

DECISION 2014 – 04 - 24
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Stop-N-Shop Travel and Tours Pvt Ltd
95, V P Road C.P.Tank
Mumbai 400 004
India.
Represented by Mr. Paresh Gandhi, Director

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Ms. Nadya Widjaja, Manager, Agency Management Asia/Pacific
IATA, Singapore.

The Case and Decision:

The Agent was issued with 2 Instances of Irregularity (NoI) on 6 January 2014 for failing to remit the BSP billing of INR 1,386,326.00 on 31 December 2013 and was given until 7 January 2014 to do so. On being alerted to this situation the Agent immediately took steps to credit the BSP account with the full amount on 2 January 2014 thus "crediting the account earlier than by normal cheque clearance, hence there was no question of any delay in payment of IATA BSP."

On investigation it was discovered that an error by an Agency staff member in issuing the settlement cheque on a closed account had caused the problem. The Agent sought removal of the NoI from the local IATA office however as the error was not caused by the Agent's Bank the provision in paragraph 1.7.4 of Atatch A to Resolution 818g "Bona Fide Bank Error" could not be applied and therefore the NoI could not be removed.

Having exhausted the IATA avenue with the arranging of letters from its bank explaining the cause of the problem the Agent contacted the writer detailing the issue and attaching confirmation from its Bank that at the time of the credit to the BSP account the Agent's account was in credit to the amount of INR 2,921,086.00 thus amply covering the payment made. The Agent went on to state that it had been IATA accredited since 1991 and had an unblemished record. The problem had been caused by an unintentional human error and the Agent gave an assurance that there would not be a repeat of this kind of incident.

As required by sub paragraph 2.3 of Resolution 820e 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.

In considering this matter I accept the Agent's assertion that the issuing of the cheque on a closed account was unintentional and this statement is supported by the fact that the Agent's account had more than sufficient funds in it on 2 January 2014 when the BSP account was direct credited.

The most appropriate provision for addressing the matter in hand is sub paragraph 13.9 of Resolution 818g which reads in part as follows:-

<<FORCE MAJEURE

The Agent shall not be liable for delay or failure to comply with the terms of the Passenger Sales Agency Agreement to the extent that such failure...

(ii) is not the result of the Agent's lack of reasonable diligence (an "Excusable Delay")>>.

The Agent has clearly taken prompt action to rectify the problem caused by the use of a cheque drawn on a closed account to the point where no delay was experienced with regard to the BSP settlement with Airlines.

One would imagine that this experience will ensure that no repetition of this event will occur again and an assurance to that effect has been given by the Agent.

Consequently it is hereby decided as follows:

1. The 2 Instances of Irregularity issued against the Agent are to be expunged.

Decided this 24th day of April 2014 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.