Uzbekistan Airways v Jetspeed Travel Pte Ltd
[2008] SGHC 138

Case Number : Suit 340/2006

Decision Date : 08 August 2008

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Lim Joo Toon and Joseph Tan (Joo Toon & Co) for the plaintiff; Margaret George (Belinda Ang, Tang & Partners) for the defendant

Parties : Uzbekistan Airways — Jetspeed Travel Pte Ltd

Contract – Contractual terms – Rules of construction – Airline seeking indemnity from sales agent – Sales agent issuing tickets on fictitious routes including sectors operated by partner airlines – Whether agent liable for full amount airline paid to partners

8 August 2008 Judgment reserved.

Andrew Ang J:

Background facts

1 The plaintiff is an airline owned by the Government of Uzbekistan. In order to increase the number of passengers on its flights, the plaintiff entered into a unilateral interline agreement with British Airways on 1 October 1993 which permitted British Airways to issue tickets for travel on routes operated by the plaintiff. It was only on 1 July 2000 that a bilateral interline agreement was executed whereby the plaintiff was also permitted to issue tickets for passengers to travel on routes operated by British Airways. The plaintiff also had interline agreements with Lufthansa and Air France.

2 The defendant is a travel agent and tour operator registered in Singapore. On 27 April 1999, the plaintiff appointed the defendant as its general sales agent in Singapore by way of a Passenger Sales Agreement ("the Passenger Sales Agreement"). The Passenger Sales Agreement allowed the defendant to issue tickets for flights on routes operated by the plaintiff. Subsequently, the plaintiff and the defendant entered into another agreement dated 29 January 2000 (the "Interline Sales Agreement") under which the defendant was authorised to issue tickets for flights on airlines with which the plaintiff had an interline agreement. The relevant clauses of the Interline Sales Agreement provided:

> 3. Jetspeed will account for the tickets issued on 2 separate Sales Reports
>
> (a) Interline Sales inclusive of fare constructions based on prorata basis.
>
> (b) Sales performed on Uzbekistan Airways and with SPAs.
>
> Tickets issued in currencies other than US Dollars are to be converted into US Dollars by applying the applicable exchange rate and accounted for in the Monthly Sales Report.
>
> …
>
> 5. Tickets issued Interline Sales are to be issued according to the officially Published routes/fares/rules, which are to be observed by Jetspeed. In order to match the fare levels of

the market, Jetspeed will be entitled to achieve fare combinations, not limited to issuing tickets based on SITI instead of SOTO, IATA applicable for tickets issued for transportation on airlines for which Uzbekistan Airways has an Interline Agreement with.

6. Jetspeed Travel will be responsible for under-collections and fare differences arising from tickets issued out of its offices. Uzbekistan Airways will invoice Jetspeed Travel for such differentials and will provide documentary evidence i.e. copy of Interline Billings received to substantiate them.

Complaints concerning the defendant's incorrect issue of tickets

3 Sometime in 2000, the plaintiff received complaints from Lufthansa, Air France and British Airways regarding the defendant's alleged incorrect issue of tickets. For example, the defendant commonly issued tickets for travel from Colombo, Sri Lanka to Reykjavik, Iceland, using the following flight route: Colombo-Singapore-London-Reykjavik-London-Singapore-Colombo. In each such case, it turned out that the passenger had really only travelled between Singapore and London and that the flight coupons for the other legs of the journey were unused. Significantly, it would have been impossible for a passenger to complete the route in this example because the plaintiff had no interline agreement with Icelandair who would not have recognised a ticket issued on the plaintiff's ticket stock for travel in its sectors. The plaintiff then suspended its agency relationship with the defendant on 20 October 2000.

4 In a letter to the plaintiff's London office dated 5 January 2001, British Airways formally complained that the defendant had extensively issued tickets for its long haul First and Club class services where the passengers did not originate from the points of origin shown on the tickets. Neither did they, in some cases, travel to the stipulated final destination. According to British Airways, the tickets were invariably issued in weak currencies from points to which lower fares would apply thereby reducing the fares charged to the passengers. British Airways ended its letter as follows:

I would emphasise that under the procedures agreed in our Interline Agreement we are entitled in these circumstances to bill Uzbekistan Airways full sector fare for any sector subjected to revenue dilution resulting from this abuse. It could also bring further continuation of our interline agreement into jeopardy. I would be grateful therefore if you will bring the matter to the attention of your head office, in the event that they have for us any alternative explanation for what has taken place.

5 Shortly thereafter, on 10 January 2001, British Airways tendered an invoice to the plaintiff for GBP46,830.45 in respect of flights flown in July 2000 which included an additional charge over and above its pro-rated share of the fare in order to reflect its alleged losses. This invoice was followed by four others, bringing the total billing from British Airways as at 23 May 2001 to GBP269,826.16 in value. I note at this juncture that, despite its key role in the events surrounding the dispute, British Airways was not a party in this case.

