

**VERÓNICA PACHECO-SANFUENTES**

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 2  
110 – 3083 West 4<sup>th</sup> Avenue  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2013 - # 33**

**In the matter of:**

**Network Plc (Travel & Tour Agency)**

IATA Code 1821013  
Piazza Arada Building  
Office No. 181  
Addis Ababa, Ethiopia  
Represented by its Managing Director,  
Mr. Yusuf Mohammend Hikmet

**The Applicant**

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 Passenger Agency Manager  
Africa & Middle East, Ms. Ruba Al-Sharif

**The Respondent**

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**I. The Case**

The Applicant (also called hereinafter as “the Agent”), sought a Travel Agency Commissioner’s review of IATA’s (also called “The Respondent”) Notice of Termination dated April 9<sup>th</sup>, 2013, due to a late payment of the 2013 Agency annual fees. The settlement of those 2013 fees made by the Applicant was not identified by the Respondent as such before the termination date.

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Interlocutory relief was requested by the Applicant and since no airline credit risk was proved nor claimed by the Respondent, as stated in Paragraph 1.2.2.4 (c) of Res. 820e, the relief was granted by this Office. On May 28, 2013 the Applicant was temporarily reinstated pending this review process.

## II. The Applicant's arguments in summary

The Applicant claims not having received any type of mail nor email message from IATA concerning the annual fees for 2012;

In Oct. 2012 the Applicant did receive an email message from IATA and they made the required payment on time, receiving a confirmation email as well as a receipt from IATA;

The Applicant was under the belief that the said payment as well as IATA's email corresponded to the **annual fees for 2013**, since nothing indicated them the contrary. That explains why when the Applicant received a "reminder" in February 2013, they answered IATA by indicating: <<we have paid the stated annual fee assuming that it was the same fee that we paid in October. After a couple of correspondences<sup>1</sup>, IATA acknowledged the payment>>;

Moreover, the Applicant stresses <<since the annual fee for the 2012 comes in October, which is the timing to receive a notification for the year 2013, when effected the payment, we had the understanding that the payment was for the year 2013>>;

<<Had Network Travel received the notification for the year 2013 in the period stated on the IATA resolution, the miscommunication could have been cleared on time and Network could have saved itself from termination>>;

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<sup>1</sup> Copy of this correspondence is on file, it was sent to this Office by the Applicant, copying the other Party.

<<Network does not have any intention to refuse to pay the annual fee. What real happened is misunderstanding from both parties, the IATA and Network Travel. From our part we did all we can to clarify about the payment that we have effected on October 2012 and as you can clearly read from the e-mail correspondences, the IATA office have accepted our explanation>>.

### **III. The Respondent's arguments in summary**

<<- Agent IATA Accreditation code: 1821013

- Agent did not pay annual fees for 2013
- Invoice was sent by Mail and email
- Reminder was sent to the email address IATA had on file: [nw.travel@ethionet.et](mailto:nw.travel@ethionet.et) on 17th Feb 2013 (attached)<sup>2</sup>.

§ It is the agents' responsibility to ensure that they communicate any changes to contact details in advance to IATA

- After the termination action was taken, the agency updated their contact details with IATA: [nw.tour@ethionet.et](mailto:nw.tour@ethionet.et) was added to IATA database.
- Agent was terminated on 09 Apr. 2013>>.

On a clarification note sent to this Office, the Respondent stressed that <<the notification that was sent to the agency in Oct. 2012 was related to 2012 annual fees, which were also not paid by the agent on time, this payment was made on 24 Oct. 2012. 2013 annual fees were issued at the beginning of Nov. <sup>3</sup>>>

### **IV. Oral Hearing**

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedure, this Commissioner, acting upon both Parties' consent on waiving their right

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<sup>2</sup> Copy of this Feb. 2013 email was sent to this Office, copying the other Party

<sup>3</sup> No evidence of this communication was sent by the Respondent nor received by this Office.

