

TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC 3
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION – July 14, 2017

In the matter of:

Vasundhara Travel Division

IATA Code 14-3 5140 0

269-270, M P Nagar, Zone – II

Bhopal (M.P.), India

Represented by its General Manager, Mr. Janardan Singhal

The Applicant

vs.

International Air Transport Association (“IATA”)

111 Somerset Road, # 14-05

Triple One Somerset

Singapore 238164

Represented by its Manager, Agency Management, Asia Pacific, Ms.

Soke Fong Wong

The Respondent

I. THE CASE

The Agent sought a Travel Agency Commissioner's (“TAC”) review of the Respondent's Notices of Irregularities (“NoI”) that had been served against it, due to:

(1) The first NoI was served on February 10, 2017, since the Respondent, despite the fact of having knowledge of a Bank error that had occurred in the Applicant's financial institution, causing the belated payment of the BSP Billing, did not accept it as proof, since the written evidence from the Bank was issued and received by the Applicant and the Respondent after the <<10 working days>>, indicated in Resolution 818g, “A”, s. 1.7.4.3;

(2) The second NoI, served on June 1, 2017, was due to an **excess** remittance that was mistakenly manually deducted from the following BSP Billing Report by the Applicant. The Applicant did not see the instructions as to how to proceed

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with this excessive payment within the given time, due to a sudden hospitalization of the Applicant's staff in charge of these accounting procedures.

II. BACKGROUND

As stated in the admission notice to the Parties, this Commissioner allowed the review of the first NoI, under exceptional circumstances, even though it was served to the Applicant 4 months ago, meaning beyond the 30-days period that allows Resolution 820e, s.1.2.2.1, to challenge a decision. The reasons invoked by this Commissioner then are hereby confirmed.

In short, her decision to allow the review of the referred NoI is based on the discretionary powers conferred to this Office by Rule # 2.A of the Rules of Practice and Procedures ("RoP&P"), which allows the Commissioner to evaluate the specific circumstances of each case that would have impeded an Agent to timely seek a review of an NoI, and, thus, allow such a review pass the 30 days period.

In this Commissioner's judgement, the evidence on file showed the Applicant's inability, at the time of the first NoI, to access the TAC Office and, therefore, based on this Office's prerogative (Rule # 2.A RoP&P) the review was allowed and its final decision will be contained in the following paragraphs, jointly with the decision pertaining the second NoI.

III. SUMMARY OF THE APPLICANT'S ARGUMENTS

- In regards to the first NoI, in the Applicant's words: <<... *the weekly remittance ... was sent by RTGS on 09.02.2017, through State Bank of India, which failed for technical reasons. The Bank accepted the fact, but*>> IATA BSP-INDIA, on the ground that it was received after 10 days, <<*did not accept the bank letter. Bank statement showing ample balance is attached*>>;
- In regards the second NoI, <<... *for sudden hospitalization of our Accounts Executive, an **excess** amount ... was remitted mistakenly on 24 May 2017, which was adjusted in our next week's remittance on 31 May 2017. The option of IATA BSP- INDIA to confirm, on 25 May 2017 itself, if the amount was to be adjusted in the following week, could not be attended to, because of the precarious condition of the lady-staff, and that only was the fault*>>. The NoI was inflicted on the sole ground that <<... *we adjusted the amount in our following week's remittance, without confirmation, as desired, as on 25 May*>>.

IV. SUMMARY OF THE RESPONDENT'S ARGUMENTS

In the Respondent's words:

- <<In regard to the first NoI, we had been informed by the agent on 9th February ... that they had overlooked to remit the amount of INR 270,574/- and payment will only be credited into IATA's account the next day morning (see attachments). As such, it was a bona-fide late payment so agent was served with notice of irregularity, as the remittance date was 9th February 2017 for remittance period 20170104W. Further, it is outside of IATA's authority to accept such bank letter after the allowable period as stipulated in the governing Resolution 818g, Attachment A, Section 1.7.4.3>>;
- <<The second NoI was served as Agent was informed by IATA that the excess funds will be refunded by way of SPCR via BSPLink system which will be included in remittance period 20170504W and guided them that they are not to manually adjust the credit in next remittance i.e. 20170503W (see attachment). Unfortunately, agent adjusted the 20170503W billing and thus second NoI was served. IATA has no authority for withdrawal of NoI because of human error for which the Commissioner shall act and to reviewing the matter>>.

V. ORAL HEARING

Both Parties were informed about this Commissioner's decision not to hold an oral hearing, considering that both of them have made extensive submissions, accompanied by substantial evidence, as to provide a clear picture of the case. This decision will be based on such written documentation, in total respect of both Parties' right to a Due Process (Resolution 820e §2.3).

VI. CONSIDERATIONS

1. As per the first NoI

The evidence regarding this first NoI shows that several things seem to have happened by Remittance Date.

