

**DECISION 2019 - 08 - 19**  
**TRAVEL AGENCY COMMISSIONER - AREA 3**

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**Applicant:**

***Best Friends Travel*** ("the Agent")  
IATA Numeric Code 02-3 5835  
Brisbane, Australia

**Respondent:**

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

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**CLARIFICATION REQUESTED BY IATA**  
SEPTEMBER 3<sup>RD</sup>, 2019

On 21 August 2019 IATA sought an interpretation of the subject decision as allowed under sub paragraph 2.9 of Resolution 820e.

IATA's grounds for seeking such an interpretation are as follows:

- "1. The Late Notification fee is not an administrative fee (In fact the change fee is no longer applicable now). The Late Notification fee is a penalty for late notification of changes by the Agency. This is designed with the intent of encouraging the Agents to keep their data updated with IATA.
2. This is enshrined in the Resolution and the decision is in conflict with application of the Resolution. The late notification fee (LNF) is to be applied when a change is not reported to IATA within 30 days from the day it takes place. The detection of un-notified change may happen 1,3 or even 12 years after the effective date of the change therefore the application of the LNF must not be set based on the date when the change took place.
3. Although this specific change may be considered minor administrative change, if the spirit of the "precedence" is applied, it will be applied for other changes that are major in nature - such as ownership, shareholding, legal name etc., which pose serious threat to IATA if not notified early. "

I will deal with each point as follows:

1. As at 1 June 2018 the CHF1500 amount was recorded in the relevant attachments to Resolutions 818g and 812 as an "Administrative Fee". However I would agree with IATA's statement that that amount represents a "penalty" and is of a dimension that certainly would make the receipt of an invoice seeking payment of that amount an unforgettable experience for an Agent.

2. This is the core issue. IATA states that an un-notified change can have the LNF applied no matter how far in the past such a change occurred.

This is the retroactive application of an amendment to a contract where the affected party cannot foresee the consequences of an action. Where is such a retroactive provision supported by contract law in Australia and other jurisdictions?

Sub-paragraph 2.1(b) of the Passenger Sales Agency Agreement requires an Agent to comply with any amendments made from time to time to the "Rules, Resolutions and provisions". Such a condition is workable where the Agent is made aware of an amendment in advance of its effectiveness for situations that occur on or after the amendment becomes effective and hence can act in accordance with the amendment. Where is the express provision that allows retroactive application of an amendment?

3. IATA's problem is recognised but the principle described in 2) above cannot be ignored.

This is the justification for the decision reached in the subject case and as a consequence the decision stands.

As a matter of information, four similar cases have arisen in other areas where a formal decision has been rendered. In one case an interpretation was sought and provided.

All the decisions have been implemented.

A signed copy of this interpretation will be emailed to the parties.

Regards,

Jo Foged