

DECISION 2009-12-23A

Travel Agency Commissioner Area 3

Jo Foged
685 Remuera Rd
Remuera, Auckland
New Zealand

The Case:

At the request of Air India the Agency Administrator seeks a Review of Garuda Travel and Tours Pvt Ltd, Hyderabad, India as a result of the Agent's persistent failure to settle ADMs owed to the Airline. Paragraph 1.3.11 of Resolution 820e legislates for such a situation.

Applicant:

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

Respondent:

Ms Bhanushri Ieyar, Owner, Garuda Travel and Tours Pvt Ltd, Hyderabad, India.

Background, formalities etc:

Air India Regional Management in Hyderabad sought assistance from the IATA Bombay office on how to recover Rs. 20,75,398.00 from the Agent. This amount resulted from the Agent modifying the fuel surcharge amount (YQ) generated by AI's automated ticketing system to a lower amount. When ADMed the Agent would use the Billing Dispute Report (BDR) facility unique to BSP-India to neutralise the ADM amount. The BDR facility is intended to cover genuine billing discrepancies and it is the Member's position that the Agent has grossly abused this facility. The tickets involved covered a period from April 2008 to April 2009.

The IATA Bombay office put this case to the IATA Regional Office in Singapore who in turn has sought a Review under the provisions of Paragraph 1.3.11 of Resolution 820e. IATA Singapore sought the Review initially without advising the Agent concurrently of its actions. On prompting by the undersigned this oversight was rectified and the Agent received the relevant notice and documentation.

Air India and IATA 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 tendered.

However to date the Agent has not provided the TAC with a clear response to the same request circulated to the Parties on 16 November 2009. The Agent sought clarification of the process and the undersigned has described the procedure in detail on two occasions. The undersigned gave the Agent a date of 8 December 2009 to advise its position on waiving a formal hearing. No response was received and hence Rule 8 of the TAC-Area 3 Rules of Practice and Procedure has been invoked in tandem with the undersigned's right,

as provided for in these Rules, to modify them to accommodate the particular circumstances of this case. My concern is that an indefinite period can be consumed while waiting for the Agent's position on waiving a formal hearing. In the interests of concluding this matter and to avoid that delay the Parties have been advised of my intention to proceed on the basis of the written information supplied to date.

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 the Agency Administrator to initiate a Review in a set of situations described in Section 1.3 of Resolution 820e, the preamble of which states:-

“The Agency Administrator, on his own initiative or at the request of any Member, a group of Members, or of the Agency Services Manager, shall initiate a review to determine whether the Agent or Location has breached the Passenger Sales Agency Agreement, including IATA Resolutions incorporated into it, when the Agency Administrator has determined that a credible case has been made, in particular in respect of any of the following: “

In the case under consideration the provisions of Paragraph 1.3.11 apply. This states:-

“ the Agent has persistently failed to settle amounts owing against Agency Debit Memos (ADMs) whether or not such ADMs have been subject to dispute; “

Having received the appeal for Review by the Applicant the undersigned has decided to allow the Review as the Agency Administrator sought this action within 30 days of being alerted to the situation by the Member.

Schedule of Events:

1. AI raised an ADM dated 7 April 2009 for Rs. 14,70,894/- and informed the Agent that it was for short collection on the YQ surcharge on tickets issued between April 2008 and January 2009, except period 2 of August 2008. This ADM was not disputed by the Agent. The Agent was asked to contact its Passenger Sales Manager (PSM) for any clarification.
2. The Agent raised a Billing Discrepancy Report (BDR) to the value of Rs.14,70,894/- during period 16-30 April 2009 thus neutralising the earlier ADM. The comment “Tkt copies not received” was annotated on the BDR.
3. On 18 July 2009 a further ADM was raised for the same amount with the annotation by the carrier that it should not be reversed by the Agent through the issuance of a BDR to the same value.

4. The AI PSM wrote to the Agent on 22 July 2009 with a list of ticket numbers showing the YQ short collection amount in each case and requesting that the Agent pay the difference as detailed in the ADM numbered 6009817277. This request was not met by the Agent.
5. For the period 1-15 August 2009 the Agent raised a BDR for Rs. 14,70,894/- to adjust the ADM with the remark "6009817277".
6. On further examination of manually issued and e-tickets two more ADMs were raised by AI , one ADM issued on 25 August 2009 being for Rs.2,65,803/- covering the period 16-31 August 2008 and manual tickets issued in April and May 2008. The other ADM was issued on 25 August 2009 for Rs.3,39,501/- and covered tickets issued between 1 February 2009 and 15 April 2009.
7. The total of these ADMs amounts to Rs.20,725,398.

The Applicant's Arguments in Summary:

1. AI has identified the individual transactions where the Agent has overridden the automated ticketing system generated YQ surcharge amount and replaced it with a lower amount.
2. ADMs have been issued to recover the short collections thus identified.
3. The Agent has been provided with the ticket number, issuing period, correct YQ amount to be charged, the actual YQ amount inserted by the Agent and the short collection resulting there from for all the transactions that make up the three ADMs issued.
4. The Agent has grossly abused the BDR facility which is intended to address genuine billing discrepancies only. By raising BDRs to the equivalent amount of the ADMs issued it has nullified the Member's objective.
5. AI is frustrated at its inability to recover its YQ costs through the Agent's manipulation of the BDR process and seeks assistance from the Agency Administrator.
6. An associated issue is that it is generally the practice to issue Agent Credit Memos (ACM) to Agents who pay advances to increase their capped sales amounts by collecting back the receipts issued by the AI office. The Respondent had paid advances against capping at the AI office at different times and raised a BDR for the sum of these amounts in April 2009 instead of accepting an ACM. On 23 July 2009 the Agent surrendered the AI receipts at the Member's office and sought an ACM for the sum. An ADM has been issued for Rs.2,70,000/- to recover the twice paid amount.

