

DECISION 2010-08-26

Travel Agency Commissioner Area 3

Jo Foged
685 Remuera Rd
Remuera, Auckland
New Zealand

The Case:

Request for Review of Decision by the Agency Administrator in a letter of 31 May 2010 which placed the Agent on notice of termination if the Agent failed to remit the charges related to its application for a Change of Legal Status. The Agent disputes the manner and method by which the Agency Administrator has handled this matter and has requested a Review.

Applicant:

Premier Tours and Travel (Chennai) Pvt. Ltd.,
486/579 Anna Selai,
Teynampet,
Chennai 600006,
India.

Represented by Mr Rama Chandran Iyer, Executive Director

Respondent:

Agency Administrator,
International Air Transport Association (IATA),
Geneva,
Switzerland.

Represented by Ms Siew Cheng Lim, Assistant Director, Accreditation -Asia Pacific,
Singapore

Background, formalities etc:

After a long and protracted series of events, by letter of 31 May 2010, the Agency Administrator placed the Applicant on notice of termination of its accreditation on 30 June 2010 should it not remit the charges applied by IATA related to its application for a change of legal status. The Applicant considers that the Respondent has neither acted in accordance with the applicable Resolutions nor with any credible, just and sustainable facts.

This case stems from the Applicant's notification to IATA on 09 June 2008 of its intention to transform the legal status of the entity from a Private Limited Company to a Public Limited Company with the same directors, management and share capital. The Applicant remitted the amount requested prior to the termination date and hence remains accredited.

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 in order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible fact.”

Based on the documentation supplied I find that a credible case for Review exists and the circumstances inherent therein fall within my jurisdiction.

The Respondent’s Notice of Termination was dated 31 May 2010 and the Applicant brought this matter to my attention on 17 June 2010 and has thereby satisfied the time limit requirement for requesting a Review.

Schedule of Events:

1. The Applicant advised the IATA Agency Services Office (ASO-India) in Mumbai on 09 June 2008 of its intention to transform the legal status of the entity from a Private Limited Company to a Public Limited Company with no change to directors, management or share capital.
2. The change falls into the category of one requiring a new Passenger Sales Agency Agreement.
3. On 6 June 2008 the ASO-India e-mailed the Applicant with a request for payment of INR11236.00 settlement of which would allow the required documentation to be sent to the Agent. No indication was given as to the charge’s purpose.
4. The Applicant arranged for an Indian Overseas Bank draft to be forwarded on 9 June 2008. The Applicant advises that no receipt was issued in connection with this payment.
5. As other issues interrupted the processing of the Change of Legal Status it was not until 11 March 2010 that the ASO forwarded the Agent a new PSAA together with an invoice for INR10862.00 which was classified as the “Applicable Fee for a Change of Legal Status” in the letter from Manager-India & Nepal.
6. The invoice itself records the charges as being “APPLICATION CHANGE FEE” of INR7972.00, “CERTIFICATE FEE” of INR1172.00 and “ADMIN FEE

- (CHANGES) “ of INR703.00 the balance being made up of various government taxes and levies.
7. On 24 March 2010 the Applicant e-mailed the ASO seeking clarification as to whether this latest charge was an additional fee in light of the fact that INR10236.00 had been paid in June 2008.
 8. Having had no reply the Applicant sent a further message on the subject to the ASO on 31 March 2010. This e-mail generated an auto-reply message from the ASO advising that a Customer Service Representative (CSR) would respond shortly.
 9. Later that day a CSR reverted with a message repeating the quantum of the amount due without clarifying whether or not it was in addition to the June 2008 payment.
 10. The Applicant went back to the ASO on 1 April 2010 pointing out the lack of clarification and again asking whether the INR10862.00 was an additional fee.
 11. Ms Dawood, a director of the Applicant agency, forwarded the signed new PSAAs to Mr Chopra (IATA) on 4 April 2010 with the comment that the “relevant fee” had been paid on 6 June 2008.
 12. On or about 3 June 2010 the Applicant received a message dated 1 June 2010 via bsplink advising that Indian Airlines (IC) had cancelled the Agent’s ability to generate IC tickets. No reason for the decision to withdraw ticketing authority was given.
 13. In a letter dated 1 June 2010, received 3 June 2010, Air India (AI) informed the Agent that as a result of IATA issuing a Notice of Termination effective 30 June 2010 they were withdrawing ticketing authority for both domestic and international sales.
 14. On 4 June 2010 the Applicant sent an e-mail to Ms Lim, IATA’s Assistant Director Accreditation-Asia Pacific, Mr Chopra, IATA’s Manager-India and Nepal and Mr D’Cruz, IATA’ Manager-Passenger Services-India expressing shock and surprise at the withdrawal of ticketing authority by the two airlines initiated by the advice from BSP that the Agent had been served with a Notice of Termination effective 30 June 2010, a notice that the Agent had not received up to that date. It was ultimately received on 5 June 2010.
 15. The Agent went on to describe its attempts to clarify whether or not two charges were involved in the Change of Legal Status process and advised that 3 unsuccessful telephone calls had been made to the ASO Mumbai that day. The Agent found IATA’s actions to be unjust and sought a fair review of the matter and asked that a reply be given by close of business Monday 7 June 2010.
 16. Mr D’Cruz replied by e-mail on 7 June 2010 stating that they were checking on all the communications regarding payment of fees for finalising the change of legal status “ that you failed to comply with.” Mr D’Cruz went on to ask for the date of payment of the 2008 charge, what was the date of the second invoice, was clarification sought on the nature of the second invoice and if so on what date, was payment made of the outstanding invoice for administrative fees connected with the change of “location” as invoiced for and if not what were the Agent’s reasons for non-payment?.

