

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

DECISION – March 29th, 2018

In the matter of:

Travel with Us

IATA Code 98-9 0012 6
Cayman Centre, 25 Dorcy Drive, Building C-4A
Grand Cayman KY1 1502
Cayman Islands
Represented by its Managing Director, Mrs. Desiree Piercy-Tulloch

The Applicant

vs.

International Air Transport Association (“IATA”)

Global Distribution Centre
Torre Europa
Paseo de la Castellana, 95
28046 Madrid, Spain
Represented by the Accreditation Manager, Ms. Carmen Teresa Sánchez

The Respondent

I. THE CASE

The Applicant is challenging the notice of irregularity ("NoI") that was served by the Respondent against it due to a late payment caused by a human mistake committed by the Applicant, which she amended within hours of having been alerted about it.

According to the Applicant's submissions and supporting evidence, not only her bank account was fully funded as to cover the total amount of the BSP Billing Report by Remittance Date, but it clearly shows that the Applicant inadvertently printed a Report that was not due for payment yet, instead of printing and paying the one that was actually owed. The Applicant claims that she had never seen this phenomenon before of being able to access and print a Billing Report that was not yet due from IATA's BSPlink, which, she argues, originated the mistaken settlement.

In less than two hours after receiving the communication from the Respondent, the Applicant paid the proper amount stated in the correct Billing Report.

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II. BACKGROUND

The Respondent offered the Applicant the alternative to request the application of the *Minor Error Rule*. Even though, at first, the Applicant could not gather all the required documents before the due date and was not able to file the request in the given time, the Respondent ended accepting her late submission and granted the application of the referred rule. Therefore, the obligation to submit a bank guarantee (“BG”) as a consequence of the late payment was waived, yet the NoI stayed on the Applicant’s records.

Despite having benefited from the application of the *Minor Error Rule*, in light of the circumstances of her case, the Applicant insisted in this Office reviewing the NoI, aiming at its cancellation, since she considers it to be a disproportionate punishment for the human error committed by her.

From the Respondent’s perspective:

<<... These first 2 IRR points are just the consequence of the error that caused the short payment, since such error was indeed responsibility of the agent – there was no agent’s bank error, for instance – but entirely agent’s mistake, the Irregularity applies and from IATA’s point of view must stay as per Resolution.

It is also worth to mention that ... the agent settled the missing amounts quickly therefore the Default non-payment was avoided. IATA has not taken such type of actions against the agent; it continues operating normally.

Regarding the mistake the agent incurred, this is to inform you that the billings are available for the agents under there user administrator access for a period of time (2 months) and once a new billing is produced this is not erasing the previous. BSPlink has this functionality as an advantage for the users so that they can access billings reiteratively for their own usage if desired during these 2 months.

That being said, IATA also understands the situation and, since the agent provided yesterday 15th March the documents for the Minor Error Rule and we will be assessing and considering so that the agent if compliant will be granted the MER to be exempt from Financial Security requirement>>.

III. ORAL HEARING

In the opinion of this Commissioner, as per Resolution 820e, s. 2.3, an oral hearing was not deemed necessary. Ample opportunity was given to the Parties to present their submissions and evidence accordingly. They both made good use of this opportunity. Therefore, this decision is based on that written documentation only.

IV. CONSIDERATIONS

In light of the evidence on file, it is clear that the reason behind the delay was an unintended mistake from the Applicant, who had enough funds to cover not only the future Billing Report, but the one that was actually due.

The fact of having access to a “future” Billing Report, not known by the Applicant, was at the origin of her mistaken settlement of a wrongful amount, which was amended in less than two hours of having been made aware.

This Office considers the circumstances surrounding this late payment as the ones referred to in s. 1.7(a) of Resolution 818g “A”, as <<*extraneous factors*>>, not being the result of a negligent nor malicious action from the Applicant side.

Under a Balance of Probabilities’ analysis it is certainly unlikely that an Accredited Agent, having enough and available funds to cover the Billing Report in full by Remittance Date, would have purposely and intentionally not honour it, but rather pay another one not even being due, placing its own business in jeopardy and exposing itself to sanctions.

V. DECISION

Based on the referred arguments, evidence and applicable rules, it is hereby decided as follows:

- The NoI served against the Applicant must be expunged from her records;
- Consequently, the request to submit a BG must also be declared null and void, not because of the *Minor Error Rule’s* application (previously granted by the Respondent), but because the event that gave rise to it (*id est*, the late payment of the corresponding Billing Report) has been considered excusable, resulting in the cancellation of the Irregularity altogether.

This decision has immediate effect.

Decided in Vancouver, the 29st day of March 2018.



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 time frame for these types of requests will be 15 days after receipt of the electronic version of this document (meaning no later than **April 13, 2018**).

Both Parties are also hereby 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.

If after having asked for and obtained clarification or correction of this decision, any Party still considers aggrieved by it, as per Resolution 820e § 4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 § 14, once the above-mentioned time frame would have elapsed.