The Respondent's Arguments in Summary:

1. The Agent objected to paying the ADMs as AI did not supply the ticket copies making up the ADM sum. AI insisted on payment but did not supply any information until the Agent engaged a lawyer to pursue that matter.

2. The BDR facility was used to reverse the ADMs as the Agent had no way of checking the accuracy of the ADM amounts.
3. The Agent paid AI amounts to lift their capped sales level but when a residual amount was due to the Agent AI would retain it claiming it was owed on ADMs.
4. The Agent cannot understand why AI is taking over a year to screen tickets and raise ADMs. AI threatened to “blacklist” the Agent if it failed to settle the ADMs while not supplying any information in support of the ADM content.
5. The Agent claims that it has not adjusted the YQ surcharge levels and needed the transaction details so that it could take the issue up with its CRS provider.
6. The Agent requested ticket images of all the transactions in question as the ticket number and issue date information is insufficient to allow the Agent to check that accuracy of the ADMs.
7. The Agent is keen to finalise the matter but without ticket facsimiles is unable to do so. The Agent is considering litigating against AI to gain that level of information.

Considerations Leading to Conclusions:

The core issue in this case is the Agent’s requirement to sight evidence from the carrier that the Agent had incurred the YQ charge short-collections in individual transactions which in sum led to the amounts shown on the 3 ADMs issued against it.

If not provided earlier, in its 22 July 2009 letter to the Agent, the Member’s PSM attached a list of transactions which recorded the issue period, ticket number, the YQ amount shown on the ticket, the YQ amount generated by the carrier’s auto ticketing system and the short collection incurred. The same information was supplied again on 27 October 2009.

The Agent found this information insufficient and wanted to sight a ticket facsimile for each of the transactions included in the ADMs.

The undersigned finds the Agent’s position fragile as under Resolution 824 – Passenger Sales Agency Agreement – paragraph 10 it states in part:-

“the Agent shall maintain adequate records and accounts, together with supporting documents, recording the details of all transactions effected under this Agreement. “

It goes on to require that such information must be retained for at least 2 years from the date of the transaction. Furthermore paragraph 4 of the same Resolution headed “Observance of Laws and Regulations” requires the Agent to observe all government laws and regulations applicable to the sale of air transportation which includes transaction record keeping. In India it is understood that records must be available for tax purposes for 10 years.

It is difficult to understand why the Agent did not trigger the “Disputed Agency Debit Memo” mechanism available to it in Resolution 832 – Reporting and Remitting Procedures - paragraphs 1.7.14 through 1.7.14.7. This would have allowed the disputed

ADM amounts to be sidelined from the BSP process and to be handled directly between the Agent and the Member.

Instead the Agent used the totally inappropriate Billing Discrepancy Report facility to neutralise the ADM issued against it. This action is a clear abuse of a system, unique to BSP-India, which provides for timely rectification of billed amounts after consultation between the agent and the carrier. The most common situation is where an agent is billed a higher value due to the system not picking up net amounts.

On several occasions the undersigned asked the Agent to advise why and under whose authority did it adjust the ticketing system generated YQ charge to a lesser amount in each of the cases identified in the AI ADMs. The Agent denied having done so and reverted to its requirement to have ticket facsimiles so that it could take the matter up with its auto ticketing system provider.

The undersigned finds that response unsatisfactory as it is hard to imagine that such a critical system error would go undetected and not rectified over such a long period.

The Agent's motives in over-riding the system and reducing the YQ charge may have been to appear more price competitive than other outlets but that is only conjecture.

Decision:

By amending the level of YQ charge generated by the Carrier's automated ticketing system, after careful review and consideration, the undersigned finds the Agent in breach of Resolution 824 – Passenger Sales Agency Agreement – paragraph 3.2 which states:-

“all services sold pursuant to this Agreement shall be sold on behalf of the Carrier and in compliance with the Carrier's tariffs, conditions of carriage and the written instructions of the Carrier as provided to the Agent. The Agent shall not in any way modify the terms and conditions set forth in the Traffic Document used for services provided by the Carrier, and the Agent shall complete these documents in the manner prescribed by the Carrier; “

There are also clauses in Resolution 832 – Reporting and Remitting Procedures – namely paragraph 1.7.13, Accounting Irregularity Safeguards, where in para 1.7.13.1(xvi) it states:-

“ (in the event an audit or other investigation reveals such irregularities on the part of the Agent as:)

persistent failure to settle amounts properly owing against Agency Debit Memos (ADMs).”

However the decision related to initiating the proscribed action detailed under this section of Resolution 832 rests with the Agency Administrator.

This leads the undersigned to determine the action required to address the issues involved in this case.

Therefore in accordance with paragraphs 3.3.2 and 3.3.7 of Resolution 820e I hereby order that the Agent is suspended by having its ticketing authority withdrawn immediately. The amount of Rs.20,75,398, less any amount withheld by AI in the course of the Agent's payment to the Carrier for increased sales capping levels, is to be repaid to Air India within 90 days from the date of this Decision failure to do so being cause for termination of its Passenger Sales Agency Agreement.

Furthermore the Agent must cease abusing the BDR facility failure to do so being justification for removal from the Agency List.

At this point ADM no. 6009817322 issued on 11 August 2009 for Rs.2,70,000 related to the increased sales capping level by the Agent and the events related thereto is not included in this Review due to insufficient evidence on that subject being provided by the Member.

Decided this 23rd December 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 810i Section 13.