

## **Decision 17 / 2017**

### **Travel Agency Commissioner - Area 2**

Andreas Körösi  
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#### **Applicant: 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: Mr Éric Vallières, Partner at McMillan LLP, Counsel for IATA and Mr Fordam Wara, In-House Counsel at IATA Montreal.

Assisted in IATA Amman by: Ms Dania Abbadi, Ms Christine Hazboun and Ms Sandra Pommier.

#### **Respondent: Al Sarah Wing Travel Agency (IATA numeric code 71-2 0085 0)**

P.O. Box 3433,  
Malaz – Al-Sitten Street,  
Riyadh, Saudi Arabia 11471

Represented by: Dr. Khaled A. Al Motawa of Dr. Khaled A. Al Motawa Law Firm in Saudi Arabia.

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#### **I. The Case**

Pursuant to Resolution 820e § 1.3 The Applicant requested a Travel Agency Commissioner's ("TAC") review to confirm that The Applicant had followed Resolutions requirements, that IATA's staff had at all times acted in good faith and the stay of a Saudi Ad Hoc Arbitration process.

After receiving the request from The Applicant, this Office immediately copied and alerted The Respondent about the rights allowed in Resolution 820e.

Having failed to get a written acknowledgement of receipt from The Respondent, this Office after a phone call, got hold of The Respondent or a Respondent's representative.

Despite having explained the significance and financial benefits to enter into this process The Respondent has chosen not to engage.

Hence this review is based solely on the submissions done by The Applicant.

The core of the matter is that The Respondent, instead of contacting this Office, has chosen to use Saudi Courts and also to seek an alternative conflict

resolution institution, for the moment a Saudi Ad Hoc Arbitration Court, solely to obtain compensation from The Applicant for the damages allegedly suffered by its suspension from BSP.

This Office has a few concerns regarding whether or not a credible case has, on behalf of The Agency Administrator (“AA”), been presented by The Applicant to open a TAC review.

These concerns are

- a) Can an “ex Agent” be part of a TAC review?
- b) Has this request for review been timely submitted?
- c) Has The Applicant presented a credible case for review?

Concern a) is in regards to the heading of Resolution 820e, clarified in Resolution 866, where it is stated, I quote:”...*the Travel Agency Commissioner shall conduct reviews and act with respect to decisions and/or actions affecting Agents and Applicants* ...”

There have been occasions where IATA has argued that an “Agent” who has had its Passenger Sales Agency Agreement (“PSAA”) terminated, **by definition is not an Agent**. Consequently, since The Respondent had its PSAA terminated in 2014 Resolution 820e should not be applicable, according to this view by IATA.

This Office’s view is, in this and other requests for review of similar nature, that since The Respondent **at the time when the events took place de facto was an Accredited Agent**, does qualify as “Party” of a review proceeding under Resolution 820e.

Concern b) is if The Applicant’s request for a review can be accepted considering the TAC’s Rules of Practice and Procedure (“RoP&P”), § 2 – “Time for submitting requests for review”, where under A.- it is stated:”... *In principle, an Agent’s, an Applicant’s, a Member Airline’s or the Agency Administrator’s Request for Review...shall be submitted in writing within thirty (30) calendar days of the Agency Administrator’s / Member’s notice of the decision under review...*”

This Office as a matter of principle encourages Parties to reach amicable solutions and even though way beyond the mandated 30 days, the RoP&P under §2, B. does allow a review “*when the Commissioner sees justification for the delay.*”

Also considering that Resolution 820e § 1.3 “*Review initiated by Agency Administrator*” **does not specifically** mandate a 30 days’ deadline to submit requests for a TAC review, it does support the above stance.

This Office assessment is that there is enough justification for the “late submission”, because The Applicant has shown that it has, since the time of

the events, been engaged in *“discussions aimed at finding a solution to the problem”*.

Taking the above and all other circumstances into consideration, it is my view that c) a credible case for a TAC review has been presented by The Applicant.

## II. The core of The Applicant’s arguments in summary

The Parties have an agreement (PSAA) to initially solve disputes by seeking a TAC review. The Respondent ignored this and introduced instead legal proceedings before Saudi Arabian courts.

