

# DECISION 2011-08-19

A2-2011-11

## Travel Agency Commissioner Area 2

Helene Cedertorn  
Nybohovsbacken 34 B Stockholm  
Sweden

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### The Matter:

Request for Travel Agency Commissioner (TAC) Review of action whereby IATA has requested payment of the amount of 267 643 FCFA in an e-mail the 13<sup>th</sup> of April to be paid via BSP Billing (in time to be at the account of IATA the 19<sup>th</sup> of April 2011)

### The Applicant/Agent:

Agence Francaise de Voyages  
BP 8164 - Yaoundé  
Cameroon  
Represented by: Ms Annick Tchangang Cotet, Director General

### The Respondent/IATA:

The Agency Administrator of the International Air Transportation Association (IATA)  
Rue de Thann Angle Boulevard Djily, MBAYE  
BP 50726, CP 18524, Dakar RP, Sénégal  
Represented by: Fabrice Sahiri, Country Manager of IATA

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### 1. Decisions etc:

IATA sent a notification dated the 6<sup>th</sup> of April 2011 via BSP to all Agents in Central and West Africa informing them of that Air Ivory had been suspended as they had failed to pay their settlements. In this message the Agents were asked to (with reference to Res 850 para 15.1):

1. Stop immediately all ticketing and refund transactions through the GDSs and BSPlink.
2. Settle all outstanding billings directly with the Airline.
3. Report and settle all refunds or other credit/debit transactions, which will be made in future reporting periods directly with the Airline.
4. Consequently adjust the total amount to be remitted to the Clearing Bank or ICCS at the end of current reporting period by excluding the total amount due to or from the BSP Airline.

By notice dated the 13 of April 2011 the Applicant was informed of that the amount to pay in the BSP Billing was in total 70 924 004 FCFA (increased with 267 643 FCFA) with a reference to the notification sent the 6<sup>th</sup> of April.

The Applicant paid the BSP bill accordingly, and thereafter contested the amount of 267 643 FCFA to the Respondent. The Respondent however claimed that the action to request additional payment was correct.

The Applicant requested review by the Travel Agency Commissioner in an e-mail dated the 14<sup>th</sup> of May 2011.

IATA responded in an e-mail the 31<sup>st</sup> of May 2011, and the undersigned granted Travel Agency Commissioner Review by decision the 1<sup>st</sup> of June 2011.

The Agent responded in an e-mail the 21<sup>st</sup> of June 2011 and IATA responded again the 31<sup>st</sup> of July. The Agent thereafter submitted its last response and IATA informed the undersigned that it had nothing to add in an e-mail dated the 16<sup>th</sup> of Aug 2011.

The parties have agreed to waive their rights for an oral hearing. As the positions of the parties are clear the undersigned finds that the review could be based on written submissions, with no oral hearing.

## **2. The position of the Applicant/Agent in summary**

The reply given by IATA to us invoking Resolution 850 - Attachment F - § 6 shows IATA's strange attitude, taking for granted that even losses of a BSP due to a defaulting airline should be borne by travel agents. This is obviously a misinterpretation of the Resolution 850 - F - § 6. Considering international world trade laws, it just seems UNBELIEVABLE that a travel agent could fully comply with all IATA rules, with BSP Airlines duly accepted and designated as such by IATA, and that because of a sudden suspension of one BSP airline by IATA (APR 6), this suspension measure could possibly RETROACTIVELY affect a previous period of trade, which is supposed to be closed once for all, after the billing process (1st-31 March) was long closed with such evidence given by the sending of a definitive invoice to be paid -- when a new billing period (should it be 1st-15APR or 1st to 30APR) is currently being processed.

Moreover, since the MARCH IATA bill had been sent in the first days of APRIL (effective availability of the funds on IATA-BSP's account on TUESDAY, APR 19), we, according to normal procedures, would have been required to make a check deposit on FRIDAY, APR 15 before 9AM. Late evening of WEDNESDAY MAR 13 long after closing hours (9PM), IATA sends an e-mail requesting ADDITIONNAL PAYMENT before 9 am of March 15 and threatening DEFAULT in case of non payment. In other words, the request demanding additional payment was sent after the close of the banking day, and the deadline given for such payment gave us only one business day to handle the case. Reasonably speaking, this does not seem acceptable in our modern world of trade and international trade laws. And if our IATA partners would have thought this through, they would have come to the conclusion that something was surely wrong and was being misinterpreted.

We believe:

- that the MARCH invoice to be paid could not be affected by any change a posteriori.
- that any decision taken in APRIL could impact ONLY the invoice of the CURRENT BILLING PERIOD, which is the final APRIL INVOICE to be produced.

