

TRAVEL AGENCY COMMISSIONER - AREA 1
VERÓNICA PACHECO-SANFUENTES
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Vancouver, British Columbia V6K 1R5
CANADA

DECISION – August 6th, 2018

In the matter of:

Corporate Travel & Tours Ltd.

IATA Code 93-5 0127 3

Trinidad & Tobago

Represented by its Managing Director, Ms. Judy Chan

The Applicant

vs.

International Air Transport Association (“IATA”)

Global Distribution Centre

Madrid, Spain

Represented by the Assistant Accreditation Manager, Mr. Ronald Guzmán

The Respondent

I. The Case

After a long and unfruitful exchange of correspondence that lasted a couple of months between the Applicant and the Respondent, where the Applicant was trying to get its point across, the Applicant finally sought a review of the Respondent’s request to pay back the refunds that it had deducted from its BSP Sales Report, as a result of them been approved by a suspended BSP Participating Airline (*id est*, *Air Insel*) (the “Airline”).

The Applicant’s main arguments are that:

- (i) such refunds had been duly approved by the Airline prior its suspension from the BSP; and,
- (ii) that the Applicant did not receive any communication from IATA, prior Remittance Date, alerting it about the suspension and instructing it how to proceed.

The Applicant claimed that the Respondent’s communication was only received (meaning, posted on *BSPlink*, and, hence available to its view) after Remittance Date and, therefore, already too late for the Applicant to have acted upon it.

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II. BACKGROUND

Based on the evidence provided by both Parties, the following are the relevant facts and dates of the case:

- Remittance period in question: 8 to 15 March 2017
- Request for refunds: 9 March 2017
- Refunds appeared as “approved” in the Applicant’s BSP Sales Report corresponding the *supra* mentioned remittance period
- **Remittance Date: 27 March 2018**
- **IATA’s communication to the market: 21 March 2018***
- IATA’s notice of *Air Insel*’s suspension and demand of payment: 28 March 2017
- Applicant’s payment of the referred refunds: 29 March 2017

* The Applicant claims not having received this communication. It states that the communication was not visible on its BSPlink screen on that date. The Applicant states that the sole communication pertaining the Airline’s suspension was visible on its BSPlink screen on March 28, 2018, meaning one day after Remittance Date had passed.

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. Both of them made good use of this opportunity.

Additionally, this Commissioner invited the Parties to hold a conference call (Resolution 820e, s. 2.6), that took place on July 31, 2018, aiming at getting clarify on a couple of matters that needed some further explanation.

The Respondent gave some undertakings during the conference, which were promptly delivered by its representative, bringing further clarity to the case and to the Applicant.

This decision is based on the written documentation submitted by the Parties, as well as on the findings that arose during and after the referred conference call.

IV. CONSIDERATIONS

BSP Participating Airlines' suspensions and the way the applicable provisions have been drafted are not always clear enough for Agents to understand and to comply with; worldwide situations confirm this fact. The Applicant's case is not an isolated one.

Having said that, this Office does notice the Respondent's multiple efforts in getting across the instructions to the Applicant in a clearer manner, once the incident had taken place.

As the evidence shows, the Respondent did comply with the procedure stated in the applicable rules (namely, Resolution 850 "F", s. 1©).

The evidence also shows that the Applicant had no ill intention to disregard the applicable provisions, it simply, due to an inexplicable reason, did not receive the notice sent by the Respondent on **March 21, 2018** (before Remittance Date) which impeded it to act accordingly. As soon as the Applicant received the second notice, meaning the one requesting for the missing settlement of the BSP Sales Report (not taking in consideration the refunds), the Applicant immediately paid the outstanding amount, despite not understanding why it had to do it.

The Respondent did prove having sent such notice, yet the communication did not reach the Applicant's screen.

On a balance of probability and considering the difficulty that for the Applicant represented proving this negative fact, I have no reasons not to believe that the Applicant indeed, most likely than not, did not receive such communication on its system and, hence, was unable to comply with IATA's instructions before Remittance Date.

As of the Applicant's request to have the Respondent return those refunded amounts to the Applicant, since they were duly approved by the Airline, I am unable to grant such request, since it would reveal a lack of awareness of how the BSP system works, jeopardising its integrity.

Lastly, based on the evidence provided, it appears that the Applicant might have a valid claim against *Air Insel* itself that would have to be dealt with locally and directly with the Airline's estate.

V. DECISION

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

- The Respondent did comply with the applicable rules as of the procedure to follow in case of a BSP Participating Airline's suspension;
- The Applicant, even though, it did not settle the full amount of its BSP Sales Report before Remittance Date, since it was unaware of the Airline's suspension and the instructions given by the Respondent in that regard, is not to be punished, since this non-compliance is excusable;

- Consequently, **no irregularity record shall be kept on the Applicant's file** as a result of this unfortunate incident.

This decision has immediate effect.

Decided in Vancouver, the 6st day of August 2018.

A handwritten signature in blue ink, reading "Racheco Sanfuentes". The signature is written in a cursive style with a horizontal line under the last name.

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 **August 21, 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.