

TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC 2
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2014 - # 7

In the matter of:

Askia Voyages
IATA Code 39-2 10393
Avenue Chardy - Immeuble Le Paris
Abidjan, Côte d'Ivoire
Represented by its General Manager, Ms. Maiga
Abdourahamane

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 Assistant Manager & Deputy Manager
Agency Management Africa & Middle East, Ms. Christine
Hazboun

The Respondent

I. The Case

On August 19, 2014 the Applicant was disconnected from the BSP system allegedly due to a lack of payment of July’s remittance by the due date. The due date was August 18, 2014 in accordance with the BSP calendar for the Ivory Coast.

The Applicant contested the technical default that was inflicted against it by the Respondent and contacted this Office on August 20. It provided proof of payment of

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the full amount of the remittance in question, which had been made on August 18, 2014.

II. The Applicant's arguments in summary

At first, the Applicant did not understand the reason behind its sudden disconnection from the BSP system, since it had not only paid the full amount owed but it had provided to the Respondent proof of that payment. It had also contacted the Respondent's bank in order to ensure that the funds had arrived, which in fact they had.

In later submissions, the Applicant, in an effort to demonstrate its total compliance with its obligations as Accredited Agent, provided a Bank letter explaining the reason why the funds, despite having been deposited at **17h15min (local time) and received by the Bank at 17h16min**, appeared to have been transferred at 19h16min, which implied that the transfer was a late payment.

The Bank letter, dated August 21, 2014, signed by the Bank's Manager and the Director of Operations, addressed to IATA-BSP's Director General, stated as follows:

<<We are hereby confirming that the swift forwarded by our client Askia Voyage was sent to your bank before the cut off time of the central bank. Indeed, the editing time written on the swift is 19h16 because we outsource the management of our system to a company based abroad where the time difference is GM +1 or +2 hours depending on the seasons. We hereby confirm to you that the transfer time to the BCEAO is 17h15mn and the reception time of the debit note in our account is 17h16mn. We regret the inconvenience that this situation might have caused. Counting on your understanding and hoping that our mutual client will not be penalise by this...>>¹.

The Applicant further explained that it was actually impossible for them to have deposited the funds at 19h16min as the swift² indicated, since there is no local Bank

¹ This is a free translation made by this Commissioner from the French language in to English.

² Proof of payment

that would have been opened at that time of the day in the Ivory Coast. The business hours at the Applicant's Bank end at 17h30min (local time).

III. The Respondent's arguments in summary

In the Respondent's words:

- <<The agent Askia Voyages billing for cycle 20140701 was XOF 264,980,789.00. The remittance date of which was the 18 Aug 2014;
- The attached proof of payment shows that the agent remitted the full amount with value date of 18 Aug 2014 to our clearing bank;
- Upon further investigation of the proof of payment, it shows that the agent made the payment at 19:16 on remittance date after the bank's cut off time which explains the reason behind the payment not being processed on the same day;
- Subsequently, the agent was reported as a short payer and a notice of irregularity and a notice of technical default were served to this agent on 19 Aug 2014;
- Furthermore, an email was sent to our clearing bank to confirm the same and that there was no technical issue from their side...>>.

Once given the opportunity by this Office to comment on the Applicant's explanation regarding the time difference (17h15min –payment made- vs. 19h16min –payment recorded as received-) and the Bank letter provided by the Applicant, the Respondent's views were, I quote:

- <<... further feedback was requested from our clearing bank regarding the matter as we need them to confirm that indeed they received the payment on 17h16 before the cut off time and advise the reason behind the payment not being transacted on the same day>>;
- <<The bank letter provided by the agent's bank does not state the nature of the error that caused the agent's payment receipt to be delayed till the next day

nor did it meet the rest of the conditions stated above as it did not mention that the agent was sufficiently funded on remittance date, thus, it cannot be considered as a valid evidence to prove a Bona fide Bank error>>, described in subsection 1.7.4.3 of Resolution 818g Attachment “A”.

When the feedback from the Respondent’s clearing Bank was received, its’ submissions were:

<<We have just received feedback from our clearing bank stating that their cut-off time is 3 PM local time (according to the central bank) and any payment requests after the cut-off time are processed the following day. The agent did pay at 17:15 which is after the cut off time, therefore, it is considered as a late payment>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e, this Commissioner has decided to base her decision on the written submissions that have been filed by both Parties only, since both of them have exhausted their arguments and evidence deeply enough as to render unnecessary any oral hearing without jeopardizing their procedural rights.

