

VERÓNICA PACHECO-SANFUENTES
TRAVEL AGENCY COMMISSIONER - AREA ONE
DEPUTY TAC 2
(The Americas and the Caribbean)
110 – 3083 West 4th Avenue,
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2012 - # 1

In the matter of:

Air Tours Services Co. Ltd.

IATA Code: 50-2 4421 3
19 Sir Adrian Dingli Street
SLM 10 Sliema
Malta

Represented by its Managing Director, Mr. Georges Bonello DuPuis
The Applicant

vs.

International Air Transport Association (“IATA”)

Torre Europa
Paseo de la Castellana, 95
28046 Madrid, Spain

Represented by the Agency Administrator, Mr. Ignacio Mula Díaz
The Respondent

I. The Case

The Applicant (also called herein after as “the Agent”), sought a Travel Agency Commissioner’s (referred to as “TAC”) review of the Default Action taken by the Respondent (indistinctively refer to as “IATA” or “The Agency Administrator”), on February 20, 2012, in respect to all of the Agent’s approved locations allegedly due to an outstanding amount of EUR 750.10, corresponding the BSP billing period from January 1, 2012 to January 31, 2012, payable by February 15, 2012, that was preceded by an unsettled Notice of Irregularity dated February 16, 2012.

Telephone: + 1 (604) 742 9854
Fax: + 1 (604) 742 9953
E-mail: Area1@tacommissioner.com
Website: travel-agency-commissioner.aero

II. Background - Chronology of events

On March 1st, 2012 this Office received the Applicant's formal request for review of the Respondent's action. According to the Agent's exposure of the facts, not contradicted by the Respondent, the chronology of events (verified by the undersigned with the evidence that is on file) was as follows:

- On February 1st, 2012 the Agent was advised by its auditors, PriceWaterHouseCoopers, to deduct from its monthly BSP remittance the amount of EUR 750.10, due to two previous overpayments (one being of EUR 100, and the other of EUR 650.10);
- On Feb. 15, according to the bank statement on file, the Agent did an electronic payment in IATA's favour of EUR 44,419.22 corresponding its billing period (Jan. 1st to Jan. 31st), minus the EUR 750.10 mentioned above;
- Despite this electronic payment, for some unexplained reason, IATA did not seem to have received the funds, originating a "Notice of Irregularity" sent to the Agent on Feb. 16th by email. On that same date, the Applicant replied to IATA and provided a scanned copy of the payment's proof and explained the reason for the underpayment of the remaining EUR 750.10;
- Finally, on Friday Feb. 17th, IATA confirmed to the Applicant that the funds had arrived on time, but that payment was incomplete since those EUR 750.10 were still outstanding. At no time IATA seemed to have acknowledged the Agent's explanation of the short payment, let alone provided him any advice in that regard nor prevented him from the forthcoming "Default Notice";
- Instead, on Monday Feb. 20th, the Agent received an email containing a "Default Notice" due to the pending remittance of EUR 750.10;
- It was not until Feb. 21st that the Applicant was verbally informed by IATA that the said amount had actually been refunded to him a <<few weeks ago>>. However, the Applicant was never informed of this before. Once received this explanation, on Feb. 22nd, the Applicant paid the remaining balance and provided proof of it;

- After the unsuccessful attempts to solve the unfortunate misunderstanding with the Respondent, the Applicant decided to contact the undersigned by Feb. 27th, filing a formal Request for Review in to this Office on March 1st.

III. Authority for Review

Resolution 820e determines the scope of the TAC's review proceedings, and as so provides for Accredited Agents, for the Agency Administrator, for a group of Member Airlines and for the Agency Services Manager to seek review by the Commissioner in circumstances described therein. In this case, the most pertinent Paragraphs as seen from the Applicant's perspective are 1.1.5 and 1.1.7, respectively.

Having received the Request for Review within the time frame limit, as indicated above, pursuant Paragraph 1.2.2.1 of Resolution 820e, the undersigned decided to allow the proceeding in compliance with Paragraph 1.2.3 of the said rule.

