

DECISION 2013 – 07 – 31
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

New Al-Falah International Travels,
UG98, Deans Trade Centre,
Peshawar,
Pakistan.
Represented by Mr. Sajid Riaz, 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 25 June 2013 for "failing to honor repayment schedule as agreed". The Agent was defaulted on 5 November 2012 for failing to settle a BSP billing with a termination date of 31 December 2012. However prior to that date the Agent entered into a repayment agreement with IATA and paid 50 percent of the outstanding amount of PKR 4,730,000 (USD 46,405.00) and submitted 6 postdated cheques for PKR 394,170.00 (USD 3,867.00) each to be banked by IATA at specified monthly intervals.

Over the following 6 months the Agent failed to make good on each instalment payment date by between 8 and 12 days as follows:-

specified payment date 20 January 2013 - paid on 31 January 2013

specified payment date 20 February 2013 - paid on 28 February 2013

specified payment date 20 March 2013 - paid on 1 April 2013

specified payment date 20 April 2013 - paid on 30 April 2013

specified payment date 20 May 2013 - paid on 31 May 2013

specified payment date 20 June 2013 - paid on 2 July 2013.

On the failure of the 20 June 2013 instalment payment to be made on that day IATA SIN terminated the Agent on 25 June 2013 and the Agent sought a review of that decision by the writer on 15 July 2013 thereby meeting the "making the request for review within 30 days of the date of the termination letter" condition provided for in sub paragraph 1.2.2.1 of Resolution 820e.

In its submission the Agent stated that following its failure to meet the 20 January 2013 payment date it had acquired the IATA KHI office's verbal consent to settle on 31 January 2013. Over the subsequent 4 late payments no action was taken by IATA to terminate the Agent. It was only when the final payment due on 20 June 2013 was missed that termination action was initiated and the Agent lost its accreditation on 25 June 2013. The Agent includes in its submission that it was only on that occasion that "the obliging attitude turned into persecution. The rule has been unfairly applied for the delay only in the final payment. It should be withdrawn and the Agency reinstated."

On being asked by the writer why the payments were not made good on the specified dates the Agent advised that they had sold personal property to raise the money which was not easy in the northern part of Pakistan. They had agreed to be paid in instalments by the buyers but the latter had not kept their word on the agreed time frame which had resulted in the delayed payments to IATA however "now we have enough resources to keep us going for some time."

When IATA SIN was queried on why, having allowed between 8 and 12 days beyond the specified dates for payment to be made good on 5 occasions, on the 6th instalment termination action was initiated when payment was not made on the due date. IATA SIN responded with the explanation that strict compliance was initiated when Pakistan came under the purview of the IATA Regional Hub operation. The non-compliance was "triggered" in the Regional Hub process flow system. The 5 earlier occasions were under IATA's Local Office purview. Based on the repayment agreement IATA should have terminated the Agent on 21 January 2013 when it did not honour the repayment agreement specified payment date and the Agent's bank guarantee should have been encashed to pay the airlines' dues.

Having carefully considered the written information submitted by the Agent and IATA it is quite clear that:

- (1) The Agent has paid the outstanding amount due in total;
- (2) During the 6 month period covered by the agreement the Agent paid between 8 and 12 days after the scheduled due date established in the written version of the agreement;
- (3) These late payments were tolerated and accepted by IATA as there is no evidence indicating that the Agent had been advised of a breach of the agreement had occurred until on the occasion of the last instalment non-payment on the due date;
- (4) The Applicant was not sanctioned nor reprimanded because of these late payments

until the 6th late instalment payment occurrence.

(5) Despite the termination action taken by IATA on 25 June 2013 the Agent made the 6th instalment payment on 2 July 2013.

Based on these facts it is clear to the writer that the Parties had verbally agreed to modify the written conditions originally established, in particular, with regard to IATA's acceptance of a time extension of the due date for payments. This circumstance created a reasonable and understandable expectation in the Agent's mind that the settlement of the last instalment, even though it was made after the due date, was going to be accepted by IATA, without generating any damaging consequences for the Agent, as it had been accepted on 5 previous occasions.

It is not up to the writer to analyse the reasons that IATA (personified in this case by its KHI Local Office) might have had to allow late payments from the Agent. The conclusion reached by the writer, based on the behaviour of the 2 parties, is that both of them had verbally agreed to modify the terms originally stated in the written agreement and that this modification generated a valid expectation in the Agent's mind that cannot be ignored by IATA. IATA's position of using the change of administration from the KHI Local Office to its Regional Hub as being the justification for suddenly reverting to the terms of the written agreement is not convincing. From a legal perspective IATA is one single legal entity despite the several IATA offices that were involved in the case at hand.

The writer agrees with the action ultimately taken by IATA to terminate the Agent's accreditation however that action should have been taken when the first instalment was not paid on the scheduled date incorporated in the written agreement. If the supervision of the arrangement between the Agent and IATA had remained with IATA's KHI Local Office, on having paid the full amount of the outstanding debt, the reinstatement of the Agent would have been a reasonable expectation and a Request for a Review from the Agent to the writer would not have eventuated.

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 provided for in sub paragraph 2.3 of Resolution 820e.

The principles of fairness and natural justice should produce a decision which would require the reinstatement of the Agent (following prudent financial checks). To that end, in compliance with sub paragraph 2.7 of Resolution 820e, it is hereby decided as follows:-

1. Subject to the fulfillment by the Agent of the provisions published in paragraph 2.3 of Attachment A to Resolution 818g the Agent is to be reinstated by the Agency Administrator without delay.
2. The Agency Administrator is to promptly contact the Agent to advise the specifics of the conditions required for reinstatement.

Decided this 31st 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.