17. A second message that day from Mr D’Cruz asked for a copy of the IATA communication seeking the amount of INR11,182 (it was INR11,236 in IATA’s 6 June 2008 e-mail) and urged the Agent to answer “all other interrogatories.”
 18. The Applicant responded on the 9th June 2010 by outlining all the exchanges with IATA highlighting the lack of response related to the question concerning whether one charge or two charges were involved with the change of legal status. Mention was also made of Mr D’Cruz’s apparent confusion over the nature of the change. The Applicant denied failing to settle the Change of Legal Status application fee and refusing to remit the applicable fee the clause language under which they were threatened with termination. The situation had been brought about by IATA’s non-response to their repeated question about the nature of the second invoice and the Notice of Termination should be recalled.
 19. The following day Mr D’Cruz replied by emphasising the fact that the Applicant admitted receiving the invoice for the application processing fee and attached the 9 April 2010 e-mail from the ASO-India which replied to the statement in the Applicant’s 3 April 2010 letter that the Agency had already paid a fee in June 2008. The ASO-India message went on to describe the purpose of the two separate charges involved in the change of legal status. The Notice of Termination was justified in light of non-payment of the invoice and settlement by the Applicant prior to 30 June 2010 was urged.
 20. The Applicant same day sought evidence of the ASO-India 9 April 2010 alleged message which described the charging regime as they had no record of receipt thereof.
 21. Mr D’Cruz replied by rebutting the use of the term “alleged” and attached the subject message.
 22. On 11 June 2010 the Applicant advised IATA that it was arranging a Demand Draft in the latter’s favour for INR10862.00 in settlement of the 11 March 2010 invoice.
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The Applicant’s Arguments in Summary:

1. The Agency Administrator applied paragraph 15.3.3 of Resolution 810i incorrectly as justification for issuing the Notice of Termination (NOT).
2. The subject clause refers to “ in the event an Agent **refuses** to remit the correct level of application fee etc”. At no time did the Applicant refuse to remit the amount of the charge invoiced but was seeking clarification as to its purpose in light of its payment of INR11236.00 in June 2008 when it initiated its application for a change of legal status.
3. The circulation of the NOT to BSP airlines caused two carriers to withdraw their ticketing authority with others requesting that the Agent refrain from ticketing pending instructions from their head offices.
4. The purpose of the invoices were described in different terms at different times by IATA staff thus causing the Applicant to doubt the validity of the second invoice, a matter on which it sought clarification over a protracted period.

5. The 9 April 2010 e-mail from the ASO-India describing the nature of the two charges was not received and the Applicant is suspicious of the authenticity of said message in view of its absence of the tag containing sender, receiver, date, time, website etc information in the attachment provided by IATA.
 6. Had this message been received the Applicant would have arranged for immediate payment of the second invoice.
 7. It is unsatisfactory that BSP-airlines should be aware of the issuance of a NOT before receipt thereof by the affected Agent.
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The Respondent's Arguments in Summary:

1. The Notice of Termination was issued correctly in accordance with the Resolutions governing the Passenger Sales Agency Agreement.
 2. The fee paid in June 2008 was never intended to mitigate the administrative fees invoiced in March 2010 as a prelude to finalisation of the Change of Legal Status application.
 3. The Applicant's query as to the nature of the two charges was answered by the ASO-India e-mail of 9 April 2010. Despite that information the Applicant withheld payment for almost two months.
 4. Settlement of the 11 March 2010 invoice before 30 June 2010 was the only method by which the Agency Administrator would be able to rescind the Notice of Termination.
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Considerations Leading to Conclusions:

My initial inclination was to deal with this matter in a more informal manner however on further examination I found that there were a number of aspects related to the events that occurred that deserved more formal treatment.

