

Decision 29/2018
Travel Agency Commissioner - Area 2

Andreas Körösi
P.O. Box 5245
S-102 45 Stockholm, Sweden

Applicant:
GHASR-E-SHIRIN Travel Agency
IATA Code # 33-2 1471 6
Iran

Respondent:
Iran Air

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

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

The dispute is about unpaid seats on *Iran Air*, contracted on "scheduled flights" under a bilateral *Charter Agreement*.

I have no knowledge about the specifics in that contract, such as if "all seats for sale" were fully committed to a fixed pre-agreed price or if the agreement was about commitment for part of the allocated seats on each flight. Detailed knowledge like that would maybe lead me to consider that the "debt is established and conclusive".

Best of my understanding, in that agreement the Parties have a provision (4-19) about "dispute resolution".

As the situation stands, according to the Passenger Sales Agency Agreement ("PSAA") Resolutions, I consider this being a bilateral contractual agreement NOT governed by the Passenger Agency Conference ("PACONF")'s Resolutions.

The issue in this review is about IATA having defaulted, suspended and terminated *GHASR-E-SHIRIN Travel Agency* "due to alleged non-payment on Remittance Date".

Considerations and Decision

Iran Air has provided evidence that the "pre dated" cheques, covering all or part of the sales on *Iran Air*, have been dishonoured by the bank when they were sent for encashment.

Even though I have no conclusive evidence about what portion of those cheques represent "IATA's sales", it is beyond doubt that at least 90+% of them are about the *Charter Agreement*.

Having said the above, I find no excuse for *GHASR-E-SHIRIN* not to pay the amount **which is not disputed**, and keep the rest in a "trust account" until the dispute is resolved.

GHASR-E-SHIRIN Travel Agency has a "considerable" amount of ticket sales on a number of IATA Member Airlines and IATA has provided testimony that no other "irregularities" have been recorded to *GHASR-E-SHIRIN Travel Agency*.

Considering that there is no BSP settlement in place in Iran, and based on the statements and evidence provided, it is hereby decided as follows:

- The termination of the PSAA of *GHASR-E-SHIRIN* has to be lifted
- *GHASR-E-SHIRIN* has to be reinstated into the BSP link, **provided**:
 - *GHASR-E-SHIRIN* pays the "undisputed" amount to *Iran Air* (this includes sold undisputed charter seats)
- *Iran Air* has the right to withdraw its ticketing authority from *GHASR-E-SHIRIN*
- *GHASR-E-SHIRIN* is free to enter "bilateral agreements" with all other IATA Member Airlines

Nota bene: should the Parties have utilized the contractual dispute resolution mechanism in Iran, mentioned in their *Charter Agreement*, without having found an amicable solution, and to avoid a costly court case, this Office can consider an Oral Hearing in Teheran.

This Decision is effective as of today.

Decided in Stockholm, on June 19th, 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 July 5th, 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.

Travel Agency Commissioner – Area 2

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Stockholm, 29 June 2018

Iranian Air issued and by GHASR-E-SHIRIN Travel Agency disputed ADMs

TAC Decision 29/ 2018

Dear Ms. Madadi and all,

Before commenting your comments I would like to state that I expect a somewhat more courteous tone than your “prologue” in the email dated 26 June, 2018.

It does not reflect well on you nor Iran Air, and is definitely not the “tone” I am accustomed to when doing business in Iran and their neighbouring countries.

I am aware of that Iran is operating under Resolution (“R”) 800 so please accept my apologies for quoting R 818g. Best of my experience, Resolutions governing Non - BSP countries are adopted under the same spirit as those adopted in Resolutions which do cover BSP participating countries. And, as in this case, are often “mirrored” by using the identical wording and identical numbering of paragraphs.

As response to your statements,

In regards of “having copied the Agent”. Transparency is of essence for a proper and expeditious review, and that is why I do insist that both parties also copy each other. As you maybe have noticed, I have stated that numerous times to the Agent as well.

Facts on the ground remain - As mandated in R 832 (being identical to R 818g “Att” 1.7.9.) the Agent did dispute the ADMs.

As main evidence to uphold the termination, Iran Air claims that the “dishonoured” **8** checks represent *bona fide* sales of Iran Air “published fare” tickets.

My decision to halt the termination is based on both parties statements and also on Iran Air NOT HAVING refuted, not even commented when asked by me to do so, the Agents claim that:

- **a)** only approximately 5 % of the ADM is “sales not covered by the charter agreement”,
- **b)** IR has received a total of **32** signed and predated checks, which does support their statement under a) that “95%” of sales is as per “charter agreement”.
- **c)** The ADMs represent almost **10.000 tickets**, so I asked IR to clarify...
- **d)** why has IR NOT taken action earlier by withdrawing TA for this Agent? and
- **e)** the “charter agreement” has (or is) already subject to review by way which is stated in

the charter agreement for dispute resolution.

Ergo, according to me, the ADMs have to be resolved bilaterally, with or without assistance of the TAC Office.

Dear Ms. Madadi, nothing in your recent emails to this Office is supporting why I should change my mind and not halt the termination.

I still do consider the “precondition” requirement of “pay what is undisputed” being in favour of IR and I still believe that under the circumstances, it should be up to each IATA Member Airline to decide whom they want to, or do not want to, do business with. Especially since I (maybe at risk of being prejudiced) believe that IR has formally or informally “communicated” IR’s view to all Airlines operating from Iran.

I am open to further “clarify” should IR have considerations I have missed, and as alternative, if IR sees no other way to impose its will to terminate the Agent I want to draw your attention to IR’s right to a “de novo” review by arbitration as described in R 830 § 13.

Respectfully yours

Andrew W. W. W.

