Travel Agency Commissioner – Area 2

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Dear all,
Dear Mr Rasiel,

Below please find my response to IATA´s request for "correction" of Decision 40/2017 (ITTAA vs. IATA)

Regarding IATAs statements referred to under A.) about the TACs´ Jurisdiction and Authority

The TACs respectfully disagree with IATA´s view of "TAC jurisdiction and authority" for the following reasons.

The list referred to in § 1.1 Reso 820e **is not**, and should not be read as, **exhaustive**. It is illustrative of the most common courses of actions for Agents to seek a TAC review.

The TACs do have jurisdiction over, and will review:" … *All disputes arising out of or in connection with matters enumerated in the present Section…"*

In this request for review there is no doubt that amongst others § 1.1.8 of Reso 820e is applicable. Quote: *"An Agent who considers that its commercial survival is threatened by a Member's individual decision preventing it from acting as Agent for, or from issuing Traffic Documents on behalf of, such Member …* "

It is worth noting that handling 6 (or more) requests for review from Agents for the very same issue is not a cost effective way to utilise the TAC program. In this case, I consider ITTAA **representing** the 6 (or more) aggrieved Agents.

Please let me know if IATA is in doubt about "ITTAA representing 6 (or more) Agents", and I will order ITTAA to submit proxies for the Agents concerned.

Even if I would turn a blind eye to reality, ITTAA´s request is supported by § 3 Reso 820d Attachment "A".

- ITTAA´s request for a TAC review is explicitly about the "general contractual agreement", asking this Office to determine whether or not a Member Airline has support in Resolutions to terminate its ticketing authority (TA) for Accredited Agents **without prior notice.** It is NOT a request to discuss a tentative commercial impact of the Member Airline´s decision on an Agent.

- *"…the Commissioner may answer punctually requests for **information from …travel agency associations**…if this request is not linked to any case of review or other dispute."*

Until today, no request for review regarding this issue has been received by this Office.

Regarding IATA´s statements under B.)

To be clear about the terminology used. The PSAA is, according to Resolution 824´s heading, a contract between an **Agent**: *"… AND **each IATA Member** (hereinafter called "Carrier") which appoints the Agent, represented by the Director General of IATA acting for and on behalf of such IATA Member."*

Nowhere in the decision is it stated nor implied that "…withdrawal of ticketing authority by an individual Carrier is assimilated to termination of the (whole) PSAA by IATA".

To clarify the rationale behind the rendered decision 40/2017:

It is my belief that the PSAA is a "standard", commercially viable, contractual agreement between a Carrier and an Agent. In this review it was assumed that the Agents had followed all "IATA Sales Agency and BSP Rules" mandated to comply with in order to keep their IATA accreditation when the Carrier exercised its right to *"…at any time withdraw from the Agent the authority to issue neutral Traffic Documents on its behalf."*

The essence of the Decision 40/2017, as stated under the "considerations" paragraphs, is that:*" … it is obvious that **the end result for an Agent**, if an Airline exercise's it rights according to Reso 824 § 6.3 part 1 and § 13.1.1" **is the same**.*

Both actions undertaken by a Carrier **in reality** (day to day operation) mean a "cancellation" of the PSAA agreement between the concerned Carrier and the Agent, since both actions *de facto* remove the objectives of why the PSAA (between the Carrier and the Agent) was entered in the first place.

Any "standard" commercial agreement, unless the Agent had breached its obligations, would entail a reasonable time allowed by the supplier for the cancelation of such contract to become effective.

Reading Resolutions´ texts in general and § 6.3 of Reso 824 in particular.

Individual Resolutions cannot be read in isolation from the whole context and spirit of the PSAA.

The first part of Reso 824 § 6.3, clearly states "…*the Carrier may at any time withdraw from the Agent the authority to issue neutral Traffic Documents on its behalf.*" There is no specific reference to effectiveness of the withdrawal.

(To present a specific "date of effectiveness" in connection with "notifying of the withdrawal" to each Airline individually, makes sense to me considering (to mention two scenarios), individual Agent´s commitment towards clients, booked but not yet ticketed, and maybe also existing bilateral agreements regarding promoting the Carrier through printed brochures or the Agent´s website.)

However, already **the following sentence** in the same § 6.3 of Reso 824**:** *"In the event an Agent is declared in default…"***,** clearly does mention that **the effectiveness** to cease issuing tickets is: *"immediately"*.

This Office considers logical to interpret that the "differentiation" between those scenarios lies in the assumption that when Reso 824 § 6.3 has been invoked by a Carrier and that Carrier had established that an Agent has **breached** a **bilateral commercial agreement between them,** the immediate effectiveness of the withdrawal would be justified.

Following that same line of thought, "the withdrawal of TA" by a Carrier, based on that Carrier´s "internal commercial considerations" and a Carrier´s right (Reso 824 §13.1.1) of "withdrawal of appointment" have to be seen in context with each other.

I fully support a Carrier´s prerogative to do business with whomever, and as for how long, it wishes. In this case, in lack of evidence demonstrating the contrary, I assume that there has been no breach of the IATA Sales Agency and BSP Rules by the Agents. Based on those grounds I am of the opinion that when "withdrawal of TAs **or** appointments" are exercised by Carriers the full essence of the PSAA should prevail.

In the absents of full clarity in part one of § 6.3 in Reso 824, when no breach of contract is the reason behind the withdrawal of TA, **the effectiveness** of the withdrawal should be done **analogous to** Reso 824 §13.2, with the time of effectiveness clearly stated when notifying the Agent.

It will be up to the Stakeholders to clarify or amend specific Resolutions´ texts to avoid possible "misunderstandings" between the parties. Until then the "*contra proferentem rule*" will be applied by this Office.

Regarding IATA´s statement under C.)

I agree with IATA´s statements in principle, therefore the "operative part" should be perceived as "recommendations" to IATA to immediately clarify to that Member Airline about its obligations according to this Decision.

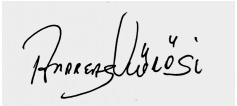
Conclusions and decision

- There should be no doubts about the TACs´ jurisdiction to review cases when Agents´ Associations **represent specific Agents** asking for reviews allowed in Reso 820e, nor when they ask for specific information (such as this request) not related to any review in particular.

- IATA is to carry out the "recommendations" described under C.)

Stockholm 08 September, 2017

Respectfully



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