

**TRAVEL AGENCY COMMISSIONER - AREA 1
(DEPUTY TAC3)**

VERÓNICA PACHECO-SANFUENTES
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CANADA

DECISION 2014 - # 88

In the matter of:

Gulf Travel Aviation

IATA Code No. 27-3 0422
Shop No.2, Sohrab Khan Chowk G.T. Road
Mingora, Pakistan
Represented by Mr. Salawar Khan

The Applicant

vs.

International Air Transport Association (“IATA”)

111 Somerset Road, #14-05
TripleOne Somerset
Singapore 238164
Represented by its Manager, Agency Management, Asia Pacific, Ms.
Nadya Widjaja

The Respondent

I. The Case

Due to a supposedly dishonoured remittance, on October 1, 2014 the Applicant was served with a Notice of Irregularity (“NoI”), being recorded as two instances of irregularity on its files. However, the Applicant had indeed made the settlement in full on Remittance Date, hence, due to a Bank issue the funds were not received by the Respondent on Due Date.

Despite of not being under a default situation, the Applicant has pointed out that <<few airlines had withdrawn their ticketing authority which is causing us financial loss and damaging reputation in the market>>.

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II. The Applicant's arguments in summary

The Applicant has argued that the NoI was wrongly served against it by the Respondent, since it did honour the BSP Sales Report in full and in a timely fashion. Proof of payment was provided.

Due to an internal bank "clearing time", the Applicant's bank did not process the payment on September 30th, 2014 when in fact the funds were received, but the next day, on 1st October 2014 causing the NoI problem.

Nonetheless, as proved by the Applicant's bank's own statement, not only (i) enough funds were available on the Applicant's account in order to entirely cover the remittance for the period 20140901F; but, (ii) the cheque was received on Due Date, yet processed a day later due to an internal procedure that <<the customer (*id est*, the Applicant) did not know about>>.

In addition to these facts, <<airlines should have not withdrawn their ticketing authority because we are not in default>>.

III. The Respondent's arguments in summary

In the Respondent's words:

<< 30 Sep 2014 - Remittance Date for P20140901F

01 Oct 2014 - 2 instances of irregularity served due to non-payment

20 Oct 2014 - Agent sent bank error letter and requested for withdrawal. This is beyond the 10 working days timeframe as governed by the Resolution (even though the letter was dated 1 Oct 14)>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule No. 14 of the Rules of Practice and Procedure, this Commissioner, acting upon both Parties' agreement on waiving their

rights to an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

V. Considerations leading to conclusion

The uncontested facts of the case are as follows:

- It has been proved that payment of the BSP Sales' Report in question was made by the Applicant on Due Date;
- A Bank letter stating the reasons why the cheque for the proper amount was not processed on time was received by the Respondent. The Bank clearly stating that the delay was due to internal bank <<clearing times>> unknown by the Applicant;
- Proof of the Applicant having sufficient funds in its Bank account as to cover the remittance in full by Due Date.

The Respondent, despite all this evidence, was reluctant to withdraw the Applicant's NoI, *motu proprio*, as encouraged by this Commissioner, arguing that <<as governed by Reso 818g Attachment A sec. 1.7.4 ... the 10 working days timeframe is for the letter to reach IATA (not based on the date of the letter) which in this case, we received the scan copy only on 20 Oct 14>>, meaning *2 working days past the required time frame* (this Commissioner's observation).

When given the opportunity to clarify this delay in sending the Bank letter to IATA, the Applicant not only properly explained the reasons behind it, but also provided evidence in support of its allegations (reference is made to 43 pages of correspondence exchanged between IATA Customer Service Representatives, the Applicant and a Member Airline demonstrative of the Applicant's diligence aimed at solving the problem at that stage rather than getting its Bank or higher levels of IATA's hierarchy involved).

Based on those grounds, it is clear for this Commissioner that the delay in submitting the Bank letter to IATA was NOT due to a lack of diligence from the Applicant nor to a

deliberate intention of procrastinate things, but rather to legitimate expectations that the problem (*id est*, the removal of the NoI served against him) was going to be solved at that level, meaning, through the explanations and evidence provided to IATA's Representatives at the Customer Service Centre.

Furthermore, according to the evidence on file, the Applicant finally sent the Bank letter, which was issued on Oct. 1, 2014, to IATA when it was instructed to do so; regrettably, the Applicant was not aware of IATA's applicable rules, namely, the rigid time frame stated in Sub-Paragraph 1.7.4.3 (i) of Res. 818g "A".

In spite of the above mentioned circumstance, the fact of the matter is that: (i) the Bank delay was completely out of the Agent's reasonable control; (ii) it was not due to its lack of diligence; and, (iii) it was proven that sufficient funds were available by Remittance Date; therefore, the delay experienced by IATA in receiving those funds is an <<***excusable delay***>>, as mandated in Section 13.9 of Resolution 818g.

Ultimately, it is this Commissioner's view that no Resolution text allows the Respondent to punish an Agent with a NoI, nor with any other form of sanction, when the cause of the alleged non-compliance with the applicable rules cannot be attributable to the Agent's actions or omissions. Furthermore, the Spirit of the Resolutions' texts is clearly stated in the Preamble of Resolution 818g, ***General Principles for Review***, where the governing rules unequivocally state, I quote:

<<... the Agent shall ***at all times*** be able to enter into discussion with IATA, to provide information to demonstrate its compliance and continued compliance with the terms of this Resolution...>>

And this discussion was precisely what the Applicant engaged in doing with the Respondent's Customer Service Representatives, aimed at getting the NoI removed from its files.

VI. Decision

Having carefully reviewed all the evidence and arguments submitted by the Parties in connection with this case;

Having analysed the applicable Resolutions;

It is hereby decided:

- The NoI that has been served against this Applicant must be expunged and removed from the Applicant's records.
- The Respondent must duly informed all BSP Member Airlines in the Applicant's market about this decision and the removal of the referred NoI from the Applicant's records, clearly stating that at no moment in time was the Applicant in a defaulting situation.

Decided in Vancouver, the 26th day of November 2014


Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
acting as Deputy TAC3

Right to ask for interpretation or correction

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which it may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

Right to seek review by arbitration

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the referred period for interpretation/corrections would have expired.