

VERÓNICA PACHECO-SANFUENTES

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC 2)
110 – 3083 West 4th Avenue,
Vancouver, BC V6K 1R5
CANADA

DECISION 2013 - # 19

In the matter of:

Afric Voyages

IATA Code # 3920254

Avenue Chardy

Galérie marchande Nour Al Hayat

01 B.P. 3984

Abidjan 01, République du Côte d'Ivoire

Represented by its Director Madame Marie-Reine Koné

and

Alizé Voyages

IATA Code # 3920994

01 B.P. 3381

Abidjan 01, République du Côte d'Ivoire

Represented by its Director Madame Thérèse Moukarzel

The Applicants

vs.

International Air Transport Association (“IATA”)

King Abdallah II Street, Al Shaab roundabout

Business Park, Building GH8

P.O. Box 940587 Amman 11194

Jordan

Represented by the Regional Assistant Director

Industry Settlement Systems, Distribution

Africa & Middle East, Mr. Janaurieu D'SA

The Respondent

I. Preliminary Note

Considering that the matters that had been brought to the attention of this Office by the two above mentioned Accredited Agents (also referred to hereinafter indistinctly as “the Agents” or “the Applicants”) were exactly the same, having obtained the previous

consent from all the Parties involved, on March 6, 2013, this Commissioner decided to accumulate both requests for review in one sole procedure, thus both cases would be substantiated as one and one sole decision will cover both Applicants' and Respondent's submissions.

II. The Case

On February 6, 2013 the Applicants sought a Travel Agency Commissioner's (referred to as "TAC") review of IATA's (also called "The Respondent") Notice of Irregularity, drafted in French, issued against them on January 18, 2013, originated from the Applicants' misunderstanding of the instructions given by the Respondent in regards to the suspension of the Member Airline Société Nouvelle Air Mali (hereinafter referred to "Air Mali"). Instructions that were stated in a circular dated December 23, 2012, drafted in English and posted on *BSPlink*.

III. The Applicant's arguments in summary

From the Applicants' perspective the Notice of Irregularity issued against each one of them by the Respondent is inequitable and unjustified based on the following reasons:

- IATA's posting/communication was not delivered in French as well as in English, as is the communications' routine in Central & West Africa, but only in English; therefore, notwithstanding the special nature and importance of the message it was not initially understood by the recipients, who, on top, were not part of the Applicants' management staff;
- French is the official language in Côte d'Ivoire; English is rarely needed for work purposes. The Applicants' staff all speak French and some have very little or no English;

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- The Respondent <<failed to communicate adequately the need for us to take certain, exceptional action>>, particularly considering that it is extremely uncommon, rather unusual <<in the business sector in which we exercise to have to modify the amount of the invoices of our suppliers>> by ourselves;
- IATA's circular pertaining Air Mali' situation <<was NOT sent to "all" IATA Accredited Agents>> in the country, but <<instead, posted on the BSPlink website, to be read by those who happened to consult it>>;
- The posting on the BSPlink <<does not meet the communication of notices requirements of Clause 16 of our Passenger Sales Agency Agreement>>;
- <<Had the BSPlink been reinforced by an email addressed to each IATA Accredited Agent individually, as it should have been in the circumstances>>, the outcome would have been quite different;
- In both cases, the outstanding amounts (according to the instructions imparted by IATA's circular) were swiftly paid by the Applicants, so <<no harm was done and at no time were BSP Airlines' monies in danger>>.
- The Applicants have been trading for more than 35 years of impeccable and unblemished reputation, one of them having been even prized-winning by IATA-BSP, back when they used to do that.

IV. The Respondent's arguments in summary

The amount that was charged to the Applicants, and which they both promptly paid, corresponds to <<an adjustment that resulted from the suspension of Air Mali>>.

The <<notification/communication of the suspension of Air Mali and the instructions (Agents to deal directly with the airline outside the BSP) to all BSP participants in Ivory Coast was issued on 23 Dec. 2012>>, adding the Respondent that <<the primary method for the distribution of market communication for IATA remains BSPlink>>.

V. Authority for Review

Resolution 820e determines the scope of a TAC review proceeding, and 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 Paragraph as seen from the Applicants' perspective is 1.1.10.

