

**DECISION 2009-11-25**

**Travel Agency Commissioner Area 3**

Jo Foged  
685 Remuera Rd  
Remuera, Auckland  
New Zealand

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**The Case:**

Request for Review of Decision by the Agency Administrator of 26 October 2009 which awarded 2 Instances of Irregularity to the Agent for not submitting audited financial accounts by the deadline date.

**Applicant:**

Khalol Air Express  
Shop No 1 Leghari Plaza  
Peer Qatal Ghazi Road  
Dera Ghazi Khan  
Pakistan

Represented by Mr Ahmed Hassan, Owner

**Respondent:**

Agency Administrator, Geneva  
International Air Transport Association, IATA  
Represented by Ms Siew Cheng Lim, Assistant Director, Accreditation -Asia Pacific

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**Background, formalities etc:**

The Agent feels aggrieved at the imposition of 2 Instances of Irregularity (IRR) by IATA due to the former's failure to provide audited financial accounts by the 20 October 2009 deadline. The Agent claims that it did not receive sufficient advance notice to allow it to produce the requested accounts but once cognisant of the IATA requirement it took action and hence feels that the 2 IRRs imposed are unfair.

Both parties have agreed to waive their rights for a formal hearing and have allowed the Travel Agency Commissioner (TAC) to base his decision on the documentation rendered.

The undersigned finds that the arguments of both sides are clear and an oral hearing can be dispensed with without jeopardising the process.

**Authority for Review:**

The terms of Resolution 820e – Reviews by the Travel Agency Commissioner – provides for an Accredited Agent to seek review by the TAC in circumstances described therein. In this case the most pertinent paragraph as seen from the Applicant's perspective is 1.1.10 which states:-

“ an Agent who considers that the Agency Administrator (as defined ) has not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent’s direct and serious detriment. “

Having received the appeal for Review by the Applicant the undersigned has decided to allow the Review as the application was made within the 30 day time limit.

### **Schedule of Events:**

1. On 11 August 2009 IATA sent out by registered mail notification to all IATA Agents in Pakistan that audited accounts were to be submitted by 20 October 2009. The letter advised that extensions of time beyond that date for up to 3 months could be allowed upon payment of a surcharge amount. It went on to advise that failure to provide said accounts by the deadline date without seeking and paying for an extension period beforehand would incur 2 IRRs.
2. On 12 August 2009 a “pop-up “notice with the same information was added to BSP Link. This is accessible by all Agents.
3. On 2 October 2009 IATA sent out a reminder by e-mail to all Agents.
4. On 16 October 2009 IATA distributed a last reminder to all Agents by e-mail.
5. By letter of 26 October 2009 IATA issued 2 Instances of Irregularity due to failure by the Agent to comply with the deadline for submitting Audited Accounts. The Agent had not sought or paid for any time extension at that point.
6. On 27 October 2009 the Agent requested an extension to 20 November 2009 and sought to have the 2 IRRs waived.
7. On 28 October 2009 IATA advised the Agent that the 2 IRRs could not be waived and acknowledged the Agent’s wish to extend its accounts supply date to 20 November 2009.
8. On the same date the Agent referred the matter to the undersigned.

### **The Applicant’s Arguments in Summary:**

1. The Agent states that it did not receive the 11 August 2009 letter from IATA requiring audited accounts to be supplied by 20 October 2009.
2. The Agent noticed the subject information on BSP Link on 14 October 2009 and commenced preparation of the information required. It alleges that this information was not loaded on to the site until 13 October 2009.
3. The Agent states that it did not receive the 2 October 2009 reminder e-mail but acknowledges receiving the 16 October 2009 e-mail reminder from IATA.
4. On 20 October 2009 the Agent received advice from IATA acknowledging receipt of the financial accounts. This was a mistake as at that stage the Agent had not sent them.
5. In light of that confusion the Agent sought removal of the 2 IRRs.
6. The Agent feels that IATA SIN, when setting the accounts supply deadline, did not take into account the five weeks from 23 August 2009 to 30 September 2009 which is the Muslim period for fasting which is followed by a week of holidays.

The unfortunate feeling of uncertainties in life and business did not help the situation.

7. The Agent named 3 other Agents who allegedly did not receive the 11 August 2009 financial statement request letter.
8. The Applicant named one Agent who had not supplied audited accounts by the deadline date and had sent a request for a deadline extension 3 weeks after 20 October 2009. The extension has been accepted by IATA and no IRRs imposed. The Applicant wishes to have similar treatment.

### **The Respondent's Arguments in Summary:**

1. Mr Younus of the Agency signed for the 11 August 2009 registered letter from IATA at 3.35pm on 19 August 2009 and evidence to that effect has been supplied to the undersigned. No other Agent has advised non-receipt of this letter.
2. The same information appeared on BSP Link on 12 August 2009 and featured for 2 months after which duration it was uploaded again and is still being displayed.
3. The erroneous advice to the Agent of 20 October is regretted and is being investigated.
4. After investigation of the 3 named Agents who also had allegedly not received the 11 August 2009 registered letter it is proven that one Agent signed for it at 1155hrs on 20 August 2009 and the undersigned has evidence thereof and the other two are newly accredited Agents who were not required to submit audited accounts on this occasion.
5. In connection with the Agent who allegedly did not supply audited accounts by the due date the facts are that they sought and paid for an extension on 3 October 2009. The Agency was going through a change of ownership and hence needed more time to prepare the required information.
6. The Applicant did not deliver its audited accounts by the deadline date and neither did it seek an extension of time prior to that date despite being provided with full instructions via a variety of media over a period of 10 weeks hence the 2 IRRs imposed are fully justified.

### **Considerations Leading to Conclusions:**

It is clear that the Agent was informed of the requirement to provide audited accounts by 20 October 2009 from the date of delivery of the IATA registered letter viz 19 August 2009. Even if this advice did not reach the right people within the Agency the fact that a constant reminder featured in BSP Link for the period from 12 August 2009 to the present should have alerted the Agent to its obligation in sufficient time to have the accounts prepared. If lack of time was an issue the Agent could have sought and paid for an extension period in advance of the deadline date and thus avoided the imposition of the 2 IRRs. Even had the BSP Link information been ignored the IATA e-mail reminder of 16 October 2009 which the Agent acknowledges as having been sighted would have allowed the Agent to seek and pay for a time extension and thereby remove the risk of sanctions being imposed.

The Agent's naming of 3 Agencies that had not received the 11 August 2009 registered IATA letter and its assertion that a further Agent had sought a time extension after the deadline date without 2IRRs being imposed proved to be erroneous.

The Agent's suggestion that the Muslim period of fasting should be taken into consideration by IATA when setting the deadline seems a little spurious as presumably businesses are still active during that period.

**Decision:**

The imposition of 2 IRRs by IATA is upheld. The Agent had sufficient options at its disposal to have avoided that outcome but failed to act in time.

Decided this 25<sup>th</sup> November 2009 in Auckland:

**Jorgen Foged**  
**Travel Agency Commissioner Area 3**

**Note:**

**The Agent may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 820e Section 4 Paragraph 1 and as detailed in Resolution 810 Section 13.**