

TRAVEL AGENCY COMMISSIONER - AREA 1

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION – November 12, 2018

Between:

Agencia de Viajes El Teide, S.A.

IATA Code # 95-5 2010 6

Caracas, Venezuela

Represented by its owner, Mr. Tim Nikolov

The Agent

vs.

International Air Transport Association

Global Distribution Centre

Torre Europa

Paseo de la Castellana, 95

28046 Madrid, España

Represented by the Accreditation Manager, Mr. Francesco Chiavon

IATA

I hereby acknowledge receipt of both of your submissions and evidence. I thank both of you for the fruitful exchange of views that you had, it has given me a rather complete picture of the situation, allowing me to render a decision without the need to hold an oral hearing (Resolution 820e, s. 2.3 *in fine*).

Based on the facts of the case and the applicable Resolutions, I hereby conclude as follows:

1. ADM Procedural Aspect

Before entering into any analysis regarding the validity or not of an ADM, and whether or not IATA or this Office have jurisdiction over that matter, it is important to determine the procedure to be applied in ADM cases, as it has been stated by this Office in several cases.

As per the Parties' submissions, there is no doubt about:

- the fact that the Agent had timely disputed the ADM, which was made in accordance with ss. 1.7.9.3 and 1.7.9.4 of Resolution 818g Attachment "A";
- the Airline did not accept the Agent's dispute of the ADM, and posted its reasoned rejection on the *BSPlink*, and,
- the fact that the Agent insisted on his reasons to dispute that ADM.

The Agent did not know that the *BSPlink* has a mechanism to process post-billing disputes. However, the Agent did make IATA aware of his insistence on disputing the ADM. The Agent communicated its insistence in disputing the ADM through IATA Portal, making IATA's Customer Services representative aware of this disagreement and leaving proof of it.

Therefore, based on those facts, the only logical conclusion to make was that there was NO AGREEMENT between the Parties involved regarding the validity or not of that ADM. As a consequence of such disagreement, IATA was mandated to wait for 60 days, as per s. 1.7.9.6 for the disputed ADM to be resolved, and if as in this case, the dispute was NOT resolved, since clearly, NO AGREEMENT was reached, **the ONLY course of action that IATA was allowed to take was to** apply s. 1.7.9.6 of Resolution 818g Attachment "A" and **withdraw the disputed ADM from the BSP**, as specifically ordered by the said provision.

Again, based on the uncontroverted facts of this case, where IATA and the Agent have stated that the Airline has rejected the dispute made by the Agent, and IATA knew about the Agent's insistence in his initial dispute, IATA had NO grounds to include that ADM into the BSP Billing in open contravention to s. 1.7.9.6 of Resolution 818g Attachment "A". There were no reasonable grounds for IATA to have "interpreted" that such ADM had been resolved, and, hence, to include it in the BSP Billing as stated in s. 1.7.9.4(i) of Resolution 818g "A".

Pursuant s. 1.7.9.7 of Resolution 818g "A", that **ADM had to be left outside the BSP for bilateral resolution between the Airline and the Agent.**

The Post-Billing Dispute, referred to by IATA, as stated in s. 1.11 of Resolution 818g "A", applies ONLY when NO Pre-Billing dispute has taken place, since when a Pre-Billing dispute has occurred and an ADM has been timely disputed by an Agent, as per s. 1.7.9 of Resolution 818g "A", and timely rebutted by an Airline, and, hence, no agreement has been reached between the Parties involved in that dispute procedure (meaning: the Agent and the Airline) **the only action that IATA is allowed to undertake is to withdraw the ADM from the BSP**, I quote:

<<if after 60 days of receipt of a disputed ADM by an Airline the dispute has not been resolved, despite consultation between the Airline and the Agent, such ADM will no longer be suspended and will be withdrawn from the BSP process>>

The applicable rules referred to above ONLY contemplate one scenario in which an ADM is to be included in the BSP Billing (as described in s. 1.7.9.5 of Resolution 818g "A"), which occurs when there has been an agreement between the Airline and the Agent (s. 1.7.9.4(i) of Resolution 818g "A") or when an amendment to an ADM has been done and such amendment is agreed between the Parties (s. 1.7.9.4(ii) of Resolution 818g "A"). In this case, IATA had no proof about any agreement reached between the Parties. The opposite, it had a disputed ADM, which had been expressly rejected by an Airline and an Agent insisting on his initial dispute: these were the facts that IATA had in its hands.

2. The validity of an ADM

In regards to the validity or not of an ADM, whether it was properly issued or not by the Airline is a matter of commercial nature which neither IATA nor this Office have jurisdiction to evaluate, let alone to decide. The reasons behind an ADM, if questioned by an Agent, form part of a commercial dispute to be resolved outside the BSP and outside IATA.

Consequently, I will not comment on any of the submissions made by the Agent nor by Mr. Chiavon regarding the accuracy or not of the ADM in question.

Nonetheless, pursuant s. 4.9 of Resolution 850m, if the Airline and the Agent agree the ADM can be referred to this Office to be resolved.

DECISION

- The disputed ADM in question has to be withdrawn from the BSP Billing and left outside the BSP for bilateral resolution between the Airline and the Agent, as mandated by s. 1.7.9.7 of Resolution 818g "A".

This decision has immediate effect.

Decided in Vancouver, the 12th day of November 2018.

Oracheco Sanfuentes

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 **November 27th, 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.