- The first situation that occurred, as demonstrated by the evidence submitted by the Respondent¹, was the admitted fact that the Applicant seemed to have forgotten to make the remittance earlier that day (Feb. 9, 2017), in order for the funds to be received in IATA's account by Due Date;
- Another evidence submitted by the Respondent², describing the Applicant's transfer made on February 9, 2017 at <<07:10 PM IST>>, indicates the following, I quote: <<Transaction authorized after 20:00 HRS IST may be reflected in the account statement on the next day...>>.

¹ Reference is made to the email sent by one of the Applicant's staff to the Respondent, dated February 9, 2017

² Reference is made to the Bank transfer/voucher, called "RTGS"

In other words, the transfer made by the Applicant at **19:10 hours** on Feb. 9, 2017, seems not to have been processed by the Bank that date, but rather the next day, even though it was made **50 min before** what could be called “the cut off time” for processing transactions.

- In fact, in an attempt to avoid any non-compliance situation due to non-payment on time, the Applicant made another transfer, also part of the evidence on file, on Feb. 10, 2017 for the same amount and was not processed by the Bank.
- The fourth situation that occurred, does not pertain to the Applicant, it refers to its Bank³, the *State Bank of India*. In fact, the letter issued by the Bank, referred to *supra*, indicates, I quote:

FAILED TRANSACTION, RS 2,70,597/-, DATED 09.02.2017 & 10.02.2017

With reference to the above subject and your query, we have to advise that the transaction in Current Account no. 10121599217 which were performed by you on dated 09.02.2017 and 10.02.2017 for Rs 2,70,597/- through our INB has been failed due to the technical error.

From this Commissioner’s perspective, the delay experienced by the Respondent in receiving the remittance funds was, ultimately, caused by the Bank’s internal failures, I quote <<*due to technical error*>>, since the Applicant made the payment before the Bank’s cutting off time. Once the Applicant realised its initial foresight of an earlier time to do the remittance, it took immediate actions to remedy the situation, which could have been fully in compliance with the BSP calendar for India, had that Bank failure not occurred. Therefore, such delay is considered to have been caused by <<***extraneous factors***>>, as stated in s. 1.7(a) of Resolution 818g "A".

This Commissioner would like to emphasize that when it comes to situations that happen at the Applicants’ banks, and the Applicants do get relevant proof from their financial institutions stating what had happened, the sole provision to be applied is **NOT** the one prescribed in the section called “*Bona Fide Bank Error*”, enshrined in Resolution 818g, Attachment “A”, s. 1.7.4; but that are **other provisions** that could also cover a situation where, as in this case, the Bank itself is assuming responsibility for what happened, triggering the delay in the Applicants’ pursuit of their obligations.

It is worth mentioning that, as proven by the evidence on file, in this case the Applicant contacted its bank on February 13 (meaning, immediately after realising the transfers’ failures and inconveniences), even asking the bank to treat the issue with priority; and, yet the Bank responded, by issuing the letter referred *supra*, on March 20, 2017: more than a month later! One wonders, is the Applicant to be penalised for a belated communication which issuance was completely, not only beyond its control, but

³ Reference is made to the Bank letter submitted by the Applicant, issued by the Bank on March 20, 2017

certainly not within any of his bargaining power? Is this the purpose, rationale and spirit of the applicable PACONF Resolutions? I do not think so.

2.- As of the second NoI

As described above, the situation regarding it was not only a human error scenario, as recognised by the Respondent, caused by an unpredictable situation that affected the proper execution of the Respondent's instructions to the Applicant.

In fact, the records show an extremely short notice given to the Applicant to comply. I am referring to the fact that the Respondent gave the Applicant barely hours –**one same day**- to respond to its question about the way the excess payment that the Applicant had mistakenly done was going to be dealt with. This Commissioner finds such a term unreasonable and not in accordance with the *General Principles for Review*, stated in the Preamble of Resolution 818g, according to which, I quote: <<*the Agent shall at all times be able to ... provide information to demonstrate its compliance and continued compliance*>> with the terms of the Resolutions, or, as in this case, with the terms instructed by the Respondent itself.

It is clear that since it was a matter of paying in **excess** by the Applicant when settling its BSP Billing Report, and how to handle that situation, there were certainly NO BSP Participating Airlines' funds at risk. Consequently, a **reasonable time to comply** should have been granted to the Applicant to reply to the Respondent's request.

VI. DECISION

Based on the analysis of the evidence on file, in light of the applicable Resolutions, the following are this Commissioner's conclusions:

- The Notices of Irregularities that were served by the Respondent to the Applicant referred to *supra*, are hereby voided and, as such, they must be removed from the Applicant's records.
- This decision is effective as of today.

Decided in Vancouver, the 14th day of July 2017.



Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Right to ask for interpretation or correction

In accordance with Resolution 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 this document (meaning no later than **July 29th, 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.

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.