

DECISION 2014 - 07 - 15
TRAVEL AGENCY COMMISSIONER - AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

American Travel International (Pvt) Ltd
Shop # 1, Mahmood Plaza
Fazal-ul-Haq Road
79-W, Blue Area, Islamabad
Pakistan.
Represented by Ms. Maher Noor Hayat, 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:

An Interim Decision 2014-07-03 was issued on 3 July 2014 in order to grant the Agent interlocutory relief until this case could be examined thoroughly. The Agent sought a review as a consequence of being terminated by IATA due to failing to pay for 23 ADMs issued against it by Turkish Airlines (TK).

The Agent's explanation of the issue reads as follows:-

- " 1. Turkish Airlines (THY) issued 23 ADMs on tickets issued by us between 30 Jan. 2013 and 24 April 2013, for the total amount of over 2 million PKR.
2. We informed THY that those tickets had been sold through Credit Cards. The Sales were reported in the prescribed - timely manner (i.e. reported to THY on the day of sale) - as per IATA Res. 890. The approval for the amount to be billed by THY had been obtained through the established procedure via the GDS.
3. THY, allegedly, did not get the payment from the Credit Card Company and, chose to issue the ADMs to the agent (us).

4. THY did not follow the IATA procedure (Res. 890, which requires the airline to provide the agent the evidence that the credit card company had denied the payment to THY).

5. The ADMs were issued on 14 May 2014 via the BSP Link. Since we were used to get the ADMs via the email, we did not notice the ADMs, and subsequently they were included in the Agent Billing Statement payable on 15 June 2014.

6. We informed IATA that the inclusion of those ADMs in the Billing Statement was incorrect due to:

A/ That THY did not adopt the IATA procedure on the alleged non receipt of payment on credit card sales;

B/ That the ADMs have been issued beyond the time limit - 9 months - after completion of travel.

As such IATA should let the matter be dealt directly between the airline and the agent.

C/ That IATA did not fulfill its role to ensure that proper procedure was followed by both Parties.

Our repeated requests were ignored by IATA to remove the ADMs from the Billing Statement.

Subsequently IATA issued NoI and NoD and Termination (Copy is given below).

IATA has not given us the option of appeal/review by TAC.

We also informed IATA-SIN that a similar case has been reviewed by TAC Area 1 (Decision 2013) and offered them to look at it. It was ignored.

We feel that IATA has taken side with the airline and in the process our commercial survival is threatened by the support of IATA on the illegal action of the airline.

With the Financial Guarantee in place with IATA we request for Interlocutory Relief in order to stay action of IATA's decision to suspend our Agency from BSP for temporarily reinstated.

The 23 ADMs include 1 ADM from the previous case reviewed by TAC 1. THY has refused to talk to us on the subject."

The writer queried the Agent as to why the 23 ADMs were not identified when they appeared on the BSP billing. The Agent replied that with their Accountant away and with no sales for that period, the Owner did not check the billing. It also appears that TK did not provide the Agent with the ADM details directly.

This case is virtually identical to one involving the same Agent and the same Airline which was ruled upon by the Deputy TAC 3 last year. Turkish Airline's total lack of response to the Agent's communications is very disturbing but seemingly an entrenched attitude when it comes to dealing with ADMs. The Agent's inattention to

the ADM billing is unfortunate and has led to unnecessary turmoil to its business. IATA's action in not allowing the ADMed amount to be sidelined from the BSP billing is in conformity with the Resolution but in an earlier time some flexibility would have been shown.

One issue which will require discussion at a global level in a different forum is the manner in which IATA reinstates an Agent's ticketing authority. When instructing IATA to return the Agent's ticketing authority in my Interim Decision I made it clear that it should be "in the exact mode it was in at the time of its termination by IATA". In other words it should allow the Agent to ticket any of the Airlines that had it under appointment pre-termination. IATA takes the position that it switches the Agent back on to the GDS and it is then over to the Airlines to decide whether or not to allow the Agent to sell its services. The writer can find no Resolution mandate for IATA to take that position but it is enshrined in the Standard Operating Procedures and will require discussion at a high level if the Procedures are to be amended. This issue will be included in this year's TAC Report to the PAPGJC.

With regard to this case the writer has no reason to doubt the explanation provided by the Agent. The Airline's behavior in stone walling the Agent is not acceptable in a commercial relationship but anecdotal evidence suggests that it is not uncommon.

Both Parties have been advised of the terms of the amended sub paragraph 2.3 of Resolution 820e which allows the writer to conclude that an oral hearing is not justified and that the writer has based his decision on the written information submitted.

Therefore, based on the foregoing, it is hereby decided as follows:-

1. The terms of sub paragraph 1.7.9.4 of Attch "A" to Resolution 818g shall apply to the 23 ADMs issued by TK.
2. The terms of sub paragraphs 1.7.9.4(i) and 1.7.9.4 (ii) shall be recognised in the event the Airline chooses to interact with the Agent
3. Subsequently the provisions of sub paragraphs 1.7.9.6 and 1.7.9.7 shall apply.
4. The Agent's ticketing authority, reinstated under Interim Decision 2014-07-03, shall be ongoing.

Decided this 15th 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.