

Decision 2015-09-06 Travel Agency Commissioner - Area 2

Andreas Körösi
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Applicant: Princess Travel Agency (67-2 0036 1)
Off Kafue Road corner of Kafue and Lumumba Roads
Lusaka, Zambia

Represented by: Mr. Bhagat K, Managing Director

Respondent: International Air Transport Association (IATA)
King Abdullah II Street, Al Shaab Roundabout
Business Park, Building GH8
P.O. Box 940587
Amman 11194 Jordan

Represented by: Ms. Christine Hazboun, Assistant Manager & Deputy Manager
Agency Management

I. The Case

The Applicant seeks a review of IATA's Notice of Default ("NoD"), dated August 20, 2015, served due to an accumulation of irregularities. Default actions were triggered by a second Notice of Irregularity ("NoI"), caused by an alleged short payment of US\$ 205, which the Agent claims is the result of: *"a refund being processed and in that period sales in USD were not available which we informed IATA about"* The Applicant sought an interim relief.

Also considering the circumstances surrounding the first NoI, (Bank Error substantiated by The Applicant, and not accepted by IATA) and after IATA's consent regarding financial risk, the interlocutory relief was granted and Agent temporarily reinstated.

II. The core of The Applicant's arguments in summary

Words of The Applicant :

"The first NoI was a result of where our Bank Guarantee was sent by DHL courier and the original reached one day late but IATA had notice of it being sent before expiration date. "

*"The second NoI has come over a short payment of USD 205, this was due to a refund being processed and in that period sales in USD were not available **which we informed IATA** about, then when the billing had come with USD sales we reduced that amount and we also at this point have informed IATA."*

"This was as we had done in previous situations and had been accepted by IATA"

III. The core of The Respondent's arguments in summary

IATA had acted as mandated by Resolutions.

The Applicant was short in the payment for the Billing cycle, and since the full amount due was not in IATA's account as requested The Applicant was defaulted.

IV. Right to Oral Hearing

The Respondent has waived its right to an oral hearing. The Applicant has requested an Oral Hearing, but after thoroughly having considered the issue, pursuant to Resolution 820 § 2.3, this Office has decided to reach a Decision based only on the written information submitted by, and communicated to, both Parties.

V. Considerations leading to Decision

Considering that the ADM which had been raised (value of USD 204,64) was not equivalent to the disputed USD 205 and not reflected in the BSP billing.

Also considering that IATA, acknowledging the banking system in Zambia, **in previous occasions has accepted** the process of settlement in USD, this Commissioner has come to the conclusion that the "short payment" cannot be attributed to the Applicant's "lack of diligence". It has to be accepted as an " extraneous factor" as stated in Resolution 818g "A" § 1.7(a) and by that beyond the Applicant's willingness to comply with Resolutions.

Finally also considering the nature of the first NoI, and the consequences it has entailed, this Commissioner lands in the following:

VI. Decision

Having carefully considered the Resolutions and the evidence presented by The Parties it is hereby decided as follows:

The first Notice of Irregularity shall stay on The Applicants Records unless IATA *motu proprio* accepts the bank letter and expunges the NoI.

The second Notice of Irregularity must be voided, since it was the result of extraneous factors not attributable to the Applicant.

Consequently, the Notice of Default must be voided and removed from the Applicant's records.

The temporary reinstatement must be made permanent.

Decided in Stockholm on 14, September 2015

Andreas Körösi
Travel Agency Commissioner Area 2

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 decision.

Right to seek review by arbitration

If considered aggrieved by this decision any Party has the right to seek review by arbitration in accordance with the provisions of Res 820e, Section 4 and Res 824, Section 14.

Note: The original signed version of this decision will be sent to The Parties by regular mail, once the above mentioned time frame has elapsed.