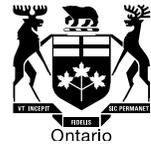


**Licence
Appeal
Tribunal**

**Tribunal
d'appel en
matière de permis**



DATE: 2016-06-08
FILE: 9756/TIA
CASE NAME: 9756 v. Travel Industry Council of Ontario

An Appeal from a Decision of the Board of the Travel Industry Council of Ontario to Deny a Claim for Compensation

Wander Travel Advisors Inc.

Appellant

-and-

Travel Industry Council of Ontario

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Mary Ann Spencer, Member

APPEARANCES:

For the Appellant: Assunta Mazzotta, Counsel

For the Respondent: Soussanna Karas, Counsel

Heard in Toronto: May 19, 2016

REASONS FOR DECISION AND ORDER

This is an appeal by the Appellant to the Licence Appeal Tribunal (the “Tribunal”) from a decision dated August 11, 2015 of the Board of the Travel Industry Council of Ontario (“TICO”) to deny a claim for compensation from the Travel Compensation Fund (the “Fund”) pursuant to section 58 of O. Reg. 26/05 (the “Regulation”).

TICO denied the Appellant’s six claims for reimbursement totalling of \$11,494.97 on the basis that insufficient documentation was provided to prove the claims.

For the reasons set out below, the Tribunal denies the Appellant’s claims.

FACTS AND EVIDENCE

An Agreed Statement of Facts was entered into evidence as Exhibit 3. The parties agree as follows:

- Mexicana Airlines ceased operating flights in August, 2010 and formally declared bankruptcy in April, 2014.
- Mexicana Airlines was a member of the International Air Transport Association (“IATA”) which operates a Billing and Settlement Plan (“BSP”).
- The BSP is a central clearinghouse for payments for airline purchases. A travel agent makes a single remittance to the BSP for the cost of airline tickets and the BSP in turn pays the airlines. BSP sales, remittances and payments are made on a weekly basis. Wander Travel Advisors Inc. (“Wander Travel”), and Mexicana Airlines both participated in the BSP.
- On August 31, 2010, IATA advised its members that refunds for Mexicana Airlines were being processed. Refund applications were required to be submitted through the BSP no later than October 15, 2010 (Exhibit 4). The advisory stated it expected to have further information about the refund process by December 15, 2010, after Mexicana completed its analysis of refunds and submitted a list of approved transactions to IATA.
- Wander Travel submitted claims to the Travel Compensation Fund with respect to passengers who purchased Mexicana Airlines flights but did not receive the travel services.
- TICO requested Wander Travel to provide BSP Reports to confirm the tickets booked had been paid to Mexicana Airlines through the BSP, that Wander Travel had requested a refund and that the refund had not been received.
- Wander Travel was not able to provide five BSP reports. Reports were missing for the following periods:

June 1- 6, 2010

June 14 – 20, 2010

November 8-14, 2010

November 15 -21, 2010

November 29 – December 5, 2010

The six claims which are under appeal represent tickets purchased from Wander Travel and paid for by credit card. In all claims, the consumers disputed the credit card charges and received refunds. In turn, the credit card companies charged Wander Travel back the amounts paid to the consumers. The specific agreed facts with respect to each claim are set out further below in the first paragraph under each claim heading.

Appellant's Evidence

Lorena Suarez Balkowski, the Manager and Director of Wander Travel, testified on behalf of the Appellant.

Ms Balkowski explained that Wander Travel specialized in the niche markets of Mexico and Latin America. Mexicana Airline tickets represented a significant portion of her sales because of the frequency of its flights. She estimated that her annual sales are approximately \$2,000,000 and, while she could not be specific, stated that before its failure, more than half of those sales were represented by Mexicana tickets. Ticket purchases were always paid through the BSP. Wander Travel never paid Mexicana directly and never received any refunds directly from Mexicana.

