

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

DECISION 2015 - # 8

In the matter of:

Satguru Travels & Tours Service SARL

IATA Code 10-2 1028 and 10-2 0086

Immueble EX Socada-à côté de la Marseille Plus/Swissair
Capitol, Yaoundé
Cameroon

Represented by its Regional Financial Controller, Mr.
Satyaweer Agarwal and its Regional Commercial Director,
Mr. Jay Khurana

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

The Respondent

I. The Case

The Applicants sought a review of the Respondent’s Notice of Default (“NoD”) dated April 22, 2015 allegedly wrongly served to them. The Applicants provided proof of payment of both of their IATA-Codes' locations. The remittances were timely made and in compliance with the amounts shown in the respective BSP Billing Reports.

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The misunderstanding derived from a minimal amount of refunds processed and authorised by a suspended Member Airline, *Yemenia Airlines* (“DN”), which were done before being suspended from the BSP; and, hence reflected in the Applicants’ BSP Reports. As indicated before, the Applicants settled those Reports in full BEFORE receiving the Respondent's notice about the supposed amendments that needed to be done in light of DN’s suspension. In fact, according to the records on file, the Applicants paid 10 days prior to the due date (payment was done April 7 and 9, 2015 according to the BSP Calendar for Cameroon).

By April 20, 2015, three days after the due date, meaning when it was already too late for the Applicants to have made any adjustment to amend the situation –if required- without being served with a Notice of Irregularity (“NoI”), the Respondent informed the Applicants about the alleged shortfall without specifying the causes of it. In fact, despite having taken more than 13 days to notify the Applicants about this difference, the notice was not even complete nor accurate, since it did not provide any explanation nor information that would allow the Applicants to know and understand the cause that had triggered the sanction. For the Applicants they have paid in full the exact amount shown in their BSP Billing Reports; they had even received the confirmation from their Bank stating that the funds had been duly transferred to IATA’s Bank account, and, they have even done all that well in advance the due date.

Temporary reinstatement was requested by the Applicants and granted by this Office, thus, once the conditions were met, the Applicants were reinstated in to the BSP system until a full review would have been conducted and a final decision rendered.

II. The Applicants’ arguments in summary

In the Applicants’ words:

- <<... we always remit our payments before 10-15 days of the due date which is visible from our past payment records ...>>
- <<Even for March 2015, the same happened, we paid the bills on the first week and sent the payment acknowledgement to IATA but IATA send the BSP shortage mail on the 20th with no clarity of how the shortage been raised and later on our further communication, the reason been identified (*DN suspension*)>>
- <<However, still, on cross check, we identify that, all refunds belong to **pre-suspension time** and **no satisfactory revert received from IATA**>>
- <<We have only suffered a lot with this kind of treatment for a shortage of 1,500 USD approx. and loosed our business for 4-5 days>>
- <<Having an active IATA association in Cameroun for the last 10 years, I strongly request you not to judge our liquidity for the case of *DN suspension* and have a review of our payment terms for the last couple of years>>.

Lastly, as of the bank guarantee that has been requested from the Applicants, they claim that <<... our Bank guarantee was announced 444,643,915 XAF¹ for our commendable prior payment record>>; however, after this incident <<... we are asked to revise the BG for 2015-16 ... up to 2,458,015,000 XAF², increased by 6 times>>.

III. The Respondent's arguments in summary

- <<IATA has suspended GROUPE AIR SÉNÉGAL (DN-440) with immediate effect on 22 Mar 2015, in accordance with the provisions in

¹ Equals to EUR 678.261,32

² Equals to EUR 3.749.464,31

Resolution 850, as the airline has failed to pay the amounts due in relation to BSP settlements>>;

