

DECISION 2019 – 09 - 20
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Kuhetur Overseas (Pvt) Ltd. (the “Agent”)
IATA Numeric Code 423 0269
Sylhet, Bangladesh.

Respondent:

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

The Case and Decision:

The Agent received an IATA invoice for USD 1557.00 described as a "Late Notification Fee" (LNF). In its request for a review the Agent stated that in 2012 fifty shares were allotted to the son of one of the Agency's Directors. No other changes in Directors or Managing Director occurred.

The Agent went on to state:-

" The company file had been missing in the office of Joint Stock Companies of Bangladesh at the time of file shifting from Chittagong Office to Dhaka Office. Thus they were unable to provide us the certified copies of this changes.

Due to this reason, we did not notify this change to the Agency Management. Moreover we were not aware of their late notification charge effective from 01/06/2018. The agency management asked to submit agency status form and we usually submitted the same. After submission of agency status form, the agency management also requested to fill up notice of change through online and submit related documents.

Though this is a minor change and this change did not effect in the area of legal status of the Company, we submitted all documents as per agency management requirements except Schedule X.

We are a small type of travel agency and our volume of monthly sale is around 800,000 BDT. Our monthly commission income is not sufficient to pay like a huge amount of late notification fee around 140,000 BDT. If a travel agency like ours has

to pay this large amount of late notification fee without any justification then we have no alternative to surrender our IATA accreditation as soon as possible. "

In considering this matter the writer has concluded that the fee, if any, is the one applicable at the time that the change took place i.e. sometime in 2012. 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 2012. There clearly was no risk as the Agency has continued to comply with the Rules since the change.

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?

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 amount currently in place in 2012, the invoice must be withdrawn.

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 of CHF 1500 effective in 2012 the invoice for same must be withdrawn.

This Decision is effective as of today.

Decided this 20th 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 6th October 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 October 2019, I will assume that there is no objection to that action being taken.

Yours faithfully,

Jorgen Foged
Travel Agency Commissioner Area 3