

DECISION 2012 – 11 - 27
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Plan B Group,
42 Barkly St,
St Kilda VIC 3182,
Australia
Represented by Mr. Daniel Okun, Chief Financial Officer.

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA,
Represented by Mr. Matteo Zanarini, Passenger Services Manager Australia and SWPI
Sydney, Australia

The Case and Decision:

The Agent received advice from IATA SYD on 26 October 2012 that a Financial Guarantee to the value of AUD579,000 was required to be in place by 26 November 2012. Same day the Agent queried with IATA staff why it was felt that the Agent did not satisfy the requirements of one of the Tests enshrined in the Australian Financial Criteria. The Agent would discuss the matter with its Auditors and would revert the following week.

On Monday 29 October 2012 the Agent spoke with the same IATA staff member stating its belief that IATA had incorrectly applied its Financial Criteria test. IATA's advice was for the Agent to submit its objection in writing to the online IATA portal thereby acquiring a Case Number and a record of same.

Following that advice and after further discussions with its Auditors the Agent, on Wednesday 7 November 2012, submitted a detailed rationale of its interpretation of the Financial Test Criteria. Having received no acknowledgement from IATA the Agent sent an e-mail seeking confirmation of receipt on 9 November 2012. In the absence of a reply on 12 November 2012 the Agent sent an e-mail to an IATA staff member known to it again attaching the detailed rationale and urging urgency.

On 19 November 2012, again without having received a reply, the Agent phoned another IATA staff member and explained the situation stressing the fact that the deadline date was fast approaching and no perceivable action was evident. IATA advised that the earlier contacted person had been on leave and that the Agent should re-submit its

documentation. This the Agent did on the same day and received an automated e-mail acknowledgement to advise that a Customer Service Representative would be in touch shortly.

On 21 November 2012 the Agent rang the IATA office and was told that the matter had yet to be referred to the Manager but that it would be unlikely that any response would be made until Friday 23 November 2012. This situation was of concern to the Agent as should IATA's decision be unfavourable then it would not allow sufficient time for any Financial Guarantee to be arranged by the deadline date of 26 November 2012. The IATA staff member undertook to progress the matter as quickly as possible and stated that the bond would not be required while the review was in progress. Later that day the Agent received an IATA e-mail stating that the writer should be approached with a view to seeking interlocutory relief for the period required to finalise the matter.

The factors involved in this case are that the Agent submitted a detailed explanation as to why it disagreed with IATA's application of the Financial Test Criteria to its financial statements and was diligent in pursuing an answer in order to meet the IATA-determined deadline date. IATA however did not focus on the issue until close to the deadline date thereby giving the Agent no option but to seek interlocutory relief. On that matter it is disturbing to note IATA's lack of acknowledgement of the Agent's submission in light of the potentially serious consequences that could befall the Agent.

As required by sub paragraph 1.2.2.4 of Resolution 820e the writer can confirm that IATA is not opposed to granting interlocutory relief for the period required to finalise this matter. Also as provided for in sub paragraph 2.3 of the same Resolution both 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 reviewed the factors involved in this case it is hereby decided as follows:-

1. The Agent is granted interlocutory relief until Friday 21 December 2012 in order to allow for the assessment by the Global Assessor to be completed and a financial guarantee arranged and put in place.

Decided this 27th day of November 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 from 1 June 2012, according to Subparagraph 2.10 of Resolution 820e, any of them may request an interpretation of this Decision, or for a 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.