



Dear Clients,

Kindly find below an important update regarding the Israeli District Court's decision permitting the determination of a (1%) commission rate as remuneration for travel agencies, under International Air Transport Association (IATA) resolution 824.

24292-02-20 The Israel Association of Travel Agencies and Consultants v. Air France and others - Air Canada judgment.

On September 19, 2021, the District Court in Lod, rendered a judgment with respect to a civil claim ("Claim") that was submitted against Air Canada ("AC"), and 5 other carriers by 127 travel agencies and the Israel Association of Travel Agencies and Consultants ("**Claimants**").

At the center of the Claim was AC's 2009 decision to reduce commission rates paid to travel agencies, from 7% to 1% without consulting Claimants, though agencies received three months' notice prior to the rate change taking effect. As such, Claimants argued that AC's notice, was a breach of International Air Transport Association (IATA) resolution 824 section 9, which stipulates that carrier shall remunerate agents for the distribution of air tickets. Accordingly, Claimants asserted that 1% was not considered remuneration as it does not cover agency costs related to the distribution of tickets.

Claimants also argued that AC's notice was given in bad faith and should have been considered unfair, based on Israeli law provisions.

The court **rejected the Claim against AC** and ordered Claimants to pay AC's legal costs.

Main provisions included in the AC judgment:

1. Resolution 824, section 9 - provides the carrier with full discretion to determine the amount of remuneration that should be paid to agents; AC's decision to reduce the commission rate to 1% is within the scope of IATA provisions;
2. AC was successful in proving that the decision to reduce the commission rate from 7% to 1% was justified in light of the 2008 world economic crisis, the entrance of low-cost carriers and the vivid

competition that those carriers introduced in the aviation market, the fact that digital developments simplify the issuance of flight tickets and increased direct sales by the carriers;

3. The Claimants argument that commission rates should cover agency costs of distributing tickets (at least) - was dismissed as Claimants were unable to prove these arguments, and such were not supported by expert opinion testimony as required by law; the court also determined that IATA resolution 824 does not stipulate that commission rates are meant to cover agency distribution costs and expenses;
4. AC is not obliged to consult with Claimants before reducing its commission rate; AC's actions should not be considered as 'bad faith' simply because AC decided to implement and utilize its contractual rights with respect to the commission rate; the court also accepted AC's arguments regarding the reduction in commission, as acceptable commercial reasoning enacted in good faith;
5. The IATA resolutions **do not** stipulate that remuneration must cover the cost of ticket distribution (in fact, the Supreme Court denied this argument in a British Airways commission case);
6. The court commented that Claimants' argument against AC' 1 % commission rate, as being unfair in that it does not cover the cost of credit card processing fees - was substantial, but it was rejected by the court for lack of evidence and supportive expert opinion.

Kindly note, that the Claimants are permitted to appeal the judgment to the Supreme Court; we will update you should such an appeal be submitted.

We are at your disposal for any questions or clarifications, and we would be glad to assist you with any further inquiries.

Sincerely,

FISCHER (FBC & Co.)

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