When Mexicana ceased operations on August 27, 2010, Ms Balkowski hired two people, who did not have any industry experience, to work with her accountant to help address the resultant issues. She relied on them to process refund applications as she, after initially focusing on helping stranded customers, was fully occupied trying to find a way for the agency to survive without the airline. Wander Travel did not automatically request refunds through the BSP process. Rather, the two employees first contacted customers to request permission from them to seek refunds. All refund applications were made by her staff in October, 2010. She was not directly involved but kept herself informed of the process.

Wander Travel received refunds totalling \$32,016.88 during the BSP billing period of December 13 to 19, 2010 (Exhibit 5, page 107). The BSP report lists the ticket number and the amount refunded. In the BSP period of January 3 to 9, 2011, Wander Travel also received "ACM" credits of \$5,591.85 from Mexicana Airlines. Ms Balkowski explained that these credits do not represent ticket refunds.

Ms Balkowski testified about the reason that some of Wander Travel's BSP reports are missing. Her accountant was in charge of all account reconciliation work. He had been hired in 2007 and had received good references. She provided him with all of the company's documents. She noted that in 2012 to 2013, his performance had deteriorated and he no longer came to the agency to work. Consequently, he had documents at his home. When TICO requested copies of missing documentation, she contacted him but he could not produce all of the missing reports. The files had been in binders but documents had been removed. She also noted that her agency uses the "TRAMS Back Office" accounting system and she believed the accountant was entering all of the documents into this. However, she discovered this was not the case. To try to obtain the missing records TICO requested, she contacted IATA but they told her they

no longer had records for 2010. She also attempted to contact Mexicana Airlines directly, without success.

Ms Balkowski testified that she did not meet with her accountant with any regularity. She trusted him; she received numbers at the end of the month and accepted them. He was responsible for the reconciliation of BSP reports although she checked occasionally. Only after he had worked for her for some time did she discover that he was not reconciling in the TRAMS systems but was performing manual reconciliations of, for example, the trust account. Asked how her company managed to produce the financial statements required by the Act, she stated that the accountant produced them.

Registrar's Evidence

Lori Furlan is the Claims Co-ordinator at TICO. She explained that claims are reviewed and assessed by staff, recommendations are prepared and then presented to TICO's Board for a decision. If there are issues with a claim, it is considered "special" and a chronology is presented to the Board. The Board does not interview claimants, but relies on the documentation presented to make its decision.

With respect to claims made by a travel agency, Ms Furlan testified that these can only be made if consumers have been refunded. TICO must have proof that a consumer paid the agency and has been refunded; and in this case, that the agency paid the airline and requested a refund. It also requires proof that the refund was not processed. She described the Fund as one of "last resort"; claimants have to exhaust all other avenues of potential reimbursement before making a claim.

In the case of an airline failure, TICO posts information on its website. The situation with Mexicana Airlines was unusual because there was a four year gap between the time it ceased operations and bankruptcy was declared. Claims cannot be processed until bankruptcy is declared.

TICO received 46 claims totalling \$79,250.52 with respect to Mexicana Airlines. In total, the Fund paid \$46,305.52. Wander Travel submitted six claims totalling \$11,494.97. All were denied. Ms Furlan testified that most were incomplete and were supported by minimal documentation when they were received on October 6, 2014. The claims were denied because TICO, due to a number of missing BSP reports, could not determine whether Wander Travel had received refunds through the IATA process. In some cases, there was no proof of payment for the tickets. She noted that registrants are required to keep all of their records for six years.

P. Claim - #108622 - \$962.10

\$962.10 was paid for two return tickets to Mexico City, leaving August 19, 2010 and returning September 8, 2010. The passengers were able to fly on August 19, 2010. However, the return flight was not operated. On October 15, 2010, the Appellant submitted a refund to IATA for tickets ending 2257 and 2258 in the amount of \$962.10.

