

DECISION 2019 - 11 - 27
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Al-Mamoorah International (Pvt) Ltd. (the “Agent”)
IATA Numeric Code 27-3 1159
Rawalpindi, Pakistan.

Respondent:

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

The Case and Decision:

The Agent sought a review of IATA's action in issuing it with a Late Notification Fee (LNF) of USD 1,557.00 for the late notification of a change in shareholding which took place in 2015. The Agent sought a waiver of this fee on the grounds that there was no such fee extant at that time and stated that IATA could not offer a reason for its action other than to indicate that the LNF was included in the Travel Agents Handbook for 2019.

IATA stated that the change of shareholding was detected when the Agent submitted the annual Agency Status Form in April 2019. There had been a string of messages over a period of time where the Agent sought a waiver which was declined by IATA culminating in a final reminder sent on 20 November 2019. The Agent had been accredited since 2011, had a valid financial security in place and had no BSP outstandings.

As has been ruled in previous decisions the writer has concluded that the fee is the one applicable at the time that the change took place i.e. in October 2015. 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 2015.

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, if any, are those effective in 2015

Decided this 27th day of November 2019 in Auckland.

All conditions are to be complied with within 30 days of the date of this decision.

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 12 December 2019 and the 30 day time frame expires on 22 December 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 5 December 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

Regards,

Jorgen Foged
Travel Agency Commissioner Area 3