

DECISION 2014 - 07 - 01 Addendum 1
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Bestjet Travel Pty Ltd.
Fortitude Valley, QLD
Australia.
Represented by Mr. Michael James, Airline Coordinator

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:

In the core Decision the Agent was granted interlocutory relief until 4 July 2014 in order to lodge its financial statements with IATA. The writer misunderstood the reason for IATA's request initially, presuming that it was in connection with the Annual Financial Review when in fact it was an *ad hoc* request due to the Agent's substantial increase in airline sales.

Subsequent to the release of the Decision it was discovered that the Agent's Auditors were planning to have the audit completed by 31 October 2014 which was clearly not acceptable. The Agent sought an earlier date from its current Auditors and at this stage the completion date has been brought forward by a month.

In the absence of the Agent's ability to comply, IATA sought a financial security of AUD1.283m until such time as the financial statements could be submitted and assessed. The Agent advised that to arrange a security of that amount would require a significant capital outlay which it was not in a position to provide.

After a number of further message exchanges the writer proposed a solution that had been applied to a similar case in Australia a few years ago. This suggestion involved the Agent settling directly with IATA 7 days earlier than the normal BSP billing/remitting cycle thereby reducing the amount of financial security required and granting the Agent the additional time required to have its audited financial statements submitted to IATA.

This proposal found favour with both Parties and, based on the risk calculation incorporated in the Local Financial Criteria for Australia, IATA advised that a lower

security amount of AUD950,000 would result from the reduction in the period where airline moneys would be at risk.

The Agent had advised that it had approached two other auditing entities to see if either of them could complete an audit earlier than the 30 September 2014 date advised by the Agent's currently retained Auditor. Additionally the Agent was in touch with a default protection insurance provider to determine the availability and cost for a 5 month cover. At the time of the release of this decision answers to those enquiries were awaited.

As required by the amended sub paragraph 2.3 of Resolution 820e both Parties have been placed on notice that in the writer's judgement an oral hearing is not justified and that this decision would be based on the written information submitted.

In considering this case it is clear that the fact that the Agent had nominated only one Executive to receive IATA's instructions and, that Executive was on leave, plus the Agent's misunderstanding of the type of audit required had caused unnecessary delay. The Agent has now ensured distribution of IATA instructions to several staff members and is clear on the specifications of the audit.

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

The Agent is granted interlocutory relief until 30 September 2014 in order to submit its audited financial statements

subject to:-

- (a) paying IATA directly no later than 7 days before the applicable Agent Remittance Date published in the BSP Calendar for Australia;
- (b) submitting a financial security of AUD950,000 to IATA within 10 working days from the date of this decision;
- (c) such financial security must have a validity of at least 4 months.

Decided this 14th day of July 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.