

DECISION 2013 – 10 – 24
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Karwan-e-Sarhad (Pvt) Ltd,
UG 76-77 Dean's Trade Centre opp State Bank,
Peshawar Saddar,
Khyber Pakhtoonkhwa,
Pakistan.
Represented by Mr. Muhammad Khan Wazir, Director

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 terminated on 1 October 2013 for having accumulated 4 Instances of Irregularity within a 12 month period. An outstanding amount of PKR 7,724,837.00 (USD 72,130.00) was reduced to PKR 3,366,226.00 (USD 31,342.00) by the Agent during the period 15 August 2013 to 30 September 2013.

In its summary of events IATA stated that it had advised the Agent of the reinstatement procedure on 24 September 2013 which involved the Agent providing proof of payment by 25 September 2015. The Agent did not submit proof of payment and did not communicate their intention to enter into a repayment agreement for the outstanding amount. Since the outstanding amount was not paid in full and the repayment agreement was not executed by the termination date IATA proceeded to terminate the Agent on 1 October 2013.

In its explanation for its lack of prompt action the Agent advised that on 22 September 2013 the younger brother of one of the Agency's Directors was killed in a terrorist attack. This tragic event caused great mental shock and the Agency was closed. On reopening the office on 30 September 2013 the Agent became aware of additional outstandings caused by a variety of ADMs. The Agent claims that at that point the actual amount owed was not clear and clarification was sought from IATA. By the time clarity was provided termination action had occurred.

The request for review has been made 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 to allow the writer to reach a decision based on the written information submitted as provided for in sub paragraph 2.3 of the same Resolution.

In considering this matter it is appropriate to apply the provisions of paragraph 13.9 of Resolution 818g which is headed "Force Majeure". The circumstances which precluded the Agent from acting in compliance with IATA's instructions were not known to IATA as the Agent provided that information during the course of this review. The unfortunate and tragic situation faced by the Agent could not have been foreseen and hence the events that unfolded are understandable and excusable in the context of the subject provision.

Consequently it is hereby decided as follows:-

1. The Agent is to be reinstated subject to fulfilling the following conditions:-

(a) all outstanding moneys including any charges are settled. If necessary the provisions of section 2.2 of Attch A to Resolution 818g may be applied.

(b) IATA is to conduct a financial review of the Agent.

(c) IATA is to review the level of financial security required from the Agent with the Agent fulfilling any adjustment required.

Decided this 24th day of October 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.