

DECISION 2019 - 08 - 21(A)
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.

CLARIFICATION REQUESTED BY IATA
SEPTEMBER 5TH, 2019

On 26 August 2019 IATA sought what the writer considered to be a request for 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:

"Though termed as Administrative Fee in Reso 818g Attachment 'D', change fee is nil and the intent of the Late Notification Fee was to encourage agents to submit changes early for risk mitigation and data integrity purposes. Also, the decision violates the Resolution 818g attachment 'D'.

Statement in the decision:

Quote

'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 1557.00. One could be forgiven for considering the fee to be punitive rather than being of a cost recovery nature'.

Unquote

It should be a part of the TAC annual report for review by Conference, since this is an interpretation of the Commissioner on the fee structure, which is enshrined in the Resolution.

Since it is a *bona fide* late notification and is supported by the Resolution, we feel that Commissioner decision is in contradiction to s 1.2 of r820e.

Respectfully, we challenge the decision and request the commissioner to reverse the decision."

The thrust of IATA's request appears to be the apparent concern by the writer as to the amount of the Late Notification Fee. That is not the issue.

The issue 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?

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?

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

The Commissioners have included this issue in their Annual Report to the PAPGJC.

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
Travel Agency Commissioner Area 3
(Asia/Pacific)