TICO calculated \$481 as the amount potentially eligible for reimbursement. Ms Furlan explained that the P. claim was rejected because BSP reports were not filed to prove that the tickets had been purchased or that a refund had not been processed. In this regard, the Appellant filed Exhibit 7, a TRAMS report listing its BSP sales for the period June 14 – 20, 2010. This report lists the two ticket numbers, each in the amount of \$481.05. Ms Balkowski explained that she only found the TRAMS report the night before the hearing. Asked if she had also thoroughly checked to ensure she had received no refunds for the claims she has made, she indicated she had.

G. Claim - # 108623 - \$4,281

The consumer purchased four return tickets ending in 2274, 2275, 2276 and 2277 which were issued June 16, 2010. Wander Travel paid \$3,981.52 through the BSP. \$299.48 was paid as commission, which Ms Balkowski added to the ticket price. Wander Travel received a refund totalling \$2,082.26 for the tickets ending 2274 and 2276. TICO determined the potentially eligible amount of the claim as \$1,899.26.

Asked about an invoice that appears in the documents sent to TICO, Ms Balkowski stated that the invoice sent to Mexicana Airlines has no relationship to the claim and explained that she erred in putting the file together. Asked why only two of the four refund applications were included in the file, she testified that she only found the two and suggested that the others had been misplaced by her accountant.

Ms Furlan testified that the claim was rejected by TICO because there was no documentation to prove the tickets had been purchased through the BSP or that refunds had not been paid.

SI. Claim - # 108624 - \$3349

The consumer purchased return air tickets from Wander Travel on June 16, 2010 and paid \$3,349. Wander Travel paid for the tickets through the BSP system. On October 17, 2010, Wander Travel requested a refund for the ticket ending 2285. This was received. On October 18, 2010 a refund for tickets ending 2292-2293, 2283-2284, and 2294-95 were requested. TICO determined the potentially eligible amount of the claim to be \$2,643.33.

Asked why she initially submitted a claim to TICO for all of the tickets, Ms Balkowski explained that, because of the state of her files, she had been unaware that one of the tickets had been refunded.

Ms Balkowski believes one of the four refund applications submitted was processed by IATA because it was requested on October 17, 2010 and that no refunds requested on October 18, 2010 were received because the money had run out. Asked why all the refund applications had been filed after the IATA deadline, Ms Balkowski stated she did not know. She also could not state or estimate how many refunds were requested in total.

Ms Furlan testified that the claims to TICO were denied because of the lack of BSP documentation. She also noted that IATA might have denied one of the refund applications because the ticket numbers and the passenger name on that request do not correspond. Ms Balkowski explained that two of the passengers had the same name, distinguished by a middle initial which had been added to both refund applications in error.

A. Claim - # 108625 – \$751.00

The consumer purchased return air tickets from Wander Travel on June 11, 2010 and paid \$1,514. On October 17, 2010, Wander Travel requested a refund for tickets ending 7979 and 7980. During the BSP period December 13 – 19, 2010, a refund in the amount of \$757 was received for the ticket ending 7979. TICO determined the potentially eligible amount of the claim to be \$688.78.

Ms Furlan testified that the 7980 refund request would likely have been denied because the ticket number claimed did not match the passenger's name; the invoice indicates the ticket numbers issued ended in 7978 and 7979.

Sz. Claim - # 108626 - \$1670.00

The consumer purchased return air tickets from Wander Travel on June 10, 2010 and paid \$1,670. TICO determined the potentially eligible amount of the claim to be \$1551.50.

Ms Furlan explained that the claim was denied because there was no proof that a refund application had been submitted and no BSP reports to prove that a refund, if requested, had not been paid.

R.B. Claim - # 108627 - \$481.87

The consumer purchased return air tickets from Wander Travel on June 16, 2010 and paid \$481.87. Wander Travel submitted a request for refund on October 18, 2010 for the ticket ending in 7263. TICO determined the potentially eligible amount of the claim to be \$381.87.

Asked why this ticket does not appear on the June 14 to June 20, 2010 TRAMS report, Ms Balkowski explained that not all documents were properly entered into the system.

Ms Furlan explained that the claim was denied because no BSP reports were provided to prove a refund had not been received.