The Applicant seeks relief to

- a) stay of the Ad Hoc Saudi Arbitration Court process;
- b) to confirm The Applicant’s view that: *“IATA... did follow correct procedures delegated by (Passenger Agency) Conference, and as such it has committed no fault or reviewable error whatsoever.”* And;
- c) to confirm that IATA’s employees: *“acted with good faith...and they are fully entitled to the protection against potential liability...”*

## III. The core of The Respondent’s arguments in summary

The Respondent has chosen not to respond to repeated attempts from this Office to engage in the process. Consequently, this Decision is based solely on the submissions done by The Applicant, which have included ample of material for This Commissioner to understand the underlying grounds for the dispute.

From the material presented it is clear that The Respondent’s sole claim at the Saudi Ad Hoc Arbitration Court is to obtain compensation from The Applicant for the damages allegedly suffered by 8 days’ suspension from the BSP.

IATA, despite The Respondent having provided solid proof of having paid in full on Remittance Day, suspended The Respondent for 8 days before realizing that the “1day late payment” had to be attributed to an error committed by IATA’s own clearing bank.

The proof provided by The Respondent was a formal bank letter clearly stating that there was no mistake from The Respondent’s side, and that the funds had been sent in time to reach IATA’s clearing bank in due time. Consequently, the *“mistake must be on IATA clearing bank’s side.”*

It is noteworthy that the reason IATA invoked to reject the “bank letter”, and by that The Respondent’s request to withdraw the suspension, was that the bank letter did not follow § 1.7.4.3 of Resolution 818g, Attachment “A” – Bona Fide bank error letter requirements “word by word”.

#### IV. Right to Oral Hearing

The Parties have received information about the possibility of an Oral Hearing. Lacking response from The Respondent, this Office has reached a Decision based on the written information submitted solely by The Applicant, and communicated to both Parties. (Resolution 820e § 2.3)

#### V. Considerations leading to Decision

Considering that The Respondent's sole claim, as understood from the material presented by The Applicant, is to obtain financial compensation attributed to the alleged "unlawful 8 days' suspension", the first consideration to make is if the TAC Office, according to Resolutions or earlier TAC Decisions having set precedents, has or has not, jurisdiction over potential monetary claims by Agents.

In the heading of Section 1 Resolution 820e it is stated:

*"All disputes arising out of or in connection with matters enumerated in the present Section shall be finally settled, subject to review by arbitration pursuant to Section 4 herein, by the Commissioner, in accordance with this Resolution."*

Since the language in this Resolution text "is broad" it can be argued that according to Resolution 820e §§ 1.1 – 1.1.10 where an Agent is aggrieved or where the issue is: "... any action or impending action by the Agency Administrator with regard to the Agent, that unreasonably diminishes the Agent's ability to conduct business in a normal manner;" **is reviewable** by the TACs.

The second consideration is if Resolution 820e § 3 "Courses Open to the Commissioner" can include damages claim reviews.

From the heading of the above mentioned section it can be concluded that the courses of the TACs' actions are not strictly limited to the courses mentioned in § 3 but rather are "... an **indicative summary** of possible courses..." open to the TACs.

This reinforces the view according to which cases where an Applicant's main or partial objective is to obtain financial compensation, derived from an action or impending action from the AA, can indeed be reviewed by the TACs.

Having stated the above, in this case The Applicant has not made a request for this Office to assess The Respondent's claim for "damages allegedly suffered by 8 days' suspension from BSP".

This would anyways not have been possible since the most important factor for a "damage claim review" to be allowed is that the Claimant specifies, and substantiates, its claims and also explains how the quantum was calculated and arrived at.

## VI. Decision

- Based on the considerations referred to above and the facts presented to this Office it is hereby **ordered a stay of the Ad Hoc Saudi Arbitration Court process** and this Commissioner encourages The Respondent to engage, as contractually agreed in the PSAA, in a TAC review.
- Lacking participation from The Respondent, solely based on the material at hand, this Office **cannot confirm nor challenge** The Applicant's view that: *"IATA... did follow correct procedures delegated by (Passenger Agency) Conference, and as such it has committed no fault or reviewable error whatsoever"*.
- Neither can this Office, based on the same grounds as stated above, evaluate if IATA's staff has acted "in good or bad faith".

Decided in Stockholm on April 11, 2017



Andreas Körösi  
Travel Agency Commissioner Area 2

### Right to ask for interpretation or correction

**This Decision is effective as of today** and in accordance with Resolution 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 after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration, in accordance with the provisions of Resolution 820e § 4 and Resolution 824 § 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.