

**DECISION 2012 – 10 - 20**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

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

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**Applicant:**

Red Lion Travel and Tours (Pvt) Ltd,  
Thamel 29,  
Kathmandu,  
Nepal.  
Represented by Mr Govinda Prasad Pathak, Managing Director.

**Respondent:**

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

**The Case and Decision:**

In brief, on receiving a Notice of Termination dated 1 August 2012 from IATA the Agent mistakenly sent a letter on 28 August 2012 addressed to the Travel Agency Commissioner at the IATA SIN office. IATA SIN assumed that the writer had received the same letter however this turned out not to be the case. The IATA BOM office alerted the writer to this situation on 15 October 2012 with the recommendation that consideration be given to the request for review as the Agent's letter was issued "prior to the date of termination".

Paragraph 1.2 of Resolution 820e states the following:-

"The Commissioner shall apply the following rules to a request for review from an Agent/applicant:-

1.2.2.1 for review of a decision or action of the Agency Administrator, except when pursuant to the provisions of 1.1.7 of this Section, the request must be submitted within 30 calendar days of the date of the Agency Administrator's notice of the decision in question;"

Paragraph 1.1.7 of Resolution 820e relates to action taken under the Accounting Irregularity Safeguards provisions of Resolutions 818g and 832 which do not apply in this case. The fact that the Agent sought a review within 30 days of the 1 August 2012 advice of termination directed at this office but mis-addressed is accepted as meeting the parameters described above.

The events leading up to the current situation were initiated by the Agent failing to settle the 16-31 May 2012 BSP billing by non-paying the NPR amount and short-paying the USD value and 2 Instances of Irregularity (IRR) were issued on 18 June 2012. The BSP in Nepal operates in dual currencies, NPR and USD. On 20 June 2012 the Agent was declared in default for non-receipt of full payment and was terminated on 1 August 2012 as that situation had not changed.

IATA initiated action to encash the Agent's Bank Guarantee of NPR19m on 2 August 2012. This amount was received on 17 August 2012 and the NPR debt was settled with the affected Airlines. On the same date IATA made an attempt to acquire USD in order to finalise that currency outstanding debt however this was not possible due to Nepal Government exchange control regulations.

On 28 August 2012 the Agent submitted its letter for reinstatement however this was precluded as the USD debt had still to be settled. The Agent paid the full outstanding amount of USD26,101.84 on 17 September 2012 and IATA returned the NPR balance of the Bank Guarantee to the Agent. Settlement to affected Airlines was completed on 19 September 2012.

The Parties have agreed to waive their right to an oral hearing and have allowed the writer to reach a decision based on the written information submitted.

Having considered the factors involved in this case and bearing in mind the long tenure of the Agent's IATA Accreditation it is hereby decided as follows:-

1. The Agent is to be reinstated as soon as is practicable subject to the following conditions:-
  - (a) a set of up to date audited financial statements are to be submitted to IATA and after examination are found to be satisfactory:
  - (b) a financial guarantee to an amount determined by IATA is to be set in place.

Decided this 20th day of October 2012 in Auckland:

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

**Notes:**

1. As per Resolution 820e, Section 4, any Party has the right, if it considers itself aggrieved by this Decision, to seek review by Arbitration in accordance with the provisions of Resolution 824, Section 14.
2. The Parties are advised that effective 1 June 2012, according to subparagraph 2.10 of Resolution 820e, any of them may request an interpretation of this Decision, or for correction of any error in computation, any clerical or typographical error, or any omission in this Decision. Such request must be made within 15 days of receipt of the electronic version of this Decision.