THE LAW

The entitlement to claims on the compensation fund is set out in sections 57 and 58 of O. Reg. 26/05 made under the *Travel Industry Act, 2002*:

57. (1) A customer is entitled to be reimbursed for travel services paid for but not provided if,
- (a) the customer paid for the travel services and the payment or any part of it was made to or through a registered travel agent;
 - (b) the customer has made a demand for payment from,
 - (i) the registered travel agent and the appropriate registered wholesaler,
 - (ii) any other person who has received the customer's money, and
 - (iii) any other person who may be legally obliged to reimburse or compensate the customer, including a person obliged under a contract for insurance; and
 - (c) the customer has not been reimbursed by,
 - (i) those of the registered travel agent and the appropriate registered wholesaler, who under section 25 of the Act are liable to make the reimbursement, because they,
 - (A) are unable to pay by reason of bankruptcy or insolvency,
 - (B) have ceased carrying on business and are unwilling to pay, or
 - (C) have ceased carrying on business and cannot be located,
 - (ii) any other person who has received the customer's money, or
 - (iii) any other person who may be legally obliged to reimburse or compensate the customer, including a person obliged under a contract for insurance.
58. (1) A travel agent is entitled to be reimbursed for money paid by the travel agent to reimburse a customer or to provide alternate travel services to the customer if,
- (a) the customer paid for the travel services and the payment or any part of it was made to or through the travel agent;
 - (b) the travel agent dealt with a travel wholesaler, airline or cruise line, in good faith and at arm's length;
 - (c) the travel agent passed all or part of the customer's money to the travel wholesaler, airline or cruise line; and
 - (d) the travel services were not provided.
- (2) Subsection (1) does not apply if the travel agent had acquired the right to the travel services for resale as described in section 46
- (3) The travel agent is entitled to be reimbursed only for the portion of the customer's money that the travel agent passed to the travel wholesaler, airline or cruise line.
- (4) The travel agent is entitled to be reimbursed only if the customer would otherwise have had a claim against the Fund.

Section 61 of the Regulation sets out the requirement to submit documentation to the Board:

61. (1) The claimant shall provide such documents and other information to the board of directors as the board requires to prove the claim.
- (2) The board of directors may request that the claimant provide additional documents or other information.

ISSUE

The issue to be addressed is whether or not the Appellant is entitled to receive compensation from the Travel Compensation Fund and if so, in what amount.

SUBMISSIONS

Counsel for the Appellant submitted that the Appellant meets all claim eligibility requirements set out in section 58 of O. Reg. 26/05. While the Appellant's claims were denied for lack of supporting documentation, she noted that the IATA bulletin contemplated a single payout and that in fact a bulk refund was received by the Appellant during the December 13 to 19, 2010 BSP period, which is documented. The Appellant provided explanations as to why she could not produce all documents. Moreover, section 58, unlike section 57 which applies to consumers, does not require a travel agent to have made a demand for payment elsewhere. Counsel suggested that section 58 has been drafted to encourage travel agents to reimburse consumers and then submit claims; denying claims from agents would act as a disincentive for them to protect consumers.

Counsel for TICO submitted that the consumer protection arguments made by Counsel for the Appellant do not hold true in this case because it was credit card providers who actually reimbursed the consumers. She noted that the Board of Directors, as trustee for the Fund, must balance consumer protection and the preservation of the Fund and this is why eligibility criteria for claims is set out. She submitted that section 58(4) of O. Reg. 26/05, which states an agent may be paid only if a consumer would be eligible to make a claim, imports section 57 which requires a consumer to have made a demand for payment. Further, an agency must perform due diligence when seeking reimbursement. Finally, she submitted that there is no way to determine that refunds were not received. The Appellant relied on her accountant whom, she testified proved to be unreliable, and, does not have the documents that she is required to maintain, including records of all payments.