The critical issue in this saga is whether or not the Applicant received the 9 April 2010 e-mail from the ASO-India which answered the former's question about the purpose of the two charges levied on the Applicant.

The Applicant maintains that no such message was sighted and that the copy of the subject message supplied later by Mr D'Cruz raised suspicion as to its authenticity by its lack of the usual time, date, etc information displayed on such a message.

On the other hand Mr D'Cruz is very clear that such a message was sent and on the copy that I have received all the time, date, addressees' data etc is published.

Faced with these divergent positions I am forced to conclude that the message was sent but for some unknown reason was not sighted by the Applicant. This is the only conclusion that I can arrive at as I cannot imagine that the Applicant would not have promptly settled the second invoice having received the answer to its query. Subsequent

action by the Applicant when the matter was clarified in Mr D'Cruz's 10 June 2010 message, to arrange for immediate payment on 11 June 2010, supports my belief. There are a number of other matters that deserve comment:-

- (a) It appears that the ASO-India is either not staffed adequately or has a relaxed attitude to its customer service function as it took 17 days for that office to reply to the Applicant's question regarding the nature of the invoiced charges using the disputed 9 April 2010 e-mail as the yardstick. Similarly 3 phone calls to the ASO went unanswered.
- (b) BSP airlines were aware of the issuance of the Notice of Termination in advance of receipt of that information by the Applicant. The mailed notice was not received by the Applicant until 6 days after its despatch whereas a number of airlines decided to remove ticketing authority the day after the NOT's issuance.
- (c) An apparent lack of central information sourcing is reflected in Mr D'Cruz's 7 June 2010 message to the Applicant seeking details of the matter in hand and referring to a "change of location".
- (d) The documentation involved in this case has categorised the nature of the invoiced charges in a variety of ways. In some instances the second invoice charge is referred to as an "administrative fee" in others it is an "application change fee" and on the IATA website there is reference to a "joining fee". I note that the website was last updated in June 2008.

Turning to whether or not IATA's issuance of the Notice of Termination was in strict compliance with paragraph 15.3.3 of Resolution 810i, seen from the perspective that the ASO's 9 April 2010 explanatory message had been received and understood by the Applicant this clause was the only one that addressed the situation. The Applicant's objection to the term "refuses to remit" is understandable but this clause must be seen as the vehicle for creating the NOT.

On the question of whether a Notice of Termination should have been issued I must side with the Agency Administrator (AA) whose duty it is to see compliance with the terms and conditions incorporated in the Agency Programme. From the AA's perspective the Applicant had received an invoice for a charge incurred in the Change of Legal Status process, had received an explanation of the charging regime involved but had not settled the invoiced amount. In order to motivate settlement the tool to realise that objective was the issuance of the NOT.

It is extremely unfortunate that, for whatever reason, the critical 9 April 2010 message from the ASO was not sighted by the Applicant as had it been seen this Review would not be necessary.

Decision:

Under the circumstances described in this Review the undersigned has decided that, in accepting that all the statements made by the parties are accurate, the issuance of the Notice of Termination by the Agency Administrator was justified.

In this Review my authority does not extend beyond the decision described in the previous paragraph however I would urge the Respondent to improve the manner in which a Notice of Termination is sent to an Agent. It is unacceptable that BSP airlines are informed of the NOT days in advance of the Agent thus leaving the latter in the dark. The process could be improved by informing the Agent and BSP carriers at the same time by e-mail and following up with the Agent by postal means.

Similarly I would suggest that an Agent is informed of all the charges involved with a given change process as early as is practicable. It would also be helpful if there was consistency in the manner in which the charges are described in various media. Finally the customer service issue described earlier in this Decision should be addressed.

Decided this 26th August 2010 in Auckland:

Jorgen Foged
Travel Agency Commissioner Area 3

Note:

The Respondent may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 820e Section 4 Paragraph 4.3 and as detailed in Resolution 810i Section 13.