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure for Area 1, the undersigned, acting upon both parties' agreement on waiving an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them, since she has considered that it will not jeopardise the process.

IV. The Applicant's Arguments in Summary

In light of the previously stated chronology of events, the Agent considers, after having had a 20 year working relationship with member airlines and having had excellent financial results over the years as an Accredited Agent, at the point where IATA had even removed its bank guarantee, that it was unfairly treated by IATA and that if he had been timely informed about the refund made by IATA in its favour, he would have never deducted the amount from its BSP remittance.

It also considers unfair the fact that the Respondent is requesting now a bank guarantee for the amount of EUR 53,000.

The Applicant considers that the Default Notice was not only unfair but unnecessary. The Agent is seeking full withdrawal of the Default Notice and immediate reinstatement of its services.

V. The Respondent's Arguments in Summary

Due to the lack of payment of the remaining balance of EUR 750.10, after issuing the Notice of Irregularity (which counts for two instances of irregularities) by Thursday Feb. 16th, The Respondent had no alternative but to declare the Agent in default on Monday Feb. 20th, according to Resolution 818g, Attachment "A", Section 1.7.2.

In regards to informing the Applicant about IATA's refund made in its favour, The Respondent argues that <<agents are able to query ADM (Agent Debit Memo), ACM (Agent Credit Memo), MAN Debit, MAN Credit (Minor Adjustment Notice), ADM Request, ADNT (Airline Debit Non-Ticket) and ACNT (Airline Credit Non-Ticket) issued through BSPlink depending on the status they have or the document number they were assigned which for sure in the case BSPlink was consulted would have avoid this awkward and unfortunate event>>.

VI. Considerations leading to conclusion

The case for review consists in whether or not the Respondent had followed correct procedure when Default Action was taken against the Applicant for having disregarded a Notice of Irregularity, previously issued, due to a short payment in its February 2012 BSP remittance of EUR 750.10.

Before looking at the applicable rules (A) and its interpretation (B), it is important to establish that both parties have agreed on various facts, namely: (i) that following the Applicant's external auditors' advice, EUR 750.10 were deducted from the Agent's BSP billing period of Jan.1-Jan.31, 2012, due to a prior overpayment of the exact amount made by the Applicant; (ii) that those monies were refunded to the Agent by the Respondent, unfortunately without the Applicant's timely awareness, on August 2011

(EUR 650.10) and in September 2011 (EUR 100), respectively¹; and, (iii) that the BSP remittance payable on Feb. 15th was timely done by the Applicant, so no delays have happened from the Agent's side, except for those deducted funds and the unfortunate miscommunication that took place between the Notice of Irregularity and the Default Notice's date, in the Applicant's detriment.

(A) Applicable Rules

Before entering in to the case's details, the undersigned deems appropriate to clarify two topics that have come to my attention while reviewing the parties' submissions.

(i) In the entire Travel Agent's Handbook nor in any of IATA's applicable Resolutions, there is not one single rule that states the possibility for Agents to do unilateral deductions from BSP billing reports, due to previous overpayments. The procedure to be reimbursed by IATA is a totally different one; I'll explain that further on. It is important to keep in mind that the relationship that exists between Agents and IATA is a contractual relation, that is governed not only by the Passenger Sales Agency Agreement signed by both parties, but also, as indicated in the said contract, by IATA's applicable Resolutions, most of them embodied in a text called the Travel Agent's Handbook. Therefore, it is the parties' obligation, and particularly, an Accredited Agent's obligation to be aware of the governing rules of their contractual relationship and follow them, rather than follow the advice of third parties, that despite being good intentioned, might lead Agents to undesirable grounds.

(ii) The second one is in regards the frequency of issuing Notice of Irregularities and eventually ulterior Default Notices. Both subjects are extensively treated in Section 1.7 (actually named Irregularities and Default) of Resolution 818g, Attachment "A". According to that Section, each Notice of Irregularity counts as 2 listed instances of irregularity (Sub-paragraph 1.7.2.1(a)) and when an Agent collects two Notices of Irregularity (that would count as having 4 irregularities) in a 12 consecutive months' period, Default Action is taken against that Agent (Paragraph 1.7.5.2 – this is called

¹ According to the evidence on file, notably the copy of both Settlement Plan Credits (SPCR), issued on Aug. 13, 2011 and Sept. 23, 2011, respectively.