### Reg Resolution 850 - Attachment F - § 2:

(iv) to settle all outstanding billings...

The term billing refers to a whole process; only the APRIL BILLING was still outstanding, the MARCH billing was closed, and invoiced.

(v) consequently, to adjust the total amount to be remitted to the Clearing Bank at the end of the current reporting period by excluding the total amount due to or from the BSP Airline;

As we have received IN APRIL instruction by IATA (iv) to settle all outstanding billings... (v) consequently to make adjustments at the end of the CURRENT reporting period (that is APRIL), then the adjustments can obviously only impact APRIL OPERATIONS -- and never past, closed, and settled operations.

We therefore conclude that IATA has acted abusively, to our financial and moral detriment, putting us under undue financial and moral stress, without caring for the correct interpretation of resolution 850. Our case occurs in APRIL, while our colleagues from Mauritania are severely impacted by a similar decision taken by IATA in JANUARY, and contested with no good will on IATA's side to get an equitable resolution of the conflict, in full respect of IATA practices and international trade laws.

We therefore request not only urgent reparation of the prejudice, but also an explanation of what misunderstanding may have occurred to cause the IATA office to deal with us in this manner, as well as an assurance that the corporate office will engage in whatever training is necessary for our IATA office to correctly and not abusively bill IATA's partners in the future (to include a translation of any documents into French that they need to properly carry out their responsibilities). The foundation of any business dealing is always trust, and we should like to have an assurance that, as we deal fairly with you and uphold our side of all business arrangements, we can trust that IATA will do the same.

Our request for review was based on the fact that under IATA's threat of default, we had no choice, but to pay back to IATA the refund of previous month granted by Air Ivoire. We sent our contestation immediately to IATA, even before paying our bill. The reply we got to our contestation was out of context and chocking: in case of suspension of a BSP airline, we poor travel agents had to pay for the losses!

Here some definitions:

APPENDIX C - GLOSSARY OF TERMS, BSP MANUAL FOR AGENT, p 39

"BILLING PERIOD" means the time span, comprising one or more Reporting Periods, for which a billing is rendered. Its duration is established by the PAConf.

"REMITTANCE PERIOD" means the time span in respect of which a remittance is made to the Clearing Bank. It shall not be shorter than one Billing Period, but may cover more than one Billing Period.

"REPORTING DATE" means the last day of the Reporting Period.

"REPORTING PERIOD" means the time span established by the Conference for reporting of Agent sales.

To make it short, we agree that IATA instructed APRIL 6th to:

(iv) to settle all outstanding billings (...) directly with the BSP Airline concerned;

(v) consequently, to adjust the total amount to be remitted to the Clearing Bank at the end of the current reporting period by excluding the total amount due to or from the BSP Airline;

(vi) to report and settle all refunds or other credit/debit transactions which will be made in future reporting periods (...) directly with the BSP Airline concerned;

APRIL 6<sup>th</sup>

Current reporting period = APR 1st to 15th

Future reporting periods = APR 16th to 30th, MAY 1st to 15th, MAY 16th to 31st, etc.

Previous month reporting periods = our refund of MARCH 11<sup>th</sup>

The expected adjustments of the total amount to be remitted to the Clearing Bank at the end of the current reporting period can reasonably ONLY impact CURRENT accountable transactions from APR 1st to APR 15th, as the MARCH reporting periods as well as the MARCH billing period were OVER and could no more be subject to adjustments. CONSEQUENTLY, the outstanding billing can only be understood as the CURRENT BILLING IN PREPARATION (= APRIL 2011).

We therefore contest as an abuse by IATA the fact that IATA has imposed to us that we should mid-APRIL pay back to IATA a refund dated of MARCH 11th, that is to say 2 reporting periods BEFORE the CURRENT PERIOD of AIR IVOIRE's suspension.

### **3. The position of the Respondent/IATA in summary**

IATA has acted in accordance with the requirements of Resolution 850 Attachment 'F'. In the event of an airline being suspended, Paragraph 2.1, inter alia, requires IATA to instruct all Agents to report as usual any sales or other credit/debit transactions made on behalf of the BSP Airline up to the date of the suspension, and if instructed by ISS Management to settle all outstanding billings directly with the airline, and consequently, to adjust the total amount to be remitted to the clearing bank at the end of the reporting period by excluding the total amount due to or from the airline.

In this particular case, communication of airline suspension was uploaded into BSPLink on 6th April. Remittance of agents is monthly in Cameroon. Agents issued tickets and refunds from 1st to 31st March but remittance was only on 19th April (value date).

