

DECISION 2019 - 09 - 09
TRAVEL AGENCY COMMISSIONER - AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

STL G Tour Co. Ltd. ("the Agent")
IATA Numeric Code 17-3 2764
Seoul, South Korea

Respondent:

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

The Case and Decision:

The Agent had been charged a Late Notification Fee (LNF) of USD 1,557.00 for not notifying IATA of the change of location within 30 days of its occurrence. In its request for a review the Agent stated that it had sought guidance "about address change process on January 30, 2019 and received its reply with relevant guide. But the one we received was out-dated version (ver. Sep 2018)."

The Agent went on to state that after a number of queries IATA admitted that the Guide was out-dated "due to defect of the system." The Agent then sought advice on the date on which the new fees applied and claims not to have received a response but surmised from the date of the LNF ADM that the update must have occurred in early June 2019.

The Agent considered it unreasonable for IATA to unilaterally charge the penalty when its own system was not updated and there had been "no warning/notice about overdue of our application from IATA even by the time we got confirmed of our address change."

IATA agreed to honour the old fee structure as the Agent had been sent the old fee table instead of the revised one. The payment to be made would now consist of the Change of Location fee of USD 494.00 plus USD 150.00 for late notification, a sum of USD 644.00, which would allow a refund of USD 913.00 to be made to the Agent.

The writer commends IATA's decision but also wishes to highlight an issue related to the LNF that has been deliberated upon in a number of other cases.

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?

In this case there was outdated information supplied to the Agent, which has led to the same outcome as if the Agent had sought redress of an LNF charge for a late notification event that occurred 3 years ago.

The Parties were placed on notice that in the writer's 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. IATA is to refund the Agent the equivalent of USD 913.00.

Decided this 9th day of September 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 24th 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 25th September 2019, I will assume that there is no objection to that action being taken.

Yours faithfully,

Jorgen Foged
Travel Agency Commissioner Area 3