

DECISION 2013 – 07 – 12
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Zahid Brothers Travel and Tours (Pvt) Ltd,
Office No 11, 12 Haji Zamin Market,
Main Bazar, Topi District,
Swabi, Pakistan.
Represented by Mr Sajid Khan, General Manager.

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA,
Represented by Ms Hwa Ooi Tham, Manager, Agency Management Asia/Pacific
IATA, Singapore.

The Case and Decision:

The Agent was terminated on 18 June 2013 after having settled 50 percent of the outstanding BSP billing but not providing a firm repayment schedule for the balance as required by sub paragraph 2.2.1 of Atch A to Resolution 818g.

In its request for review the Agent states that it was of the belief that, prior to dispatching the repayment schedule, IATA would provide the Agent with confirmation of its reinstatement on the completion of full settlement. This belief was maintained despite 3 requests by IATA for a firm repayment schedule to be submitted. It was only when the Agent contacted the local IATA office that this understanding was abandoned and the Agent states that a 15 June 2013 message to IATA's Customer Services-Pakistan address (khics@iata.org) gave details of 6 post-dated cheque payment dates and amounts together with the comment that it was hoped that full settlement would be made by 30 September 2013. The cheques together with a covering letter were dispatched same day to the IATA KHI office.

IATA SIN's resume of the situation advises that 3 days following the Agent's original termination date (31 May 2013) notification was received that the Agent had paid 50 percent of the outstanding amount due but had not submitted a repayment plan. As the Agent had settled 50 percent of the amount owed termination action was halted and time was allowed for the Agent to submit a repayment plan for the remaining amount. Despite 3 reminders to comply with that request the Agent was terminated on 18 June 2013 as a consequence. On 21 June 2013 the Agent communicated that they had sent 6 cheques to

the IATA KHI office and requested that these cheques be held there pending this review.

In a subsequent message exchange IATA SIN advised that they had not received the Agent's 15 June 2013 message detailing its repayment plan. IATA KHI confirmed that they had received the 6 cheques by courier on 21 June 2013 however they had been made out to Deutsche Bank and not the IATA Pakistan BSP Hinge Account and had therefore been returned to the Agent the same day.

The Agent acted on the information in IATA's 18 June 2013 termination letter referring to the seeking of a TAC review by contacting the writer for same on 21 June 2013. This action meets the within 30 days of the date of the termination letter time frame set out in sub paragraph 1.2.2.1 of Resolution 820e. 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 as proscribed in sub paragraph 2.3 of the same Resolution.

In examining the factors involved in this case the writer has determined that a credible case for review has been established. The critical element that led to the outcome is the non-receipt by IATA of the Agent's 15 June 2013 e-mail detailing the repayment plan. Had this message been sighted by IATA following IATA's 12 June 2013 message to the Agent warning of termination if a repayment plan was not submitted, then the outcome could have been quite different. The fact that the cheques were made out to the wrong recipient could have been rectified in short order.

The Agent has provided the full text including dispatch time/date of the 15 June 2013 message to a "Tony" at khics@iata.org however IATA advises that there is no record of this email on their Customer Services Portal. The Agent, on being advised of that reply, states that it did not receive a "return" so assumed that its message had been received. The Agent goes on to advise that they are located in Swabi, the most volatile area in Pakistan where uncertainty is normal. Doing business has been far from routine. Emails have been erratic due to electric power breakdowns and law and order issues. Courier services can take a week for pick-up or delivery.

Having digested the elements involved in this case it is clear that the Agent sought some form of written confirmation from IATA that on settling the full amount due there was an assurance of being re-instated as an IATA Accredited Agent. The absence of that assurance led to the delay in submitting a repayment plan to IATA. A reading of Section 2.3 of Atch A to Resolution 818g by the Agent would have clarified that matter. On that subject it may have been helpful if IATA's Notice of Default letter was more detailed in the procedure of setting up the repayment schedule agreement and the action required of the Agent in that process.

With regard to the critical 15 June 2013 Agent email to IATA I have no evidence to believe that it was not dispatched. Its non-receipt by IATA may be due to the problems associated with the Agent's location. I am not an expert in the field of electronic information transmission and hence am giving the Agent the benefit of the doubt.

In examining the documents connected with this case I note that in IATA's 4 April 2013 Notice of Default letter reference is made to "a firm schedule of repayment of the balance in instalments, plus interest at the official (prime) bank rate plus **2%**." This level of additional interest differs from that specified in sub paragraph 2.2.1 (ii) of Attch A to Resolution 818g where **1** percent is shown. Unless this change is due to some Conference mail vote action then a consequent adjustment will be required when calculating the repayment plan.

Based on the premise that, had IATA received the Agent's 15 June 2013 message termination action would not have occurred, the writer has decided as follows:-

1. The Agent is to settle the remaining outstanding amount as determined by IATA based on the parameters detailed in sub paragraph 2.2.1 (ii) of Attch A to Resolution 818g.
2. Subject to meeting the conditions enshrined in Section 2.3 of Attch A to Resolution 818g the Agent is to be reinstated as an IATA Accredited Passenger Sales Agent.

Decided this 12th day of July 2013 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.