Having received the Request for Review within the time frame limit, as indicated above (II), 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 2, this Commissioner, acting upon both Parties' agreement on waiving their right for an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

VI. Considerations leading to Decision

Some important facts of the case were undisputed by the Parties, so this Commissioner considers them as accepted by both of them. Those facts are:

- The amount that was indicated in the Notice of Irregularity, since it reflected the transactions that were made with Air Mali;
- The Applicants once informed by IATA about their short payment, through the Notice of Irregularity communicated in French and via email, immediately paid the indicated amount and swiftly sent proof of it to the Respondent's satisfaction;
- At no time were Member Airlines' moneys at risk;
- The Applicants had never been the object of any irregularity towards the applicable Resolutions;
- The Respondents' circular communicating the instructions for Agents to process the transactions made with the suspended Member Airline, dated December 23, 2012 was NOT sent to all Agents as indicated in Section 16, of

Resolution 824, but it was posted on the BS*Plink*, without any further follow-up;

- That circular was only posted in English;
- The Respondent's communication/notification routine in Côte d'Ivoire, considering that French is the official language of that country, has always been to send and post all correspondence addressed to Accredited Agents in French and in English, whether it is transmitted by email, by certified/registered letter or through postings on the BS*Plink*;
- The instructions that are given to Agents when a Member Airline is suspended from the BSP system are **completely out of the ordinary and rather unusual**, since not only does it require for Agents the need to unilaterally modify the payable sum that appears in their BSP Report (in other words, to alter the invoice received from a supplier), but it also affects the way refunds should be dealt with, it affects passengers' issues, future remittances, etc.

Having those facts as background, in addition of the far reaching scope of the Passenger Sales Agency Agreement (stated in Resolution 824), signed by the Applicants and the Respondent, noting particularly Paragraph 2.1(b) of the said rule, this Commissioner deems that:

The communication *posted* by the Respondent on BS*Plink* on December 23, 2012, notwithstanding its unique and extraordinary character and importance, was not in accordance with the requirements set in **Section 16 of Resolution 824**, since it was not sufficient nor adequate to constitute <<proof of dispatch>> nor <<receipt addressed, as appropriate to>> the Applicants, because:

- a. It was not individually addressed to each one of the Applicants for them to have taken immediate action, by an email addressed to the Applicants' management, as they did when they received from the Respondent the Notice of Irregularity communicated in compliance with the above

mentioned rule and pursuant Clause No. 12.4 of the BSP Manual for Agents^{1 2};

- b. Nor was it drafted in French and in English, as it is the reiterated and long-lasting communication/notification practice of the Respondent in the Region.

In this regard, it is worth to note a relatively recent precedent where the Respondent, in a similar situation concerning a suspended Member Airline, did comply with the proper communications' rules. We are referring to the suspension of Air Ivoire from the BSP of Central & West Africa in 2011.

Lastly, as a clarifying note to the Applicants, considering their trouble to understand the uncommon instructions received from the Respondent in regards to the suspended Airline and the way of processing its transactions, this Commissioner advises that even though the general rule is to settle the BSP Report amount exactly as it is shown in the invoice received from IATA, as mandated in Clause No. 11.2 of the BSP Manual for Agents, in situations of suspended airlines a completely different procedure takes place. That new procedure being precisely the current Air Mali case where, according to Resolution 850, Attachment "F", Section 2 Subparagraph (b)(iv)(b) and Chapter 13, Clause No. 13.1 of the BSP Manual for Agents, the Applicants were required to manually adjust, *by themselves*, the proper amount to be settled, without counting the transactions that were made with the suspended Member Airline nor the potential refunds with it.

This Commissioner notes that for the sake of clarity it would have been useful if the Respondent would have quoted any of the preceding rules in its communication to Agents, for them to have a better understanding of the situation and get further

¹ Rule that expressly recognizes the need to address the communications to the attention of the Agent's "Manager", in order to ensure a real "*proof of dispatch*", guaranteeing the immediate awareness of the recipient

² It is worth to note that the applicable BSP Manual for Agents is the version currently posted on IATA's official website, which effective date appears to be **1 June 2011**.

explanation –if needed- by reading the applicable rules of this peculiar and uncommon remittance and settlement procedure.

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 communication posted on December 23, 2012 by the Respondent on *BSPlink* was not in accordance with Section 16 of Resolution 824, therefore, the Applicants' misunderstanding of the situation and thus their late compliance with the instructions set out in that circular, which was at the origin of the Notices of Irregularity issued against them on January 18, 2013, is excused;
- Consequently, the Notices of Irregularity issued against the Applicants must be expunged and thus removed from the Applicants' records.

Decided in Vancouver, the 29th day of March, 2013

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
acting as Deputy TAC2

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which the Party may find appropriate to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the above mentioned timeframe for interpretation/corrections would have expired.