ANALYSIS

O. Reg. 26/05 provides that a registered travel agent is entitled to be reimbursed for travel services paid for but not provided, if the customer paid for the travel services, the travel agent dealt with the provider in good faith, passed the payment onto it and services were not provided. Section 58(3) restricts the payment to the portion the agent passed to the provider and therefore excludes commission. Section 58(4) restricts eligibility to claims which the individual consumer would have been entitled to make.

The Tribunal agrees with Counsel for TICO's interpretation that section 58(4) subsumes the requirements of section 57(1) and that the eligibility test for registered travel agents is not less rigorous than it is for individual consumers. Section 57(1)(b) requires that a consumer make a demand for payment from the travel provider and not have received payment before making a claim on the Fund. If this restriction did not apply to registered travel agents, the Fund could, in effect, become financially responsible in a situation where a provider declared bankruptcy even when funds were available for disbursement from that provider. Requiring registered travel agents to demonstrate that they have tried and failed to obtain reimbursement from other sources before they are eligible for reimbursement from the Fund not only ensures that the Fund is used only in cases where funds are not available elsewhere, but ensures that a registered travel agent is not able to obtain reimbursement from both a provider and the Fund.

The onus is on the Appellant to prove its claims are eligible for reimbursement from the Fund. The Tribunal must be satisfied that the travel services were paid for, that a demand for reimbursement was made, and that reimbursement was not received. In this case, after Mexicana Airlines ceased operations on August 4, 2010, IATA issued a bulletin on August 31, 2010 that states it had "reached an agreement with Mexicana that will allow us to process the outstanding refunds using the Mexicana funds IATA holds." The Appellant must provide evidence that it paid Mexicana Airlines, that it pursued a refund through the avenue provided by IATA, and that the refund was not received.

Ms Balkowski testified that she discovered that the Appellant's records were in disarray after she had placed both her trust and her records in the hands of the Appellant's accountant. The Tribunal has no reason to doubt her testimony that she attempted to obtain the documents necessary to support her claims from her former accountant, from IATA and even from failed Mexicana Airlines. The volume of documents sent to TICO in support of her claims and submitted as evidence at this hearing speaks to her attempts to secure the necessary proof. However, the fact that she submitted claims to TICO in two cases where refunds had already been received and could not answer how many refunds had been requested in total speaks to either a lack of record organization or a lack of appropriate management oversight.

Providing the required documentation should not have been difficult for the Appellant. As Counsel for TICO noted, section 29(1)(3) of O. Reg. 26/05 requires a registrant to maintain "a written record of all payments made by or to the registrant respecting the purchase or sale of travel services. The record shall be in a form that enables the

registrar to identify readily the transaction to which each payment relates, based on the unique identifiers or serial numbers". Section 29(2) requires that the records be maintained for at least six years following the date of the transaction. Mexicana ceased operations in August, 2010. Wander Travel's records should be available.

However, the Appellant's records are not complete. With respect to the Sz. Claim #108626, Ms Balkowski could not provide any evidence to prove that an application for refund was submitted to IATA. A copy of the refund application was not submitted. Nor was any list or reconciliation of the total number of refund applications submitted. This latter type of record might have supported that a refund had been requested and the copy of the application simply misplaced. The Tribunal cannot accept Ms Balkowski's word that one was submitted, particularly after she testified about the disorganization of her accountant, whom she made responsible for the process, and to the fact that the two staff she hired to assist him had no experience in the travel industry. Because there is no evidence that the Appellant made a demand for payment in the form of an application for refund, Claim #108626 must be denied.

Copies of refund applications were provided with respect to the balance of the Appellant's claims. The question before the Tribunal is whether or not the documentation Ms Balkowski was able to provide is sufficient to establish the claims' eligibility for reimbursement from the Fund. The Tribunal notes that it accepts the amended amounts TICO calculated as the correct amounts eligible for reimbursement. The Appellant's claims were for the full amounts charged back by credit card companies, even though refunds had been received in some cases. TICO's calculations deduct these refunds, commissions, and, in P. Claim #108622, the amount related to travel services which the consumer received.

