

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

DECISION 2015

In the matter of:

Travkor Pty Ltd.
IATA Code 77-2 0217 1
78 Elizabeth Avenue
Sandhurst 2146
Sandton, South Africa
Represented by its Managing Director, Ms. Anthea Leonsins
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 Notice of Technical Default dated July 16, 2015, served due to an Accumulation of Irregularities during the last 12 consecutive months.

The Applicant claims having paid the night of July 15 (value date July 16), in accordance with the BSP Calendar applicable in South Africa. The Applicant argues having been unable to make the payment on July 14 due to a power outage.

Telephone: + 1 (604) 742 9854 / Fax: + 1 (604) 742 9953
e-mail: Area1@tacommissioner.com / website: travel-agency-commissioner.aero

The previous Notice of Irregularity ("NoI"), dated March 17, 2015, was caused by a belated payment as a result of an alleged *bona fide* bank error, where the <<payment instructions were done on time and we had sufficient funds and due to technical error with the electronic banking, the payment was delayed for one day>>.

Interlocutory relief was requested by the Applicant and granted by this Office. The Applicant was temporarily reinstated in to the BSP system during the course of this review process.

II. The Applicant's arguments in summary

Paraphrasing the Applicant's submissions:

<<1. Notice of Irregularity dated 17 March 2015: This notice was received as a consequence of payment reaching the BSP Clearing Bank on 18 March when due date was 17 March:

- A letter from *Nedbank* was submitted (dated March 2015) stating that the delay was caused by a technical error in the bank and that Travkor was and is in possession of sufficient funds both in its current and all accounts;
- Travkor was unaware that we had to produce the said letter within the 10 days period.

2. Notice of Irregularity dated 16 July 2015: The reason for the delay of this payment was due to a power outage occurred when payments were being released, including the BSP payments on 14 July. It was assumed that the payments had all been authorised. We only picked up that none of our payments had been made when I accessed my electronic banking in the late afternoon of 15 July. I immediately paid the BSP on the 15 July and have provided proof of

payment, however, the payment reached the clearing bank at midnight on the 16 July;

- Travkor informed IATA in correspondence on 16 July that the delayed payment was a result of Electricity Supply Commission's ("ESKOM") load shedding.

In conclusion, I need to add that we have maintained an impeccable record with IATA for 27 years and are very respected in the travel industry>>.

III. The Respondent's arguments in summary

In the Respondent's words:

As of the first NoI:

- <<Agent was late in the payment of cycle 20150201, so on 17 Mar 2014 Agent received the first instance of Irregularity (2 points);
- Agent was informed on 17 Mar 2015 (the same day the first NoI was issued) by IATA that if the payment has been made by 3/16/2015 and the delay in receiving funds into our account is due to a bank error, the Agent needs to send us an official bank letter as per the criteria mentioned hereunder showing that the total billing amount for the period 20150201M has been made.

Requirements of the bank letter:

- ... The original bank letter must be sent to IATA **within 10 working days** by registered post or courier... ;
- The Agent did not return to IATA with requested Bank letter up until yesterday (July 18, 2015), IATA cannot accept the bank letter as it is not within the period of 10 days as per Reso 1.7.4.3 point (i) which the Agent was made aware of back in 16 Mar 2015>>

As of the second NoI:

- <<It was issued on 16 Jul 2015 for late payment of billing 20150601, the remittance date was 15 Jul 2015 and per Reso 866, the remittance date

means the Clearing Bank's close of business on the latest date by which the Agent's remittance must reach the Clearing Bank and the Proof of Payment shows that the Agent made the payment on 5:14:04 which is after the close of business of IATA's clearing bank>>.

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.

V. Considerations leading to Decision

As a starting point, before determining the rightfulness or not of the second NoI, this Commissioner wants to expressly thank the Respondent for its willingness to, acting out of its own initiative, undertake a review of the situation that occurred back in March 2015 with the Applicant, which triggered the “accumulation of NoIs” faced in this case.

Considering the length of time that went through between March and July 2015, date when the Applicant sought a review of the second NoI, it was not possible for this Office to analyze the first NoI and determine whether or not a *bona fide* bank error could have been established.

Nevertheless, in light of the evidence provided by both Parties, notably by the Respondent¹, it is unquestionable that the Respondent did notify the Applicant about the <<10 working days>> time period in which the letter should have been submitted. Regrettably, this part of the message went unnoticed by the

¹ Reference is made to the email message sent to the Applicant by the Respondent on March 17, 2015 clearly indicating the <<10 working days>> time frame to submit the letter in question.

Applicant and, hence, the letter was not submitted on time, but months later once the issue was brought to this Office's attention.

As per the current stage of Resolutions, even if the situation did occur (*id est*, an internal error from the bank), this Commissioner cannot order the Respondent to expunge the referred NoI, but the Respondent could certainly do it *motu proprio*.

As of the second NoI, considering the factual circumstances that surrounded the delay in paying the amounts due, such as:

- The evidence submitted by the Applicant issued by the Electricity authority in South Africa, clearly demonstrating that a power outage had indeed occurred at the time when the settlement of the BSP Report was done, impeding the transfer of funds in to IATA's account;
- Considering that the Applicant had no means to suspect that the transaction did not go through, earlier than when it noticed it;
- Considering that payment was immediately made once been aware of the electricity failure;

This Commissioners deems that the referred delay must be treated as <<an *Excusable Delay*>>, as stated in Resolution 818g, Section 13.9, since it was beyond the reasonable control of the Applicant and in no fashion attributable to its own negligence.

VI. 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 Notice of Irregularity/Notice of Technical Default served against the Applicant on July 16, 2015 must be removed from the Applicant's records;
- Therefore, its temporary reinstatement should become permanent.

Decided in Vancouver, the 12th day of September of 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.