

DECISION 2014 – 05 - 27
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Japan Air Travel Marketing Co Ltd.
4F, Nakata Mac Toranomom Bldg
1-10, Atago, Minato-Ku, 105-0002
Tokyo, Japan
Represented by Mr. D. Hada, President

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Mr Nawaz Shaikh, Manager Agency Risk Management Asia/Pacific,
IATA, Singapore.

The Case and Decision:

The Agent was issued with 2 Instances of Irregularity (NoI) on 2 May 2014 for failing to include the Cover Letter with its Audited Financial Statements when submitting them to IATA for the Annual Financial Review.

In its request for review dated 9 May 2014 the Agent opined that the NoI was considered a harsh punishment for a clerical oversight. As a consequence of advice to that effect being circulated to Airlines the Agent had received enquiries from carriers regarding its financial position. The Agent had been accredited for many years and had diligently met all its obligations and felt that as the missing Cover Letter did not constitute a serious accounting or overdue payment irregularity that the NoI should be expunged from its record.

In its explanation for the oversight in not submitting the Cover Letter on time the Agent stated that the IATA Internet site instructions for lodging the document were complex and a new staff member had sought clarification from IATA. Answers to these questions were not provided quickly or fully and were ignored "for a fairly long period of time." In a later message the Agent advised that during the critical time around the submission date of 2 May 2014 a senior staff member had passed away thus causing an absence for the funeral and this was followed by the "Golden Week" holiday break which ended on 6 May. The Cover Letter was submitted to IATA by email on 7 May 2014.

IATA's summary of events recorded the dispatch of regular reminders commencing on 31 March 2013 about the missing Cover Letter. An additional issue was the fact that the confirmation of accounts by the certified accountant was not the official confirmation sent to the Tax Authority for tax returns and the Agent was requested to resolve that matter. There was some confusion over the Agent's accounting contact email address which had changed but the Agent had not fulfilled its responsibilities by advising IATA of the change. An 11 April 2014 message to multiple email addresses of the Agent mentioning the missing Cover Letter should have initiated action. Furthermore a 20 February 2014 pre-notification message sent to another of the Agent's email addresses informing them of the documents requiring to be submitted and also on which email ID the financial assessment email would be sent, if the Agent had responded, "the situation would have been rectified before the start of the financial assessment exercise." Based on the events that had occurred IATA could not withdraw the NoI.

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. Additionally, the Agent has met the within 30 day time frame to make the request for review enshrined in sub paragraph 1.2.2 1 of the same Resolution.

In considering this matter it is clear that the Agent had no intention of being obstructive or non-compliant. Equally IATA demonstrated a desire to be helpful and gave the Agent adequate notice of its requirements. It was the unfortunate combination of a new accounting person unfamiliar with the process and the events around the "Golden Week" break that caused the issue. The delayed submission of the Cover Letter and the accounting certification were not serious matters which had any financial risk elements. For that reason the writer has some empathy for the Agent's opinion that "the punishment did not fit the crime".

The issuance of a NoI automatically, in the minds of many Airlines, creates suspicion of some financial issue which places their moneys at risk and hence causes them to review their appointment of the Agent. In this case that was never the situation and the powerful ripple effect of a NoI should not have been used.

Based on the foregoing, therefore, it is hereby decided as follows:-

1. The Agent is to be issued with a Reprimand as detailed in paragraph 13.4.3 of Resolution 818g.
2. The 2 Instances of Irregularity are to be expunged from the Agent's records.

Decided this 27th day of May 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.