

**Decision 9/2018**  
**Travel Agency Commissioner - Area 2**

With clarification

Andreas Körösi  
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**Applicant: *AI Captain Tours and Travel***  
IATA Code # 42-2 1279  
Kuwait

**Respondent: International Air Transport Association (IATA)**  
Torre Europa  
Paseo de la Castellana, número 95  
28046 Madrid, Spain

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**NOTE:**

This summarized decision is being posted as the Parties have received it. Occasional requests for clarification are not posted. However, should any Stakeholder requests it, a copy of such clarification will be sent to her/him.

**Background**

On behalf of ***AI Captain Tours and Travel*** ("***AI Captain***"), Mr. Homoud Alhadiya, Attorney at Law at Illtizam Legal Group approached this Office on 16 October 2017 to challenge an IATA's decision to include an ADM, representing 515 tickets issued by Turkish Airways ("TK") into the BSP system. The ADM was for 91,587.830 KD, equalling approximately € 257,000.

In a formal decision (51/2017) this Office found that since the ADM was duly disputed and considering that TK's sole explanation for the ADM was: "*Pending Airlines' Investigation*", the requirements as mandated by Resolution 850m were not met and the ADMs had to be settled bilaterally outside the BSP system.

In regards to the provisions in Resolution 818g Attachment "A" § 1.10.5.2, where an Agent is mandated to "deposit" the disputed amount with IATA for a maximum of 30 days, this Office considered the disputed ADM being "unreasonably high" (meaning an obvious risk for non payment default) and in that decision allowed AI Captain, **provided all other debts were duly settled on Remittance Day**, not to "deposit" the disputed ADM during the time it would take to **resolve the matter bilaterally**.

## **Considerations and Decision:**

It was made clear to the Parties that the TAC's Decision itself did **not discuss the validity of the disputed amounts** and that neither IATA nor this Office, at that point, was a party to the dispute.

It was also made clear to the Parties that an agreement, with or without mediation from this Office, had to be discussed promptly.

Through a series of email exchanges between the Parties it became obvious that TK wanted to engage in a discussion to resolve the dispute, but Al Captain was of the opinion that "they had already discussed enough" and that the disputed amounts should be settled in local Kuwaiti courts.

Al Captain made it clear that the services of this Office were not required to resolve or mediate between the Parties.

This Commissioner has received necessary documentation about the disputed ADMs from TK to conduct a review, and Al Captain has been allowed time to comment, but it has reiterated its will not to engage in a discussion and rather to "settle the difference in a Kuwaiti court".

The objective of this Office is to allow "affordable and cost effective" dispute resolutions to all Parties (Agents, Airlines and IATA alike) and this Commissioner found Al Captain's approach not to engage in bilateral discussions, **AFTER it had sought and been granted interim relief**, as being close to "an abuse of the Travel Agency Commissioner's institution" and is seen as a challenge to the integrity of this Office.

In the absence of Al Captain's views or comments on the allegations put forward by TK, which resulted in the disputed ADM, this Office has no other choice than to accept TK's allegations as valid. Additionally,

- Considering that up to date Al Captain, even after excluding the disputed amount, has not paid its debts to the BSP;
- Considering that Al Captain has been served a Notice of Non Payment Default and Notice of Termination of its Passenger Sales Agency Agreement with a deadline set to 28 February, 2018;
- Considering that the disputed ADM would not be part of the debt covered by financial security held by IATA

**It is hereby decided that the disputed ADM, in full, shall form part of Al Captain's debt to the BSP Participating Airlines.**

**This Decision is effective as of today.**

Decided in Stockholm, on February 26, 2018

Andreas Körösi  
Travel Agency Commissioner  
IATA-Area 2

In accordance with Resolution 820e § 2.10 any Party may ask for an interpretation or correction of any error in computation, any clerical or typographical error, or any error or omission of a similar nature 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 14 March 2018**.

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 §4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 §14.

Please let me know if any of the Parties requires a signed hard copy of this decision and I will send one once the time for "interpretation or correction" has elapsed.

CLARIFICATION  
RENDERED MARCH 9<sup>TH</sup>, 2018  
TO THE APPLICANT'S REQUEST

Dear Mr Al-Jouhar,

As earlier stated, I will regard this email as a formal request for clarification of the Decision 9/2018.

I will respond to your statements and questions as they appear.

1) *"You issued the TAC decision 51/2017 which was not adhered to by IATA regarding the same ADM."*

As previously stated and also several times explained by this Office, the disputed ADMs, after this Office's intervention and decision, DID NOT form part of the remittance. IATA did acknowledge this. There was never a situation where IATA claimed the disputed ADMs have to be remitted after my Decision.

As also several times previously stated by me, just because **AI Captain Tours** did not receive an ACM from **TK**, does not give **AI Captain** the right not to remit all other debts in full on Remittance Date.

Please also note, IATA is never part of a commercial dispute between Agent and Airline, and cannot, on its own, "withdraw or include" ADMs in the Billing Report.

2) *"TK were given ample time to reply to the dispute but instead chose to ignore the matter well past the original deadline stated in decision 51/2017"*

This statement has been refuted by **TK**, and even if it was true, it did not affect my decision, which is based on **AI-Captain Tours** and your reluctance to engage in discussions about the disputed ADMs.

3) *"AI-Captain has posted the necessary guarantee required of it under rules and regulations."*

The issue has never been about "required financial security". The sole issue, which I have at least at three occasions reiterated, was that **AI-Captain** failed to remit its debts, **excluding the disputed ADM**. Financial Security is in place to cover "future sales" and not historic sales.

This non- payment on Remittance Date is, as I understand, the reason for the non-payment default.

**4) "IATA was completely unjust in how it handled the matter from the start, with a clear bias towards the interests of TK."**

IATA is a Member Organisation. Its main objective is to protect Member Airlines' interests so it should not come as a surprised that IATA is biased. This does not mean that IATA can ignore Resolutions' requirements.

This is the reason why Agents are allowed to seek justification and ask for review by this Office should IATA's decision be detrimental to their business.

**AI-Captain Tours** has exercised this right by asking this Office for a review. I made the review and decided that the disputed ADM "*because the size of it was considerably high and theoretically could threaten the existence of the Agent*" **despite** Resolution 818g Attachment "A" § 1.10.5.2: "*All validly disputed amounts will continue to form part of the Billing and the Agent must remit the disputed amount to the BSP on the Remittance Date notwithstanding the existence of the dispute*", should temporarily be removed from the Billing Report.

This was decided to enable the Parties (**TK** and **AI-Captain**) to resolve the matter bilaterally.

**5) "TK did not present clear evidence of any violation"**

This is the issue **AI-Captain** and **TK** have to resolve bilaterally - with or without the assistance from this Office - OR as **AI-Captain** chose - through "Local Kuwaiti Court".

And this "choice", since I considered your action bordering to "abusive of the TAC institution" made me to retract the interlocutory relief (from Resolution 818g Attachment "A" § 1.10.5.2).

I hope having covered all your questions and that the above clarifies them.

**Please note -ALL PARTIES-** the decision to retract the Interlocutory Relief **does in NO way confirm correctness** of any of the ADM's issued by **TK**, It is simply about due process.

Kind Regards,

Andreas Körösi  
Travel Agency Commissioner  
(for Europe, Middle East & Africa)