for an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

## V. Considerations leading to Decision

It appears from the evidence on file, despite the allegations made by the Parties, that the sole communications actually received by the Applicant from the Respondent were:

- (1) a notice dated Oct. 2012, which the Applicant assumed was for collecting the 2013 annual fees, but the Respondent intended it to be for collecting the year 2012 annual fees that had not been paid by the Applicant in due time; nor requested to be paid by the Respondent, as stated in Section 14.2 and Section 14.3 of Res. 818g. The Applicant's assumption is considered valid by this Commissioner since (i) not only the notice contained no indication for it to be considered as pertaining the year 2012 fees, but (ii) it was received precisely in the time frame stipulated in Res. 818g Paragraph 14.2 for the collection of the **2013 annual fees**, not the 2012 ones. The Applicant settled the requested amount immediately and the Respondent acknowledged that payment right after;
- (2) a reminder for payment, dated Feb. 2013 via email, which the Applicant understood as a mistake since it had already paid the fees for 2013 (back in Oct. 2012), so it understood it as a double payment request.

Considering those facts in light of the applicable rules, stated in Res. 818g, Sections 14.2 and 14.3, the following conclusions come out:

- As indicated in a previous TAC case<sup>4</sup>, the above mentioned rules norm the collection of agency annual fees specifically for the current year; those rules, as well as the rest of the Resolutions, are silent in regards to the collection of former years' fees, so considering the time of the year on which the first communication (Oct. 2012) was received by the Applicant from the Respondent, in the absence of

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<sup>4</sup> Case "Ethio-Arab Tour & Travel Agency vs. IATA", June 21, 2013, pages 7-8

any express indication to the contrary, there is no other possible interpretation to give to that notice other than the one made by the Applicant;

- Therefore, according to the evidence on file, the Applicant settled on time the Agency annual fees for the year 2013 and no sanction should had been applied to it;
- It was not proved during the course of this procedure (the burden of proof lied on the Respondent) that the Respondent had timely requested the payment of the Applicant's 2012 annual fees, which according to Section 14.2 of Res. 818g would have had to happen before **Nov. 1 of 2011**, thus no valid sanction can be imposed to the Applicant, since as indicated in the quoted case:

<<Sections 14.2 and 14.3 of Resolution 818g state the due process to be followed when collecting the annual fees from Accredited Agents during one particular year. Those rules are silent –as well as the rest of the applicable Resolutions- in regards to situations where former years' fees have not been settled by Agents. Therefore, pursuant the Law principle according to which analogy cannot be applied when imposing sanctions, the termination that is stated in the above mentioned rules **cannot** be applied when former years' annual fees have not been paid by Agents nor have them been duly and timely communicated to them>><sup>5</sup>.

- Nevertheless, it is an unquestionable obligation of all Accredited Agents to honour this annual fee and the Applicant has presented no objection to it; on the contrary, it had paid the outstanding 2012 fee upon clarification of the situation, once the case was brought to this Office's attention.

The Applicant, as this Commissioner sees it, has not been observant enough of its obligations as Accredited Agent in regard to the 2012 annual fees, but the same can be said about The Respondent who due to human error did not request the payment on time (back in Oct.-Nov. 2011), in accordance with the procedure stated in Res. 818g, Section 14.2.

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<sup>5</sup> Page 7

## VII. Decision

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

Having looked at the applicable Resolution,

It is hereby decided:

- Concerning the collection of the Agency annual fees for 2013 the Respondent had followed correct procedure, and the Applicant had complied with its obligation by timely settling those fees;
- Concerning the collection of 2012 Agency annual fees, proper and timely communication had to be undertaken by the Respondent to the Applicant before imposing any sanction to the Applicant;
- Considering that the Applicant has settled all outstanding annual fees its temporarily reinstatement should become permanent without any further delay.

Decided in Vancouver, the 5<sup>th</sup> day of July, 2013



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

### **Right to ask for interpretation or correction**

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

### **Right to seek review by arbitration**

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 referred period for interpretation/corrections would have expired.