- <<Accordingly, IATA has communicated to all BSP Participants in Cameroun on 22 Mar 2015 a complete description of the effect of suspension and what actions are required to be taken by BSP Travel Agents in accordance with Resolution 850 Attachment F, paragraph 2>>;
- The communication about DN's suspension <<... was sent to the Agent ... on the following email addresses, the same communication was uploaded as well in *BSPlink* on 22 Mar 2015>>;
- <<Point 2 and 3 in the communication sent to BSP Participants in CM mentions that all refunds for Air Sénégal must be added to the total amounts of the billings and that if the Agent already remitted to the clearing bank ahead of the next Remittance Date, the Agent may need to complete the remittance by making further adjustments as described in the communication>>;
- <<On 20 Apr 2014, the Agent was sent a demand of payment in which the Agent was requested to settle the outstanding amount of XAF 832,944³ ... so it will be received by the clearing bank before its close of business 21 Apr 2015>>;
- <<No Notice of Irregularity was issued as the amount fell within the Minor Error Policy Margin>>;
- <<On 22 Apr 2015, we have received confirmation from our clearing bank that the amount of XAF 832,944.00 was not accredited to our account, so the Agent was defaulted for non-payment>>;
- <<The Agent paid the amount of XAF 832,944.00 on 22 Apr 2015 after the deadline of 21 Apr 2015, plus made the payment with a cheque with value date of 27th April' 2015, therefore, we need till 28 Apr 2015 to be sure that the cheque is cleared and that the amount is indeed accredited to our Account>>.

³ Equals to EUR 1,270.16

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 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

This is a clear case of a damaging lack of timely communication, where at no moment in time Member Airlines' funds have been at risk nor there has been any intention from the Applicants' side to avoid their obligations as accredited agents.

In fact, the "shortfall" and "late payment" was not due to a negligence attitude attributable to the Applicants, but rather to:

- (i) A wrong understanding concerning the accuracy of the BSP Billing Reports – the Applicants believed that since the Reports were sent (April 2nd) by the Respondent once the Member Airline had been suspended over a month back (March 22nd), they logically assumed that those Reports were accurate and that they had already been adjusted by the Respondent, and, hence, reflecting the proper amounts to be settled, which is why they settled them in full;
- (ii) Additionally, it is worth mentioning in the Applicants' benefit, that those refunds were processed and approved by the Member Airline BEFORE it was suspended from the BSP and even BEFORE the Applicants and the rest of the market received the Respondent's notice making public the suspended status of this Member Airline. From the Applicants' perspective, thinking that those refunds were not allowed to be processed implied a retroactive application of the rules;

- (iii) Since the Applicants have paid well in advance the due date, even receiving the confirmation of payment being accredited in to IATA's account, the Applicants thought that the payment had been correctly done and processed. Regrettably, despite this early payment (made on April 7th and 9th), the Respondent did not get back to the Applicants (on April 20th) but when the due date had already expired and the Applicants could not do anything to impede the late payment condition;

- (iv) Lack of timely response from IATA – once the Applicants received the notice from the Respondent stating a supposedly short payment that needed to be covered, no explanation was provided as for the reasons behind this request. Moreover, the Applicants tried insistently to obtain a clarification from the Respondent⁴, believing that it was a mistake, however, at no avail, since the Respondent did not get back to them but –again- when it was already too late to make any payment within the given time frame. Once made aware of the rule to be applied to those refunds, even being in disagreement with the provided explanation, the Applicants paid the requested amount.

In light of the above, this Commissioner deems that, even though the Respondent acted according to the applicable rules in regards to the procedures and notifications to be delivered when suspended BSP Airlines (Resolution 850 Attachment “F” Section 2), it failed in timely addressing the Applicants’ understandable concerns during a very unusual and critical situation.

As of the request to increase the bank guarantee (“BG”) provided by the Applicants, it was cleared out during the course of this review process that it was requested as <<... *a result of the quarterly financial review done to all of the*

⁴ Evidence of this communication exchange where the Applicants were seeking for clarifications, providing to the Respondent what for them were irrefutable proofs of an early payment, was submitted by the Applicants and not disputed by the Respondent.

market in CM before undergoing the move to the fortnightly remittance on the 1st of June>>. The Respondent contacted the Applicants and explained the reason behind this request. The Applicants submitted the BG in the demanded terms.

Note:

It is worth noting the laudable attitude of the Respondent by not imposing any Notice of Irregularity to the Applicants when realising, on April 20th, that a shortfall had occurred considering that, I quote: *<As this is a minor amount not notice of irregularity was sent>>.*

VII. Decision

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 Respondent has acted in accordance with the provisions set out in Section 2 of Resolution 850 Attachment “F”;
- However, in light of the particular factual circumstances of this case, based on the evidence provided by both Parties, the delay in covering the shortfall was understandable and excusable and, hence, the Notice of Irregularity served against the Applicants must be expunged from their records;
- The temporary reinstatement should become permanent without the need of any further requirement.

Decided in Vancouver, the 29th day of May, 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.