The IATA bulletin advised agents to submit refund applications by October 15, 2010:

The deadline for submitting Refund applications is until close of business on 15 October 2010 (CET); **please note that this is a definite deadline, and we anticipate disbursing the funds we hold based on the Applications we received in this process;**

The evidence indicates that the refund applications with respect to P. Claim #108622, submitted on October 15, 2010, were the only ones which met this deadline.

Refund applications ending 17834 and 17892 with respect to G. Claim #108623 were submitted to IATA on October 17 and 18, 2010 respectively. The Tribunal notes that when this claim was considered by TICO, there was no evidence that the tickets had been purchased through the BSP system due to missing BSP reports. However, the June 14 to 20, 2010 TRAMS report submitted by the Appellant lists the related ticket numbers as BSP sales during that period. The Tribunal accepts this report as evidence of payment. While it could be argued that its appearance at this hearing is somewhat convenient, the Tribunal accepts Ms Balkowski's evidence as to the state of her records and has no reason to doubt that the record is a genuine one which was found after she conducted a search.

The refund applications ending 17893, 17894 and 17900 with respect to Sl. Claim #108624 were submitted to IATA on October 18, 2010. The refund application ending 17837 with respect to the A. Claim #108625 was submitted on October 17, 2010. The Tribunal also notes that this application incorrectly claimed for ticket ending 7980 rather than ticket ending 7978. Finally, the refund application ending 17878 with respect to R.B. Claim #108627 was submitted to IATA on October 18, 2010.

Counsel for the Appellant suggested the fact that the refund applications were submitted after IATA's deadline is not relevant because IATA did in fact process some refund applications it received after October 15, 2010. In this regard, the Tribunal notes that four refund applications related to Sl. Claim #108624 were submitted on October 17 and 18, 2010. The one submitted on October 17, 2010 was processed. The refund related to A. Claim #108625, submitted on October 17, 2010, was also processed. There is no documentary evidence before the Tribunal to indicate why these two refunds might have been paid. The Tribunal can only speculate; perhaps the funds IATA had available exceeded the value of the refund applications it had received by the deadline, enabling late applications to be considered. In this regard, the Tribunal notes that IATA's August 31, 2010 bulletin states:

Whether your requested refund is paid in full will depend on the total amount of Refund Applications when compared to the funds IATA held at the time of the suspension. There is no assurance that the funds IATA holds will be sufficient to pay full refunds for all Applications.

Further information about the refund process will be provided once Mexicana has completed its analysis of all refund transactions and has submitted a list of the approved transactions to IATA

Notwithstanding the fact that some applications submitted on October 17, 2010 were paid, the Tribunal cannot accept Counsel for the Appellant's submission that the date refunds were requested is not relevant. The IATA statements quoted above indicate that a cut-off date for submission of refunds had to be established; it was a key component of the process that enabled IATA to determine what refunds could be paid out. What is unknown is whether or not the cut-off was extended and if so, to what date.

Ms Balkowski speculated that some applications were not paid because IATA ran out of money. The implication is that IATA paid applications until that happened. In this regard, the Tribunal notes that refund #7838 related to the Sl. Claim #108624 was paid; the Appellant's claim is that refunds #7893, #7894 and #7900 were not. At face value, the fact that the paid application has a lower sequential number supports Ms Balkowski's theory. The paid refund applications with respect to G. Claim #108623 were not submitted to the Tribunal so this theory cannot be tested to any extent. The Tribunal cannot conclude that the applications were considered in sequential order.

The Appellant's position is that refunds were not received with respect to its claims because they were not paid in the BSP period December 13 to 19, 2010 when, by the Tribunal's count, the Appellant received payment with respect to 44 refund applications.

