

DECISION 2019 – 08 - 21
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Ace Travels (Pvt) Ltd. (“the Agent”)
IATA Numeric Code 27-3 0201
Karachi, Pakistan.

Respondent:

Agency Administrator, International Air Transport Association (“IATA”)
Singapore.

The Case and Decision:

The Agent received an IATA invoice for USD 1,557.00 described as a "Late Notification Fee" (LNF). In its request for a review the Agent assumed that the issue which initiated the fee was the need for the Agency's paid up capital to be increased from PKR 3m to PKR 4m and that had been fixed in 2009.

When seeking IATA's input it was clarified that the paid up capital matter was not the trigger for the fee to be levied but rather was a change in shareholding shown on an Agency Status Form submitted in February 2019. The Agent claimed that it had submitted a Notice of Change at the pertinent time but IATA was not able to locate same but did locate the shareholding change in the Agent's financial statements for 2014. The Agent sought the withdrawal of the LNF invoice.

In light of a precedent established by another decision, which remains unchallenged, this Commissioner has adopted an interpretation on this issue, which differs from that previously espoused.

The principle that has been set is that the fee, if any, is the one applicable at the time that the change took place i.e. sometime in 2014. The Late Notification fee was introduced in Atch D to Resolution 818g from 1 June 2018. In the absence of an express provision that states otherwise, any fee was the one effective in 2014. There clearly was no risk as the Agency has continued to comply with the Rules since the change.

Consequently, it is incumbent on IATA to charge any fee that applied to the situation described herein at the time the oversight occurred. As there was no fee of the kind currently in place in 2014, the invoice must be withdrawn.

It should also be said that the fee in question is labelled an "Administrative Fee". It would be hard to imagine that the late notification of the change that took place incurred administration costs to IATA to the tune of USD 1,557.00. One could be forgiven for considering the fee to be punitive rather than being of a cost recovery nature.

The parties have complied with the terms of Resolution 820e and were placed on notice by the writer that in his judgement an oral hearing was not necessary and that this decision would be based on the written information submitted.

Therefore based on the foregoing it is hereby decided as follows:

1. as there was no Late Notification Fee effective in 2014 the invoice for same must be withdrawn;
2. the Agent must pay any fee(s) related to the nature of the change of shareholding extant at the time.

Decided this 21th day of August 2019 in Auckland.

The following sub paragraph of Resolution 820e is brought to the attention of the Parties:

"2.10 - within 15 days after the receipt of the decision, a party, with notice to the other parties, may request that the Commissioner gives an interpretation of the decision or correct in the decision any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the Commissioner considers that the request is justified, he shall make the interpretation or correction within 15 days of receipt of the request. The interpretation or correction shall form part of the decision."

In this particular case the 15-day time frame expires on 5th September 2019.

If after having pursued this process a Party still considers itself aggrieved by this Decision the Party has the right to seek review by arbitration as detailed in Resolution 824, Section 14.

Finally, I seek your authority for this Decision to be posted on the private pages of the Travel Agency Commissioner website which can only be accessed by the 3 TACs and the 12 members of the Passenger Agency Programme Global Joint Council. In the absence of advice to the contrary by 6th September 2019, I will assume that there is no objection to that action being taken.

Yours faithfully,

Jorgen Foged
Travel Agency Commissioner Area 3