respond to a notification/request for clarification such action could potentially be relevant under the rules contained in Res 818g section 2. or potentially in some situations, if falsification of documents could be established, under the rules of 818g attachment A section 1.7.7.1. (viii).)

In general terms the undersigned shares the opinion of IATA that this indicates a certain lack of control of the company and its advisors/contractors, but as mentioned this alone would not be grounds for any suspension action.

The alleged ticketing malpractices

IATA/BMI claims that they have found 236 inaccurate bookings so far, but only seven bookings have been specified to the Agent during this Review. No other bookings than the once that are specified could therefore be held against the Agent. However there is no dispute as to the fact that the specified tickets were booked by the Agent and thereafter manipulated, likely with the help of a person working for the Indian subcontractor/customer service of the Agent, with the effect that the tickets sold have not been reported and settled appropriately, to the detriment of the airlines. One of the irregular bookings includes a ticket for Mr Vishal Chandnani himself. Mr Chandnani has not been able to clearly explain why he has not paid for the ticket. - At this stage there are police investigations ongoing and final outcome is yet not known. BMI however agrees to that certain responsibility falls on them, as the likely scenario includes that someone working for the airline has also participated in the inaccurate bookings.

The Agent is responsible and liable for actions by its subcontractors under Res 824 section 15.3 and 15.4, Indemnities and Waivers. It is established that the Agent/its subcontractor has attempted to circumvent reporting and settlement requirements. By this it is established that the rules on Account Irregularity Safeguards apply in this situation (see Res 818g Attachment A Section 1.7.7.2 as described above), and that the BSP Airlines' ability to collect for tickets sold is seriously prejudiced by these actions by the Agent/its subcontractor. I also find that the rules under the same Attachment section 1.8.1. apply in the situation as there is enough written information which could be substantiated, leading to belief that BSP Airlines' ability to collect monies for tickets may be prejudiced.

There are altogether solid grounds in this matter for the action by IATA to suspend the Agent, and the decision to suspend the Agent shall therefore stand.

During the review IATA has also claimed that the Agent violates other rules for ticketing as for example that it does not inform travellers before changes of class and that it sells tickets in one currency to the traveller, and allows the tickets to be issued in another currency. As the resolutions stands the comments made by IATA with regard to other ticketing rules are correct, see further for example Res 830a where certain general ticketing procedures may be found.

One difficulty in this review is that sometimes the Agent acts under its IATA license and sometimes it acts under the IATA license of others. In any case it is my opinion that an IATA Accredited Agent should never contribute to, or take part in, any violations of the IATA Resolutions independent of whether the Agent acts in its capacity as IATA Accredited Agent or not. This as a consequence of the Agents being bound to the IATA Resolutions under the Passenger Sales Agency Agreement with IATA/The Member Airlines (see Res 824). The IATA Resolutions do not always reflect properly the business models of today, in the rapidly changing business environment. This may be an issue as preferably all Agents in the market place should be treated the same. - However the Agent still should at least be aware of the rules and seek guidance from the airlines if there is a discrepancy between practices and

rules. The IATA Airline is the principal in this contractual relationship, and must be able to set standards for the sale of its tickets.

The Agent has taken certain steps to improve control of the ticketing; the Indian call center no longer has any rights to issue tickets and the manual control of credit cards will be automated. However it is established that the airline has suffered financially from the ticketing malpractices, though no specific claim is yet brought forward. The review has also disclosed lack of knowledge of IATA Resolutions, resulting in the violations of the Resolutions as described above. IATA has taken the position that the Agent could stay suspended during investigations and work with the airlines and report findings. I therefore do not require that the Agent shall be removed from the Agency List now, but only stay suspended during the ongoing investigations. The conditions for reinstatement includes that no outstanding amounts are due to the airlines arising out of the irregular bookings, to the extent the actions by the Agent or its subcontractor has caused loss to the Airline (or a re-payment schedule is in place for any such amounts) and that the Agent has evidenced that proper controls are in place to ensure compliance with the IATA regulations and the ticketing rules of the airlines.

It is for IATA to make regular assessments of the status and decide if the Agent is in such standing and meets the conditions for reinstatement, or if the Agent shall be permanently removed from the Agency List. It is not appropriate to allow this status for a too long period of time and this is why the IATA Agency Administrator is allowed to permanently remove the Agent from the Agency List after six months from the date of this decision, if the conditions are not met.

Decision

The decision by IATA to suspend the Agent stands. The Agent may be reinstated if the IATA Agency Administrator is satisfied that there are no outstanding amounts due to any BSP Airline (or a repayment schedule is in place for any such amounts) and that the Agent has evidenced that proper controls are in place to ensure compliance with the IATA Resolutions and the ticketing rules of the Airlines. If these conditions are not met the IATA Agency Administrator may permanently remove the Agent from the Agency List after six months from the date of this decision.

Decided in Stockholm 2011-05-17

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 Chandnani, Mr Skuse, Mr Forest and Ms Ciuperceanu.

Note:

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