

DECISION 2011-12-11

Travel Agency Commissioner Area 3

Jo Foged
685 Remuera Rd
Remuera, Auckland
New Zealand

The Case:

The Applicant, Reem Express (Pvt) Ltd, requests review of the decision of the Agency Administrator to terminate its IATA accreditation as a result of a change of ownership issue.

Applicant:

The Agent, Reem Express (Pvt), located in Sialkot Pakistan represented by its General Manager Mr Syed Iftikhar Hussain .

Respondent:

The Agency Administrator, International Air Transport Association, IATA, Geneva, Switzerland represented by Mr Nadarajah Prabakaran, Manager, Agency Management Asia Pacific based in Singapore.

Background, formalities etc:

The Agent contacted the undersigned to seek advice on whether up to a 29% change in ownership is considered a “minor” change whether or not the shareholding beneficiary is an existing or new shareholder. This enquiry stemmed from a dispute with the Respondent who categorised the subject change of ownership as “major” as it involved a new stockholder.

The Applicant was disappointed that the undersigned signaled the Agent’s approach to the Travel Agency Commissioner (TAC) as it had only sought the TAC’s opinion. However in Attachment A to Resolution 820d under “TAC Job Description” paragraph 3. it states in part :-

“In the performance of his/her duties the Commissioner is not authorised to counsel, train, coach or in any similar capacity offer **guidance** to individual agents etc.”

In the opinion of the undersigned this clause prevents a TAC in providing the kind of assistance requested by the Applicant and hence a process leading up to a formal review was considered the best avenue for moving the matter forward.

The Applicant and the Respondent have agreed to waive their rights for a formal hearing and have allowed the TAC to base his decision on the documentation tendered.

The undersigned finds that the information provided by both sides is 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 in Section 1 that the Commissioner shall rule on cases initiated by subparagraph 1.1.5 which states as follows :-

“ an Agent who has received formal notice from the Agency Administrator of impending removal of the Agent or Approved location of the Agent from the Agency List, or of any action or impending action by the Agency Administrator with regard to the Agent, that unreasonably diminishes the Agent’s ability to conduct business in a normal manner; “

Having received the request for Review from the Applicant within the 30 day time limit and having found credible cause therefore the undersigned has proceeded therewith.

Schedule of Events:

1. In January 2010 the Agent underwent a change of ownership whereby 25.33% of the stock was transferred to a new part-owner.
2. In March 2011 the Respondent received a minor change of ownership application whereby one director’s share went from 50% to 62.5%, the director holding 25.33% reduced her holding to 19% and a new shareholder acquired 18.5%.
3. An e-mail was sent to the Agent on 7 April 2011 advising that this change was not approved as it was a major change and hence additional documentation was required. The Agent states that this e-mail was not received.
4. There being no response to the Respondent’s requests on 20 October 2011 the Agent was advised to provide the required documentation by 31 October 2011 failing which termination action would occur.
5. The Agent responded on 28 October 2011 withdrawing the change of ownership submitted in January 2010 and advising that a revised Form 29 plus Share Transfer Deed would be submitted by 15 November 2011 there being a holiday period 7 – 11 November.
6. The Respondent terminates the Agent effective 1 November 2011 citing a disapproved change of location as the trigger.
7. After a number of e-mails from the Applicant and the undersigned the Respondent acknowledges the error and on the 23 November 2011 issues a Notice of Termination for 1 November 2011 specifying disapproved change of ownership as the cause thereof.

The Applicant’s Arguments in Summary:

1. There was a misunderstanding as to what a “minor” and what a “major” change of ownership is.

2. The change of ownership application submitted to the Respondent in March 2011 was mischievous and not authorised by the Applicant.
3. The 7 April 2011 message from the Respondent was not received and hence the Applicant was not able to detect the existence of the March 2011 change of ownership application or to provide the information sought by the Respondent.
4. This unknown and unauthorised application was the cause of the confusion.
5. The seeming reluctance of IATA staff to respond to questions posed by the Applicant by stating that the outcome of the TAC's involvement should be awaited was unhelpful.
6. The Respondent's reference to termination due change of location caused further confusion and anxiety.
7. The Applicant is keen to reconcile the ownership matter in order that IATA accreditation can be restored.

The Respondent's Arguments in Summary:

1. The Applicant had ample opportunity to respond to the requests for further information made of it.
2. The ownership mix submitted by the Applicant did not match the information held on file.
3. It is a prime responsibility to minimise financial risk to Member airlines and in light of the mis-matching ownership information the required action to take was to terminate the Agent. A change of ownership notice lodged in January 2010 cannot be withdrawn in October 2011.

Considerations Leading to Conclusions:

The undersigned has found this matter to be of a complex nature and has described the essence of the issue involved and has attempted to keep the narrative to the point. It is clear that the change of ownership submitted in March 2011 which the Applicant classifies as unauthorised and not known to it is the cause of the problem ultimately faced by the Applicant.

Close comparison of one of the authorised signatures on the January 2010 Notice of Change with that on the March 2011 Notice of Change reveals that they do not match and gives credence to the Applicant's belief that the later Notice was unauthorised and mischievous.

The undersigned felt that the Respondent could have been more obliging in resolving the issue identified with the Applicant but seemed to prefer to see the matter handled to a conclusion by the undersigned.

There was confusion on both sides, some relating to the classification of the nature of the change, was it minor or major, some due to careless recording evidenced by the Respondent's use of the disapproved change of location as the cause for termination and certainly the March 2011 lodgment of a change of ownership notice.

The undersigned considers that the Applicant has been the victim of mischievous activity by persons unknown with regard to the March 2011 change lodgment and deserves to be given the opportunity to have its IATA agency accreditation restored.

Decision:

The Applicant is to submit a Notice of Change recording the correct ownership with the required supporting documentation to the Respondent who will promptly action said Notice with the objective of re-instating the Applicant's accreditation. Any fees already paid by the Applicant are to be credited towards the cost of this process.

Decided this 11th December 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 the provisions of Section 4 subparagraphs 4.1 or 4.3 of Resolution 820e.