

**DECISION 2013 – 08 – 08**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

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

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**Applicant:**

AD Travel SDN. BHD  
No. 14, Jalan Sutera,  
Taman Sentosa,  
80150 Johor Bahru,  
Johor,  
Malaysia.

Represented by Mr. Jason Tan, Chief Executive Officer.

**Respondent:**

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

**The Case and Decision:**

The Agent was issued with a Notice of Irregularity (NOI) for a late BSP payment. That action, combined with the Agent's failure to submit its financial statements by 31 July 2013 and the issuance of a further NOI thus accumulating 4 Instances of Irregularity within a 12 month span, has placed the Agent in default.

It is clear to the writer that the core cause of the late BSP payment is due to the Agent's recording of the beneficiary bank's (Deutsche Bank) account number incorrectly by omitting a single zero on the "Remittance Application Form" raised on 24 July 2013.

The Agent had sufficient funds to cover the remittance amount so if it had been alerted in sufficient time to allow the error to be corrected before the 15H30 cut-off time on 24 July 2013 then the NOI would not have been issued. The Agent's bank, Public Islamic Bank (PBB), states in its letter of 30 July 2013 signed by its Banking Services Manager, that they were unable to make good payment that day as they were not advised of the error by Deutsche Bank (DB) until 16:22 hours on 24 July 2013 which was after the cut-off time.

The DB 5 August 2013 letter signed by 2 senior executives states that they received payment from PBB at 10:29 hours on 24 July 2013. On discovering the incorrect account number they contacted PBB who advised that they would get in touch with the customer to "check for the correct details and would provide CRN (amendment) by 3:30pm."

When such action had not occurred by that time DB contacted PBB again alerting them to non-receipt of the subject CRN. PBB told DB to return the funds as they were not able to provide the CRN. This request was actioned at 16:25 hours citing invalid account number.

On seeking further information from DB through IATA SIN to confirm the events outlined in the previous paragraph, it was stated that a named DB staff member contacted PBB between 10:30-11:00 hours on 24 July 2013 and spoke to a named PBB staff member. A call to the same named PBB staff member was made after lunch. A further call to the same named PBB staff member was made between 15:00-15:30 hours the same day to advise that DB had not received the subject CRN. The named PBB staff member confirmed that they were unable to provide the CRN and consequently the funds were returned to PBB at 16:25 hours that day.

In considering the events recorded herein the writer has arrived at a number of conclusions. The first is that the "confirm 4:22 pm" hand written on the PBB document submitted by the Agent refers to the time at which PBB received the funds returned by DB. The second is that, absent a declaration on oath as would be required in a court proceeding, the writer accepts the train of events described by DB. To conclude otherwise would envisage PBB advising the Agent of the error and the Agent taking no action pre 15:30 hours that day, a situation which is blatantly illogical.

The description of "Bona Fide Bank Error " detailed in sub paragraph 1.7.4.1 of Atch A to Resolution 818g refers to "sufficient funds being available in the account on which the cheque or other method of payment was drawn - - - - and the bank erroneously fails to honor such line of credit or other arrangement." From other documents submitted by the Agent it is obvious that sufficient funds were available to honor the amount of the BSP billing in question. The above described sub paragraph can be interpreted in several ways. The Agency Administrator has decided that the Agent's situation did not fit the bona fide bank error provision. However the writer interprets the request by PBB for DB to return the funds as a CRN could not be issued, as fitting that situation. Furthermore the writer sees his role as one involving the principles of fairness and natural justice. In that context the writer does not accept that a simple omission of one digit in the preparation of a funds transfer document should see the downfall of a well established Agency.

In reading some of the Agent's letters there is a reference to the Agent considering seeking compensation from a party with regard to the situation that it found itself in. Before taking such a step the writer would ask that the Agent ponders on why it did not put more effort into having its financial accounts completed by the deadline date specified by IATA. The reasons given by the Agent viz a shortage of qualified auditing staff in Malaysia and the protracted absence of its own accountant due to a family bereavement are not convincing in the writer's opinion. Had the Agent met the specified submission date then it would not have been defaulted when the later situation, the main subject of this decision, occurred. The Agent cannot escape the fact that the core error sparking the developments that followed occurred within its own office. However whether or not the Agent pursues its claim for compensation is obviously its own

decision.

The Agent is encouraged to focus on having its financial statements completed as quickly as possible and submitting them to IATA without further delay. Also it will need to take greater care when preparing future "Remittance Application Forms" relating to BSP settlements.

The Agent has sought a review within the time frame detailed in sub paragraph 1.2.2.1 of Resolution 820e and both Parties have agreed to waive their rights 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 the same Resolution.

Having regard to the events and conclusions described above it is hereby decided as follows:-

1. The Notice of Irregularity issued in connection with the BSP billing late payment is to be withdrawn and the Agent's ticketing authority re-instated.

Decided this 8<sup>th</sup> day of August 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.