Technical Default). However, there is another possible scenario as well. When a single Notice of Irregularity is issued against an Agent, and if payment is not received by the given time frame (which is particularly short, since it's the first working day following the date of its demand) Default Action is immediately taken against that Agent (Sub-Paragraph 1.7.2.1.(b)), despite having had only one recorded Notice of Irregularity. The difference with this scenario and the previously mentioned one is that in the first case the Notice of Irregularity is timely and fully paid by the Agent; on the contrary, in the second one, the time limit expires without the arrival of the demanded funds, therefore, default action is immediately displayed against that Agent.

Consequently, it is true that two Notices of Irregularity are required to declare an Agent under "Technical" Default, however, that was not the hypothesis in this case, but the second scenario, hence, Default Action was taken even though only one Notice of Irregularity was given to the Applicant, since this one was not honoured on time.

Once clarified those two topics, let's look at the applicable rules.

In this matter, we encounter two sets of rules since two different submissions/situations have been put forward. (a) The first set of applicable rules correspond the situation of the Notice of Irregularity and the subsequent Default Notice. (b) The second set of applicable rules correspond the Applicant's deduction of an overpaid amount and the way the Respondent communicated the refund that it had previously made in the Agent's favour.

(a) The first set of applicable rules correspond to the situation of the Notice of Irregularity and the subsequent Default Notice

In regards to the Notice of Irregularity and consequent Default Action Notice, as explained above, the applicable rules were those stated in Section 1.7 Attachment "A" of Resolution 818g, particularly Sub-paragraphs 1.7.2.1(a) and 1.7.2.1(b), so according to the facts narrated earlier and the evidence on file, this Commissioner deems that the rules were properly applied by The Respondent, considering that:

-the Feb. 15 remittance was paid on time by the Applicant, but it was incomplete due to the missing EUR 750.10 that were erroneously deducted from the BSP report by

the Agent, who had months ago overpaid that amount; situation that originated the issuance of the Notice of Irregularity dated Feb. 16 (first Notice ever received by the Applicant's history as an Accredited Agent);

-due to the Applicant's lack of understanding of the applicable rules and also due to an unfortunate miscommunication from the Respondent's side², the Applicant, still in the belief that the deduction unilaterally made by him was correct, and unaware of IATA's previously made refund, did not pay on time the outstanding amount of EUR 750.10, being dishonoured the Notice of Irregularity, triggering therefore Sub-Paragraph 1.7.2.1(b) of Res. 818g, Attachment "A", the Default Action procedure.

It is worth noting that unfortunately IATA Resolutions do not take in consideration the fact that an Agent might have had an impeccable history in its past's years as an Accredited Agent. As per the current state of the rules, a BSP report has to be paid in full –meaning the exact amount, no more no less than it- and in a timely manner by every Agent, otherwise, the Irregularities and Default (Section 1.7 *supra*) procedures are immediately triggered, regardless the presence or absence of any particular consideration towards the Agent. Those are the rules in black and white.

However, in this case a particular circumstance caused the unfortunate Default procedure. It was the confusion between, on one side, the unilateral deduction made by the Agent, and on the other side, the refund previously made by IATA in the Applicant's favour but without its awareness. An analysis of those rules is required, since they would determine whether the Applicant was duly sanctioned or not by The Respondent despite the fact of haven't been informed about the refund made by it.

(b) The second set of applicable rules correspond the Applicant's deduction and the refund procedure

² I am using the words <<unfortunate miscommunication>>, because as stated on file, had the Agent been told by IATA's representative on Feb.16, when talked to the Agent over the phone and got its explanation in regards to the missing EUR 750.10 , that this was an improper deduction, none of this had happened and a default action could have been avoided. In other words, a more proactive approach to communication with Agents would have made the difference. Regrettably, the current Resolutions do not require that step forward.

