

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

DECISION 2015 - # 1

In the matter of:

Trans Tour Voyages

IATA Code 39-2 1001 0
19, Av. Delafosse – IMM La Pointe Plateau
22 BP 1450 Abidjan 22
Côte d’Ivoire

Represented by its Deputy General Managers, Ms. Arame Sanogo and Mr. Zakaria Konate

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

The Applicant sought a review of the Respondent’s decision of suspending it from the BSP and applying Default Actions against it, allegedly due to a late payment of XOF 130,967,386, corresponding the billing period of 20150101M, which the Applicant proved having timely paid, as instructed in the BSP Calendar for Côte d’Ivoire.

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According to the referred Calendar, since the "formal" payment date was on Sunday February 15, which is not a business day, hence, no banks were open that day, the settlement was made the next business day as expressly indicated in that Calendar.

The Respondent acknowledged receipt of payment, however, did not accept the arguments provided by the Applicant nor the letter it submitted from its Bank, duly signed by two Managers, stating that sufficient funds were available on Remittance Date in order to honour the remittance in full (and even more), since the Respondent considered that the said letter did not fully comply with all the requirements stated in Resolution 818g, Attachment "A", Section 1.7.4. The Respondent was processing this case as a *bona fide* bank error situation.

II. 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 presented their arguments and evidence deeply enough as to render unnecessary any oral hearing without jeopardizing their procedural rights. Both Parties have agreed.

III. Considerations leading to Decision

Based on the Respondent's submissions, there is no doubt that the **Remittance Date** for this Applicant was February 17, 2015;

Based on the Respondent's own submissions also, it has been proved that the Applicant had indeed paid on February 17, 2015 the remittance amount in full (the Applicant actually paid on Monday Feb. 16, but due to Bank internal

procedures the cheque was processed the next day), hence, in total compliance with the BSP Calendar applicable in Côte d'Ivoire.

The Responded had stated that due to IATA's Bank internal procedures the process of crediting the funds in to its account takes some days. In this case, according to IATA's Bank statement the payment would had to be done on Friday February 13, 2015 for it to be credited on IATA's account by February 17, 2015. It is worth noting that this is **5 days ahead** of what is stated in the BSP Calendar.

Indeed, according to the BSP Calendar for Côte d'Ivoire, which is the instruction that had to be followed by the Applicant, pursuant its Passenger Sales Agency Agreement (and not internal Bank policies), it is expressly indicated that the Settlement Date for the remittance in question was **Sunday February 15, 2015;**

Considering that Sunday (contrary to the situation in Jordan) is NOT a business day in Côte d'Ivoire and, therefore, no Banks are open that day;

Considering that according to the referred Calendar, I quote: <<*Au cas où une date d'obligation BSP tombe un jour férié spécifique à un pays donné, c'est le jour ouvrable suivant cette date qu'il faudra prendre en compte*>>;

There is no doubt for this Commissioner that the Applicant did pay on time **in accordance with the rules that it was supposed to follow and to comply with;** these rules being those stated in the applicable Resolutions and Manuals: the BSP Calendar being part of that set of rules.

The Respondent has brought up the concept of *bona fide* bank error (enshrined in Resolution 818g, Attachment "A", Section 1.7.4), based on which it has denied the Applicant's argument. However, that concept is completely irrelevant in this case since no error was committed by any bank (the Agent's Bank nor IATA's bank). This case is not about that.

It is important to clearly state that the referred provision is NOT the sole and unique situation where Bank ***issues*** can have an impact on an Accredited Agent settlement's outcome, as it seems to be the perception of the Respondent. In fact, as it has been proved in this case, the Applicant not only paid on time, fully respecting the rules that were applicable to him, but also proved having more than enough funds available to completely honour the remittance by the due date and provided proof of payment to the Respondent; nevertheless, due to an internal bank process, which not only does not qualify as an error but in no manner nor way should be attributable to the Applicant, the Agent was yet punished for something that was/is completely beyond its control.

NOTES:

While analysing the evidence that was submitted by both Parties during the course of this review process, this Commissioner observed the following facts:

- The Respondent did not comply with the terms stated in its own Notices. In fact, according to the Notice of Irregularity served to the Applicant it was given until February 19, 2015 to make the payment in question (even though, as pointed out above, it had already made the settlement). However, *before* the expiration of the referred time frame, on February 18, 2015 the Applicant was wrongfully disconnected from the BSP when it still had **one (1) more day to comply**. This Commissioner never received an explanation as of the reason behind this action, despite having asked for one.
- The Respondent has sent to the Applicant a Notice that was not even applicable to him, since it indicated that the Applicant had the possibility of paying 50% of the outstanding amount and so on so forth, when by the time the Notice was sent the Applicant had already paid and NO outstanding was actually due.

Even though this Office understands the need and convenience of having "samples" already drafted, the Respondent must ensure to send the Notices according to EACH and every Agent's particular circumstances, instead of sending them communications that do not even apply to them. This causes confusion and can lead to a non-compliance situation for Agents.

Neither of the above mentioned facts reflect a particularly attentive Customer Service Satisfaction approach, which according to this Office's understanding, it is one of the Respondent's goals. On the contrary, this situation has caused serious detriment to the Applicant's business and reputation.

VII. Decision

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

Having analysed the applicable Resolutions, particularly Section 13.9 of Resolution 818g, according to which no Agent should be liable for "delay" caused by factors that are *<<beyond the reasonable control of the Agent, and it is not the result of the Agent's lack of reasonable diligence>>*,

It is hereby decided as follows:

- The Applicant should be immediately reinstated in to the BSP system, the Default Actions withdrawn and the Notice of Irregularity served against it expunged from its records.

Decided in Vancouver, the 23rd day of February, 2015

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.