

**DECISION 2019 - 10 - 15**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

Jo Foged  
685 Remuera Road  
Remuera, Auckland 1050  
New Zealand

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**Applicant:**

***Al-Mansur Air Service Ltd.*** (the “Agent”)  
IATA Numeric Code 42-3 0130  
Sylhet, Bangladesh.

**Respondent:**

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

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**The Case and Decision:**

The Agent was served with an invoice dated 3 September 2019, which included a Late Notification Fee (LNF) of USD 1,557.00 as a result of changes made to its shareholding in June 2018 and directorship in December 2018, which had been detected by IATA in July 2019.

In its request for a review the Agent stated that it had submitted certified copies of the changes to IATA in February 2019 having waited for formal approval from the Companies Office as “without documentary evidence we were unable to notify the same”. The Agent claims to have notified IATA of this elapsed time before it could submit formal evidence of the changes and had sought an extension to the time limit, which had been declined. It was not aware of the LNF and had requested a waiver of the charge which had been “ignored”.

IATA stated that the LNF became applicable from 1 January 2019 and had been published in the Travel Agent's Handbook since 1 June 2018 allowing Agent's 6 months notice of the fee. As the Agent had not notified it of the changes within 30 days of the change “being enacted” the LNF had been charged.

In considering this matter the Agent is mistaken in believing that it had to wait until the changes described above had been “approved” by the Companies Office.

The “trigger” point in time from which the “within 30 days of the occurrence” condition applies is the day on which, in this case e.g. the shareholding change was

enacted, and which should have generated a Change Form submission to IATA. There is no requirement to wait for any form of regulatory approval before advising IATA of a change.

As has been ruled in previous decisions the writer has concluded that the fee is the one applicable at the time that the changes took place i.e. in June and December of 2018. The Late Notification fee was published in Attch D to Resolution 818g from 1 June 2018 for effect from 1 January 2019. In the absence of an express provision that states otherwise, any fees were the ones effective in 2018.

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?

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. the fees to be paid by the Agent are those effective in 2018.

Decided this 15<sup>th</sup> day of October 2019 in Auckland.

This Decision is effective immediately.

The following sub paragraphs of Resolution 820e are brought to the attention of the Parties:

"2.9 - 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."

"2.10 - within 30 days after the receipt of the decision or an interpreted or clarified decision pursuant to paragraph 2.8 hereinabove, a party, with notice to the other parties may request that the decision be reviewed by a majority decision of all of the Commissioners."

In this particular case the 15 day time frame expires on 30 October 2019 and the 30 day time frame expires on 14 November 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 15 November 2019 I will assume that there is no objection to that action being taken.

A signed copy of the decision will be emailed to the parties

Yours faithfully,

**Jorgen Foged**  
**Travel Agency Commissioner Area 3**