

Decision 22 / 2017
Travel Agency Commissioner - Area 2
Acting as Deputy for Area 3

Andreas Körösi
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S-102 45 Stockholm, Sweden

Applicant: Airworth Travel & Tours Pvt Ltd
506, Manisha Building (opposite B.S.E.S. Office), 75-76 Nehru Place
110 019 New Delhi, India

Represented by:
Mr Arjun Krishnan, Advocate

Assisted by:
Mr Gaurav Mehra, Managing Director

Respondent: International Air Transport Association (IATA- India)
111 Somerset Road, #14-05
Triple one Somerset, Singapore 238164

Represented by:
Mr Éric Vallières,
Mr. Rodney D´Cruz, Manager Agency Management Asia & Pacific

I. The Case

During the process leading up to this Decision several allegations have been made by both Parties. I have addressed most of them in the TAC letter dated March 21st, 2017. The “allegations” which have not been addressed in that letter, nor after that, are considered to have been dealt with in the original Decision and the “Clarification” subsequent to that Decision.

What is left for this Office to address are the two clear claims submitted by The Applicant when filing its petition to this Office dated 1st March, 2017 to:

- a) review if the provisions of Resolution 818g Attachment “A” § 1.7.9 and Resolution 850m have been properly followed by The Respondent when handling Agency Debit Memos (“ADM”s) issued in 2015 and 2016. And to “...assist, if needed, to enforce The Applicant’s right to settle ADMs bilaterally with BSP Participating Airlines outside the BSP system...”
- b) The Respondent’s compliance with the TAC’s Decision dated February 2nd, 2016 mainly “...to assist in retaining GDS’s access for monitoring possibilities...”.

As this Commissioner understands, The Applicant’s **core concern** is if the above mentioned allegedly “timely disputed ADMs” should be part of The Applicant’s debt towards IATA/BSP.

Before addressing the above mentioned matters, it is necessary to first determine if The Applicant has presented a credible case for this Office to open **a new review** based on the above allegations, or, if this petition has to be considered as **a request to reopen a case already decided upon**, and to do so more than one year after the Decision was served to The Parties.

II. The core of The Applicant's arguments in summary

The Applicant had" *...since the very inception, that is since its BSP link was shut down by IATA, disputed all the ADMs generated against it and accounted for in the BSP statements generated from time to time...*"; stating further that: *"This fact was mentioned... in the review proceedings by virtue of its pleadings therein."*

Furthermore The Applicant alleges a general "reluctance" from The Respondent to comply with the TAC's Decision even after repeated remarks to do so:

"Nor has IATA complied with the direction to assist Airworth with legitimate refunds, or retain GDS access (despite consenting to do so before the Delhi High Court on 09.11.2016)".

III. The core of The Respondent's arguments in summary

The Applicant has *"over the past two years instituted numerous judicial and arbitration proceedings..."* and *"with its latest request to the TAC...is now effectively attempting to re-open a case which was definitely settled in 20 February, 2016..."* by the TAC.

The Applicant: *"...was clearly not in a situation of impossibility to bring the current request at an earlier date..."*

Contrary to what The Applicant" *... wrongfully asserts, IATA has at all times fully complied with the TAC Decision"*.

Consequently, The Respondent: *"...respectfully requests that the TAC summarily dismisses the Request filed..."* by The Applicant.

IV. Oral Hearing

This decision is based on the written information submitted and shared by The Parties, also considering the "underlying information" filed at this Office when deciding in February, 2016.

V. Considerations leading to Decision

Preliminary matter:

The Respondent has, amongst others, argued that an "ex Agent" who has had its Passenger Sales Agency Agreement ("PSAA") terminated, **by definition** is not an Agent. Consequently, Resolution 820e should not be applicable to this request.

This Office's view is, in this and other requests for review of similar nature, that since The Respondent **at the time when the events took place** was an Accredited Agent, does qualify as "Party" of a review proceeding under Resolution 820e.

This Office's assessment is also that there is enough justification for the "late submission", because The Applicant has shown that it has, **since the time of the events**, been engaged in "*discussions aimed at finding a solution to the problem*".

Taking the above and all other circumstances into consideration, it is my view that a credible case for a TAC review has been presented by The Applicant.

Core issues:

The two issues at bar as referred to under § "The Case":

- A) The Applicant's right to settle correctly and timely disputed ADMs bilaterally with BSP Participating Airlines outside the BSP system is fundamental and is enshrined in the applicable Resolutions. This has also been clearly stated in the original TAC Decision.

It is uncontested that "some or all" of the "pre default" ADMs and "some or all" of those ADMs presented after default, and within the 45 days allowed to be processed through BSP, have been timely disputed by The Applicant.

From the statements and documentation on file, it is obvious that "some or all" of these ADMs have not been handled in the way mandated by Resolutions.

Due to the large amount of ADMs, it is extremely difficult to put forward evidence demonstrating which of these ADMs are part of the above.

According to Resolution 818g Attachment "A" §§ 1.7.9.4 and 1.7.9.6, it is unquestionable that those ADMs which have been disputed timely and in a correct manner should not form part of the debt towards IATA/BSP. They have to be resolved bilaterally between The Applicant and the concerned Airline.

- B) Even though The Applicant did not get the GDS provider Galileo to reactivate monitoring possibilities, **the GDS provider** and The Applicant must have been fully aware that there was a binding contract between Galileo and The Applicant.

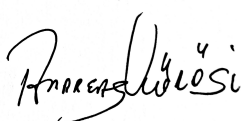
The Applicant did have the TAC decision dated February 2016 to "support his arguments" in discussions with Galileo. "Assistance" by The Respondent was ordered in that decision but "assistance" can be done in large varieties of ways, and this Office cannot speculate on the "dedication involved" by The Respondent while providing such "assistance".

VI. Decision – with immediate effect

Having carefully considered the statements and evidence presented by The Parties, in light of the applicable Resolutions, it is hereby decided as follows:

- 1) The ADMs which have been timely disputed **shall not be part of the “debt” to IATA/BSP** and should be settled bilaterally with the concerned Airlines.
- 2) Even though not to the extent The Applicant desired, The Respondent has demonstrated its compliance with the TAC Decision in regards to the issue of “assisting” The Applicant as mandated in the referred Decision.

Decided in Stockholm on May 5th, 2017



Andreas Körösi
Travel Agency Commissioner Area 2

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 The Party 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 decision.

Right to seek review by arbitration

If after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e §4 and Resolution 824 §14.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the above mentioned time frame has elapsed.

This Decision is effective as of today and in accordance with Res 820e, § 2.10, any party may ask for an interpretation or correction of any error which the party may find relevant to this decision. The time frame for these types of requests will be maximum 15 calendar days after receipt of this decision. Meaning as soon as possible and **not later than 20 May, 2017**.

Please also be advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Please note that if after having asked for and obtained clarification or correction any Party still considers aggrieved by this decision, as per Resolution 820e, Section 4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824, Section 14.

I would be grateful if both Parties could acknowledge receipt of this decision.