So after suspension of the airline, next remittance to be made by agents was on 19th April for tickets issued and refunds done from 1st March - to 31st March. The instruction sent to each agent (in addition of the general communication) was for agents in Cameroon to adjust this next amount to be remitted (on 19th April) by removing amounts of tickets issued on behalf of Air Ivoire and adding all amounts of refunds due by the airline.

The basis of the agent's request for review is that IATA's action is "strange and base on a misinterpretation of ATT F of Resolution 850", IATA accordingly provide this response in accordance with paragraphs 1.1.5, and 1.1.10 of Resolution 820e. Please find below a full description of the series of events;

On 6th April 2011, Airline SN Air Ivoire was suspended from BSP operations in Central West Africa as a result of the airlines inability to pay for the negative balances in the BSP in accordance to Resolution 850 Attachment F. A communication (in English and in French) was sent to all agents and airlines in Central and West Africa countries via BSPLink the 6th April.

BSP Travel Agents were asked to:

1. Stop immediately all ticketing and refund transactions through the GDSs and BSPLink.
2. Settle all outstanding billings directly with the Airline.
3. Report and settle all refunds or other credit/debit transactions, which will be made in future reporting periods directly with the Airline.
4. Consequently adjust the total amount to be remitted to the Clearing Bank at the end of current reporting period by excluding the total amount due to or from the BSP Airline.

Outstanding billings were on 6th April, all pending billing not yet paid by the agents. On that date, billing of March was still outstanding because not yet paid by agents. Remittance date for March billing was 19th April.

So asking agents to settle all outstanding billing (tickets issued and refunds) directly to the airline and consequently adjust the total amount to be remitted to the bank is totally in accordance with Attachment F of Resolution 850.

This is what was followed by all the agents concerned, including the Applicant.

Please note also the below points:

(a) Resolution 850F subsections 2.1(b)(iv) and (v) allow IATA to direct agents' settlement with the BSP Airline and require Accredited Agents to exclude such amounts from their remittances for the current reporting period;

(b) Resolution 850F subsection 2.1 (b)(ii) should not be misinterpreted in a manner that confuses the Accredited Agent's reporting obligations with their settlement obligation. Subsection 2.1(b)(ii) allows IATA to instruct Accredited Agents "to report as usual any sales ... made on behalf of the BSP Airline up to the date of suspension..." whereas subsections (iv) and (v) require them "to settle all outstanding billings... with the BSP Airline" and "to adjust the total amount to be remitted ... by excluding the total amount due to or from BSP Airline";

and (c) IATA's instructions to the Respondent does not create a retroactive effect to the contract between the parties. There was no retroactive change affecting the billings, sales and refunds which had been concluded with airline passengers. Instead, IATA only denied access on a going forward basis to the settlement process in the BSP (and thus to the Respondents' ability to net the amounts remitted with others). This denial of access was necessary to preserve the integrity of the BSP process following the suspension of Air Ivoire as a BSP Airline.

For IATA, the matter was closed as agent followed the instruction sent to them. Instruction was strictly based on Attachment F of resolution 850.

#### **4. Relevant Rules**

To become an Accredited Agent an Agent signs a Passenger Sales Agency 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 or the Carrier) 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, Passenger Sales Agency Rules. For Cameroun these rules are to be found in IATA Resolution 818g. The Passenger Sales Agency Rules are consequently to be considered as part of the contractual relationship between the individual Agent and the IATA Members. The Resolution 850 Attachment F "Suspension of operations by a BSP Airline" will be found in the Handbook and thereby also this Resolution is incorporated into the contract between the Agent and the Airlines.

The relevant versions of the Resolutions are, in the context of this review, the versions from 1<sup>st</sup> of June 2010 (some changes are in effect from the 1<sup>st</sup> of June 2011 but this review concerns events under the time of the previous texts).

#### **5. Travel Agency Commissioner Review – Rules**

The procedures under which the Travel Agency Commissioner (referred to as TAC) operates are contained in IATA Resolution 820e. The section of main interest in this matter is to be found in Resolution 820e section 1.1.10 stating;

*"...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.* “ - In this context it is worth to note that the TAC does not have authority to overrule resolutions, or change the material content of any rules.

## 6. The Review

The key question in this matter is if the Respondent, under the IATA Resolutions, is able to require settlement directly with the airline, and exclude amounts due to or from the BSP Airline at BSP Payment, if these amounts relate to the time before the current reporting period and before the date of the suspension of the airline.