As indicated in page 5 of this document, it does not exist any IATA Resolution that would allow Agents to make unilateral deductions from their BSP reports whenever a circumstance would call for it. The procedure for claiming a refund is stated in Chapter 14 of the Local Financial Criteria for every country. In this case, those rules are located in the BSP Manual for Agents-Local Procedures - Chapter 14, Malta, June 2011³.

According to those rules, once the Agent realizes that an overpayment has been made when settling its BSP report the procedure to follow is indicated in Section 14.7 (Remittance Procedures), Paragraph 14.7.4 (Post Settlement Errors Discovered by Agent) of the aforementioned Chapter 14 rules.

As we know, in this case the Agent did not realise that an overpayment was made, but it was originally detected by IATA. According to the evidence on file, the Respondent issued two SPCRs (Settlement Plan Credits), covering the total amount of the overpayments occurred in two different BSP billing periods, and refunded the total amount to the Agent.

As per Chapter 14, Sub-Section 14.5.1., an SPCR is an <<Agency Credit Memo (used in those cases where the Airline owes money to the Agent) issued by IATA for commercial invoice purposes>>. So, in principle The Respondent acted according to the rules, nevertheless, is still to be determined if it should have communicated the issuance of these two SPCRs to the Agent and ultimately informed him about the actual refund of the monies in question.

As indicated above, the procedure for issuing SPCRs is assimilated to the one used for ACMs (Agency Credit Memos), hence, pursuant Sub-Section 14.5.3 (ADM/ACM Procedures): <<Where BSplink ADMs/ACMs have been implemented, the documents are issued either on line in BSplink, or by using a mass file upload feature. This feature allows the airline (or third party acting on the airline behalf) raising the ADM/ACM to issue the document in its own system and upload as a file into BSplink so the Agent can

³ For further reference, please look at the electronic copy attached to the digital version of this decision

view it>>. Consequently, when the Respondent argues that it had posted on BSPlink the two SPCRs (ACMs) pertaining the refunds that were to be paid to the Agent, it acted in compliance with the applicable rules.

According to Chapter 14, BSPlink has been set as the appropriate tool to communicate to Agents the issuance of ACMs, ADMs and other documents, and it is up to Agents to follow up through that web site the status in which each one of these documents might be at. Therefore, in this case having the Respondent posted the two SPCRs (assimilated to ACM, as indicated before) on BSPlink, it was the Agent's responsibility to check the system –the BSPlink portal- in order to be informed about the situation of the forthcoming refund in its favour and even before that, to be informed about its issuance itself.

Notwithstanding, it seems that the said portal was not visited by the Applicant, who was probably expecting a more direct way of communication; however, no infringement of the applicable rules can be attributable to the Respondent.-

VII. Decision

Having carefully reviewed all the evidence and arguments submitted by the parties in connection with this case,

Having looked at the applicable Resolutions,

This Commissioner decides:

- The decision taken by IATA of applying default action with respect to the Applicant was in accordance with Sub-Paragraph 1.7.2.1(b) of Resolution 818g, Attachment "A";
- The fact of posting the two SPCRs issued in the Applicant's favour on the BSPlink internet portal was in compliance with the BSP Manual for Agents-Malta, Local Procedures - Chapter 14, Sub-Section 14.5.3;
- Therefore, IATA's decision is upheld;

- Considering that is the first time in twenty years that the Applicant has been issued a Notice of Irregularity; considering that no monies are outstanding from the aforementioned BSP report, since it had been paid in full by the Applicant, no penalty fee should be applied to the Agent when reinstated, as indicated in Section 14.8.3 of Chapter 14-Malta.

Per Resolution 820e, Section 4.1, the Applicant has the right, if he considers himself aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14.

Decided in Vancouver, BC, the 3rd day of April, 2012

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Note: The original signed version of this decision will be sent to the parties by regular mail. In the meantime, in order to ensure timely receipt by the parties, an electronic version of it is sent on this date (3-IV-2012)