

Decision 37/2017
Travel Agency Commissioner - Area 2

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Applicant: Israeli Association of Travel Agencies & Consultants ("ITTAA")
Israel

Respondent: International Air Transport Association (IATA)
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NOTE:

This summarized decision is being posted as the Parties have received it. Occasional requests for clarification are not posted. However, should any Stakeholder requests it, a copy of such clarification will be sent to her/him.

Decision:

Background:

The Applicant requested a review to determine whether § 3.5 of PAConf Resolution ("Reso") 800 or § 13.2 of Reso 824, referred to as the Passenger Sales Agency Agreement (version II) ("PSAA"), should be applied since an Airline operating in Israel: " ... *had terminated its contractual contact with at least a dozen travel agencies, without prior notice...*"

Also having considered Advocate Asaf Rasiel's, on behalf of IATA, arguments, mainly that the request for review was not initiated by an Agent and thus: "... *the Commissioner does not have jurisdiction...*" I have allowed the review based on Reso 820d Attachment "A" second part of §3, which states the Commissioners' obligation also to "... *answer punctually requests of information from ... travel agencies associations...*", when the request is: "...*not linked to any case of review or any dispute...*" current at the TAC's Office.

Not only is my decision to allow the review supported by Resolutions, but it is also obvious that refusing the request, since the issue *de facto* has aggrieved multiple Agents in Israel, simply would encourage ITTAA, **on behalf of** one or multiple "aggrieved Agents", to re-approach this Office.

Findings and conclusions

The issue at hand is not the prerogative for Airlines to do business with whom they want, but rather about the **termination of an existing Airline - Agent agreement** (mainly the right to issue tickets on behalf of the Airline) **without prior notice**.

The statements and allegations done by ITTAA are in brief: "... *IATA's Israeli branch's approach suggests that such conduct* (termination without prior notice – my comment) *may meet ... Reso 800.*"

ITTAA in its statements has submitted as evidence a, from Hebrew translated, copy of Ms. Yael Goldschmidt's email dated July 11th, 2017 claiming the above. I have accepted the "translation" as being valid, since it has not been refuted by IATA.

Advocate Asaf Rasiel, has reiterated Ms. Goldschmidt's statements adding the provisions of Reso 824 § 6.3 as new "evidence" supporting IATA's stance.

After having considered all applicable Resolutions it is obvious that when § 2.4 of Reso 824 is stating that when "... *contradiction or inconsistency between any provisions **with which the Agent** is required to comply...*", the provisions of Reso 824 agreement shall prevail.

This hierarchy is also manifested in Reso 010 § 4.1, which holds Reso 824 as the prevailing source should there be a conflict between Resolutions.

It is also clear that:

- Reso 800 § 3.5 does regulate the possibility for Airlines to grant, and also to cancel, an Agents "*electronic ticketing authority*" ("ETA");
- Reso 800 § 3.5.1.2 outlines the need for notification when cancelling ETA;
- Reso 824 § 6.3 does not discuss requirements of notification when "... *the carrier at any time ... may withdraw from the Agent the authority to issue Standard Traffic Documents ("STD"s) on its behalf...*";
- Reso 824 §13.1.1 allows individual Carriers to "*withdraw its appointment of the Agent*" – **conditioned** by
- Reso 824 §13.2 that the withdrawal is done according to the "*notification including the effective date of the withdrawal*".

The question would be if there is a material difference between "cancelling the ETA" and "withdrawing STDs".

Cancelling ETA is formalized and has to be done by: "**notifying the Agent in writing or by updating the relevant information online through the BSPlink system**".

Neither § 3.5 nor any other § in Reso 800 discusses the "**date of effectiveness**" when such cancellation is "notified".

The issue is also if an Airline, as allowed in § 6.3 of Reso 824, withdraws the right to issue STDs also needs to adhere to §13.2 of the same Resolution.

The "conflict" is not between Reso 800 and Reso 824, but rather between § 6.3 and §§ 13.1.1 and 13.2 of Reso 824.

It is obvious that the end result for an Agent, if an Airline "cancels ETA" or "withdraws STDs" is the same. Lack of "clarity" in a specific §, such as the above mentioned § 6.3 of Reso 824, does not per definition mean that the "general understanding and spirit" of the contract between IATA/Airline and Agents, as in all commercial contracts, should be ignored. IATA's numerous statements about "business minded approach" towards Agents are proof of this.

Applying the "*contra proferentem* rule", it is my view that the specific provision about prior notice and effectiveness in Reso 824 §13.1.2 has to be applied analogically to whatever Reso an Airline invokes to terminate "cooperation" with an IATA Accredited Agent.

Decision:

1. IATA is to inform the concerned Member Airline, without further delay, about its obligation to reactivate Ticketing Authorities for the concerned Agent/s;
2. Should the concerned Airline want to uphold its will to terminate the PSAA of the concerned Agent/s, it has to honour the requirements, prior notice and time frame of effectiveness included, stated in § 13.2 of Reso 824;
3. The Member Airline should also be made aware of the "Notice requirements" set out in § 16 of Reso 824.

This Decision is effective as of today.

Decided in Stockholm, on August 14th, 2017

Andreas Körösi
Travel Agency Commissioner
IATA-Area 2

In accordance with Res 820e § 2.10 any Party may ask for an interpretation or correction of any error in computation, any clerical or typographical error, or any error or omission of a similar nature which the Party may find relevant to this decision. The time frame for these types of requests will be maximum 15 calendar days after receipt of this decision. Meaning as soon as possible and **not later than August 30th, 2017**.

Please also be advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Please note that if after having asked for and obtained clarification or correction any Party still considers aggrieved by this decision, as per Resolution 820e §4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 §14.

Please let me know if any of the Parties requires a signed hard copy of this decision and I will send one once the time for "interpretation or correction" has elapsed.