IATA claims that the instructions to the Agent does not create a retroactive effect to the contract between the parties. - IATA states that there was no retroactive change affecting the billings, sales and refunds which had been concluded with airline passengers. Instead, IATA only denied access on a going forward basis to the settlement process in the BSP (and thus to the Agents' ability to net the amounts remitted with others). This denial of access was, according to IATA, necessary to preserve the integrity of the BSP process following the suspension of Air Ivoire as a BSP Airline.

- To these arguments I have the comment that the IATA Agency Programme does not contractually primarily regulate the transport contract with the airline passenger – it regulates primarily the relationship between the Agent and the Airlines when the Agents handle sales on behalf of the Airlines (both collectively and individually). One important ingredient in this relationship is the BSP Billing process. It is my opinion that if an activity is accepted under the PSAA day 1, and after instruction the same activity is not permitted day 2 with effect from day 1, the instruction has some kind of retroactive effect on the contractual relationship. In this case in relation to the rules and processes for the BSP Billing. (Still the same rules for refunds and sales in relation to the airline passenger should be applied.) In my opinion this kind of retroactive effect of a contract should at least be very clear to all involved parties.

I note that according to (text before 1<sup>st</sup> June 2011) Resolution 850 Attachment F section 2.1. first section (b) the ISS Management shall, if it determines that the BSP Airline should be suspended from BSP operations, immediately instruct all Agents, to amongst other things suspend immediately the use of the name and numeric code of the concerned Airline as ticketing airline. In addition – of special relevance here - the text states that Agents shall be instructed to report as usual any sales, refunds or other credit/debit transactions made on behalf of the BSP Airline up to the date of the suspension to the Data Processing Centre (DPC). Furthermore the Agent is instructed to settle all outstanding billings either directly with ISS Management for control and reconciliation of the special account detailed in paragraph 2(c), or if instructed by ISS Management directly with the BSP Airline concerned and consequently, to adjust the total amount to be remitted to the Clearing Bank at the end of the current reporting period by excluding the total amount due to or from the BSP Airline (underscore by the undersigned).

Not to confuse reporting obligations with payment obligations we need to investigate the text “...to adjust the total amount to be remitted to the Clearing Bank at the end of the current reporting period...” - It must be clear to everyone that *reporting period* is the period 1-31 of March, 1-30/1-15 April etc. (This is also clear considering the definition under IATA Resolution 866.) When the Agent is instructed to adjust amounts to be remitted at the end of current reporting period, it must therefore be a reference to the ongoing reporting period; in this case the 1-15 or 1-30 April. Already by this it is clear that the request to adjust amounts to be remitted for an already ended reporting period was not correct. The next logical question is if it would be correct to ask the Agent to adjust the amounts at the end of the current reporting period (1-30 April/1-15 April) with “outstanding billings”, and by this mean transactions that relates to the previous reporting period that were outstanding in the

sense “not paid” at the date of suspension though already “invoiced”. This would be rather far-fetched. At the time for payment of current reporting period transactions related to the previous would have been already settled, and this is not even argued by the Respondent.

Altogether I cannot agree to an interpretation that the Respondent is able to request that remittance relating to the previous reporting period should be adjusted, only days before settlement date, when an amount to pay is already established based on what is reported to the DPC long before suspension date. IATA contractually represents the Airlines in relation to the Agents and should the IATA Airlines wish to have such rules, these need to be much clearer and be communicated in an understandable way to the Agents, under the PSAA.

In this situation consequently the decision by the Respondent was not in accordance with correct procedures as delegated by the PaConf, to the Agents’ direct and serious detriment. The request for payment of an additional amount of 267 643 FCFA shall therefore be revoked. Please note that there may be other grounds on which the amount should still be paid by the Agent; for example if the refund was incorrect under the airline refund policy or similar.

I suspect that this decision is controversial to the Respondent. I can only argue that in the interest of all parties the rules of the Passenger Programme should be balanced and understandable to all parties. I further note that this decision has no prejudice for future similar matters. - Given the amount in question I do not think that it is appropriate that the Applicant shall be able to require payment until it is clarified whether or not the Respondent will arbitrate against this decision.

## **7. Decision**

The request for payment of an additional amount of 267 643 FCFA in the BSP Billing with settlement date 19<sup>th</sup> of April 2011 shall be revoked and the money shall be re-paid to the Applicant. This decision is not in effect until 31 calendar days from the date of this decision, and it is also subject to that the Respondent does not arbitrate against this decision under the rules of 818g section 12.

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Decided in Stockholm 2011-08-19

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the parties. In addition the decision will be sent by e-mail this date to the relevant parties for information purposes.

**Note:**

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