VI. Considerations leading to Decision

Before any further consideration, due to the important implications that such a strict interpretation of a provision can cause to its addressees, this Commissioner deems necessary to comment on the Respondent’s submissions about *bona fide* Bank error, as described in Sub-section 1.7.4.3 of Resolution 818g Attachment “A”, even though this decision will not be based on that provision.

Analysing the letter issued by the Applicant’s Bank in light of the requirements mentioned in the referred provision, particularly regarding numeral (iv), it seems unquestionable to this Commissioner that **the Applicant had indeed**

<<**sufficient available funds on Remittance Date in the stipulated bank account**>>, otherwise, the transfer could not had been made. As simple as that!

It is quite regrettably the way the Respondent has looked at this provision vis à vis the facts of the case, demanding from the Applicant –*id est*, its Bank- a literal account of affairs that seemed absurd. The Respondent should have arrived to the same conclusion by simply contrasting the reality at hand (meaning: the actual receipt in IATA's account of the full remittance owed by the Applicant). It was obvious that the requirement had been fulfilled despite the lack of express mention about it by the financial institution: if no monies would have been available in the Applicant's account, no funds would have been possibly transmitted!

As of requirements described in numerals (iii) and (ii) both were met by the Applicant. In fact, the letter was not only signed by the Manager but also by the Director of Operations, their printed names were missing though. This situation could have been easily solved by a simple request, without the need of being disconnected from the BSP system inflicting such severe consequences on the Applicant.

As of requirement stated in numeral (i) indeed the letter does not indicate the <<nature of the error>> because **no error** had occurred in this case; the delay was due to an internal standard procedure at the institution itself, in which the Applicant had no intervention or control whatsoever. The letter though did state the <<reason for the delay in remittance>>, which is the other requirement enshrined in the referred numeral.

Consequently, considering the narrow manner the Respondent has interpreted this provision, this Commissioner has deliberately opted not to invoke it since indeed some –from her perspective- minor (and as such completely “repairable”³) details were not fully met.

³ Especially considering (i) that at no moment in time where Member Airlines' funds at risk; nor was the Agent's intention not to honour its BSP payments; and, (ii) the supposedly new IATA's policy of

Considering the narrated facts, particularly regarding the reason of the delay, the evidence has clearly demonstrated that it was <<*beyond the reasonable control of the Agent*>> and <<*it is not the result of the Agent's lack of reasonable diligence (an "Excusable Delay")*>>, it is this Commissioner's understanding that the case at hand falls in to the category described in Section 13.9 of Resolution 818g as Force Majeure and as such <<*the Agent shall not be liable for delay or failure to comply with the terms of the Passenger Sales Agency Agreement to the extent that such delay or failure is caused by any other cause, whether similar or dissimilar beyond the reasonable control of the Agent*>>.

Note:

Lastly, I would like to point out that the 2 hours' time difference between the close of business hours (17H30min) and the so called by the Respondent "cut-off" hour (15H) of the Banks involved in the transaction, in order for such a time to be imposed on the Applicant it would had to be dully and timely communicated to the Applicant, since clearly it had no idea about the concept of those two different times, on one hand, and, on the other hand, nowhere in the applicable Resolutions it is mentioned the "cut-off" time as a time limit for an Accredited Agent to remit due amounts. On the contrary, **Resolution 818g, Attachment "A", Sub-section 1.6.2.1 (e)** clearly states, I quote:

<<... the remittance shall be made by the Agent so as to reach the Clearing Bank ***before its close of business...***>>

Therefore, no other time frame limit could have been validly imposed on the Applicant.-

VII. Decision

"Customer Satisfaction" where minor details could be overlooked if no funds are at stake, like precisely in this case. It is worth to mention that IATA had, in fact, the funds for the BSP settlement date due to Member Airlines.

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

Having analysed the applicable Resolutions,

It is hereby decided as follows:

- The Applicant is not to be liable for the hours' delay in its July 2014 remittance, therefore, the Notice of Irregularity and the Default Notice that were served against it must be rescinded and expunged from the Applicant's records;
- The Respondent must reinstate the Applicant in to the BSP system without any further delay or requirement, restoring its *status quo* prior to suspension.

Decided in Vancouver, this 26th day of August, 2014

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 the Party 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 above mentioned period for interpretation/corrections would have expired.