The BSP report lists the refunds in sequential order by application number which range from 7641 to 7848. The Tribunal acknowledges TICO's concern that refunds could have been processed in the November periods for which BSP reports are missing. However, as noted above, the IATA bulletin describes a process whereby the total of all refunds approved by Mexicana was to be assessed against the availability of IATA funds in order to determine what could be paid out. In the Tribunal's view, this supports the Appellant's position that IATA made "bulk" refunds. The Tribunal finds it highly improbable that refunds, particularly with respect to applications filed after the IATA deadline, all of which have higher sequential numbers than those paid in December, 2010, would have been paid in November, 2010.

However, the Tribunal notes that the Appellant did receive "ACM" credits of \$5,591.85 from Mexicana Airlines in the BSP period of January 3 to 9, 2011. Ms Balkowski testified that these credits do not represent ticket refunds but provided no information as to what they might comprise. Given the significance of the sum and the subject matter of this hearing, the Tribunal would have expected Ms Balkowski to have provided evidence with respect to what this payment represents. The Tribunal notes that when refunds were paid in December, they were listed by application number and amount. However, no evidence was provided with respect to how IATA's BSP system categorizes its payments which would allow the Tribunal to conclude that refunds are not included in the significant amount of credits paid.

The evidence is that the refund applications for G. Claim #108623, Sl. Claim #108624, A. Claim #108625 and R.B. Claim #108627 were all submitted to IATA after IATA's October 15, 2010 deadline. While there is evidence that at least two applications were paid after the deadline, there is no evidence before the Tribunal to indicate that IATA formally extended its deadline, and, if it did, to what date. It was the responsibility of the Appellant to ensure it availed itself of the opportunity to receive refunds for the tickets it purchased and submit applications by October 15, 2010. That Ms Balkowski understood that time was of the essence is evident from her testimony that she hired two individuals to assist her accountant in processing refunds. O. Reg. 26/05 states that a demand for payment must be made. In this case, payment was actually on offer and the Appellant failed to take full advantage of it, thereby failing to meet that requirement. As Ms Karas noted, the Fund is not "errors and omissions insurance" for agents. In this regard, the Tribunal also notes that the refund application in A. claim #108625 was incorrect; Ms Furlan testified that it was likely that the refund was not paid because the ticket number and passenger name did not match the records of Mexicana Airlines. Further, even if IATA did extend its deadline and considered all the late applications, the Tribunal cannot determine that they were not refunded and included in the credits the Appellant received from Mexicana Airlines in the BSP period January 3 to 10, 2011. For these reasons, the Tribunal finds that G. Claim # 108623, Sl. Claim # 108624, A. Claim #108625 and R.B. Claim #108627 do not meet the eligibility criteria set out in O. Reg. 26/05 and therefore must be denied.

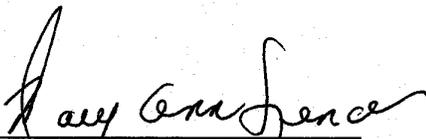
The final claim before the Tribunal is P. Claim #108622 which TICO denied because there was no proof of payment; the Appellant's BSP report for the period June 14 to 20,

2010 was missing. There was also no proof that refunds had not been received. The Tribunal accepts the Appellant's June 14 to 20, 2010 TRAMS report, which lists the tickets, as proof of payment. With respect to refund, the evidence indicates that refund applications ending 17692 and 17694, each in the amount of \$481.05 were submitted to IATA on October 15, 2010 and were not paid in the December 10 to 19, 2010 BSP period where both higher and lower application numbers appear in sequential order. The Tribunal can only speculate as to why the P. refund request might not have been included in this period; perhaps, as a partially used ticket, it required processing in a different manner. What the Tribunal cannot determine is whether or not payment for this application is included in the January 3 to 10, 2011 ACM credits received by the Appellant. Because the Tribunal cannot determine that the refund was not received, the claim must be denied.

ORDER

Pursuant to section 71(6) of O.Reg. 26/05, the Tribunal refuses to allow the Appellant's claims #108622 to #108627 inclusive.

LICENCE APPEAL TRIBUNAL


Mary Ann Spencer,
Member

Released: June 08, 2016