

DECISION 2011 – 11 - 30
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road,
Remuera, Auckland 1050,
New Zealand

Applicant:

Al-Ansar Travel and Tours,
G-8, Mehran Estate,
Dr. Daud Pota Road,
Near Cantt,
Karachi,
Pakistan.
Represented by Shahnawaz, Manager.

Respondent:

Agency Administrator, Geneva,
International Air Transport Association, IATA,
111 Somerset Road, #14-05,
TripleOne Somerset,
Singapore.
Represented by Mr Mr Prabakaran Nadarajah, Manager, Agency Management Asia Pacific.

The Case and Decision:

In brief, the Agent submitted an application for Change of Ownership, Name and Location. After providing further documentation sought by IATA the Agent's location was visited by an IATA inspector on the afternoon of Friday 4 November 2011 who found the office closed. A return visit an hour later evidenced the same situation. The inspection was carried out in accordance with paragraph 10.5 of Resolution 818g and was of an impromptu nature. Based on the report resulting from this unfruitful visit the Agency Administrator (AA) terminated the Agent's accreditation on the grounds that he "believes you no longer fulfill the requirements."

The Agent advises that the office was closed at 1430 hours that Friday as the manager and one staff member were away purchasing cattle for sacrificing at the Eid Festival which occurred on Monday 7 November 2011. Other staff were involved in escorting a group of pilgrims in Saudi Arabia and the remaining staff were given vacation for the Eid Festival. Prior to this event the agency had been performing faultlessly for over 10 years.

The Agent contacted the IATA staff member who had visited the location and discovered that a report had been submitted to IATA SIN. On 16 November 2011 the Agent received

an e-mailed Notice of Termination from IATA SIN. A meeting with staff of the IATA KHI office concluded with the situation remaining as advised and the IATA comment that inspection visits were not forewarned. The suggestion was made for the Agent to contact my office as provided for in Resolution 820e and this proposal was taken up by the Agent.

After the commencement of this review, on 23 November 2011, IATA SIN offered to arrange for a second inspection visit but in light of the case being referred to the TAC advised that it would await the outcome of the review.

In Resolution 818g Section 2 – Qualifications for Accreditation – there is no reference to the business hours that an agency must maintain in order to gain and maintain IATA accreditation. Common sense would determine that an agency would be open during the same hours as are traditional in the area in which they are located hence 0900 to 1700 or 1800 is common for brick and mortar operations. In the particular circumstances involved in this case the timing of the inspection occurred on the Friday afternoon preceding a religious festival weekend. The Agent’s staff were busy preparing for the festival with others away on business and others on leave. I am not familiar with the cultural norms associated with this festival and perhaps it was not possible to instruct some staff to stay at the agency in order that it remained open and thereby avoiding the issue that has arisen.

At the end of the day the Agent’s purpose in offering its services is to make a profit. The hours that it makes services available are determined by the profit motive and competition. Against that background it is unnecessary to impose an opening hours regime on a commercial enterprise, a notion supported by the absence of any reference to opening times in Section 2 “Qualifications for Accreditation” of Resolution 818g.

In Section 6 of the Application Form for Approval as an IATA Passenger Sales Agent it asks in 6.1 what are the **normal** business hours and days of the week that the office is open. The use of the word “normal” recognises that situations arise whereby the normal timings cannot be kept and that some flexibility must be applied in recognition of those events.

The purpose of the inspection is to verify the information supplied by the Agent and hence a pre-arranged visit would allow that prime objective to be achieved. In my experience this is normal in other parts of Area 3 particularly where the Agent is located remotely. In my opinion the manner in which inspections are carried out in Pakistan is counter-productive. If an appointment is made the IATA inspector is able to achieve the objective of the visit and the Agent can maintain continuity of operation.

I am puzzled at the reason for IATA to terminate the Agent. If it concerned that a closed office could signal a “bust out “ then to terminate the Agent 12 days after the abortive inspection date is not going to be effective should that actually have been the case. IATA SIN refers to paragraph 2.1.14 of Resolution 818g as the vehicle for the termination. It states:-

“All material statements made in the application shall be accurate and complete.”

The IATA logic appears to be that if the application form shows the Agent being open from 0900 until 1700 Monday to Saturday and he is not open at 1500 on a Friday afternoon then that situation differs from the application form information and hence the Agent “no longer fulfills the requirements “which completely ignores the “**normal** business hours” qualifying term in section 6.1 of the approval application form as described above.

I find that the timing of the IATA inspection was unfortunate being the Friday preceding a religious festival. However in the absence of a definitive clause specifying operating/opening hours in the Passenger Sales Agency Rules other than as described above and recognising that a commercial enterprise must have some flexibility in determining its availability for doing business I consider it fair that the Agent should have another opportunity to have its recorded information related to the change application verified.

Consequently it is decided as follows:-

1. The Agent must be visited promptly by IATA on a pre-arranged basis to verify the information supplied in the documentation submitted by it for the changes involved.
2. Subject to the submitted information being found to be correct the Agent is to be added to the Agency List without delay. Should there be a need for further information to be supplied by the Agent that opportunity must be allowed and the Change of Ownership, Name and Location process completed.

Decided this 30th November 2011 in Auckland:

Jorgen Foged
Travel Agency Commissioner Area 3

Note:

Either party may, if considered aggrieved by this decision, seek review by arbitration in accordance with Resolution 820e, Section 4 subparagraphs 4.1 and 4.3.