6 The plaintiff replied on 28 June 2001 disclaiming responsibility for the defendant's actions and arguing that the amount invoiced should be calculated on the basis of the normal through applicable fare and not the full sector fare. Under cl 4.1 of the International Air Transport Association ("IATA") Revenue Accounting Manual, this amounted to a first rejection of British Airways' original billing. Clause 4.1 of the IATA Revenue Accounting Manual further provided that if British Airways rendered another bill giving reasons for its debit (second rejection), and this was again not accepted by the plaintiff (third rejection), the next step would have been for British Airways to initiate correspondence

to negotiate a settlement, failing which it would be bound to accept the amount suggested by the plaintiff in its third rejection.

7 In this particular case, the matter did not progress to the stage of correspondence. After the letter of 28 June 2001, the plaintiff contacted the defendant and a meeting was held between the parties on 14 July 2001. At this meeting, the plaintiff and the defendant entered into a Protocol ("the Protocol") wherein both sides agreed, *inter alia*, as follows:

> 3. The [defendant] will be obliged to cover all under-collection that has arisen as a result of issuing the tickets what become the reason for [the plaintiff's] interline partners to bill [the plaintiff] using full applicable sector fare which is contrary to IATA rules and regulations. The total amount of claims on July 10, 2001 is 456.233,19 USD. The [defendant] has provided [the plaintiff's] delegation proof that such tickets have been issued *according to IATA fare construction rules* and copies of fare calculations were also provided to prove the case. [The plaintiff's] tickets were issued in accordance to Para 5 of the [Interline Sales Agreement] signed between [the plaintiff] and the [defendant]. The [defendant] *acknowledges that it will be responsible to pay* the total amount of claims *in case of no adjustment* between [the plaintiff] and its interline partners *which is in accordance to Para 6* of the [Interline Sales Agreement]. The [defendant] suggested to [the plaintiff] that both parties should work together to overcome any unprecedented issues raised by [the plaintiff's] Interline partners and to overcome all problems together for mutual benefit. [*The plaintiff] requested the [defendant] to forward to [the plaintiff's] Financial Department a letter with supporting documents*.
>
> 4. The total billed amount from [the plaintiff's] interline partners for the period from Oct 1999 to Apr 2001 is 418.099,19 USD. The [defendant] is responsible to cover any differences between the amount of remittances regarding sales reports and the amount of billing [the plaintiff] by interline partners; this is in accordance to Para 6 of the said [Interline Sales Agreement]. The [defendant] reminded [the plaintiff's] delegation that in accordance to local income tax laws, [the plaintiff] will have to provide copies of Interline billing to the [defendant] who will need to have these documents filed substantiate such claims.
>
> [emphasis added]

8 Approximately one month later, on 10 August 2001, British Airways replied to the plaintiff's letter of 28 June 2001, refusing to accept the plaintiff's invoices (second rejection) and stating that British Airways was unable to recalculate the value of the disputed flights based upon actual fares as opposed to full sector fares because the journeys were on the plaintiff's ticket stock and it did not have the complete information regarding the actual journeys flown. British Airways requested that any further rejection be supported with system information or copies of the Passenger Name Records ("PNR") to prove the actual journeys travelled. It further took the position that the plaintiff was fully responsible for the actions of its agent. Sometime later, British Airways sent another two invoices to the plaintiff.

9 The plaintiff then entered into a settlement with British Airways in the amount of GBP272,928.07 as evidenced by a letter the plaintiff sent the defendant dated 30 October 2001 requiring the defendant, in accordance with cll 3 and 4 of the Protocol, to transfer the said sum to the plaintiff.

10 However, after discovering arithmetical errors in British Airways' calculation, the plaintiff issued a partial third rejection to British Airways, agreeing to pay its invoices subject to deduction of GBP9,744.55. That settled the matter between the plaintiff and British Airways. Ultimately, the total

sum invoiced by British Airways totalled GBP549,781.44 of which GBP270,310.73 represented the additional charges for British Airways' alleged losses. The plaintiff later conceded that the defendant was not liable for part of this amount because three of the tickets referred to in the invoices were not issued by the defendant. The plaintiff now claims GBP265,090.30 from the defendant in relation to the amount paid to British Airways.

11 In addition to this amount, by a letter dated 7 January 2002, the plaintiff further claimed the sum of USD8,750.12 from the defendant, representing the difference between the total amount billed for other interline tickets (not involving British Airways) and the amount stated in the defendant's sales report. This claim was later reduced to USD4,204.22 because the plaintiff conceded that it only had supporting documents to prove that portion of the claim.

"Gabriel system" and SingTel telephone charges

12 The plaintiff further claimed from the defendant USD 4,541.94 for the use of a computer ticketing system known as "the Gabriel System" and SGD907.22 for SingTel bills incurred as a result of using the Gabriel System after the termination of the agency relationship between the plaintiff and the defendant. The plaintiff had procured the installation of the Gabriel System on the defendant's office premises to enable the defendant to make ticket bookings and had also contracted with SingTel to provide a telephone line to support the Gabriel System.

Issues

13 The main issue that falls to be decided is whether the defendant is liable to indemnify the plaintiff for the sums of:

(a) GBP265,090.30 paid to British Airways;

(b) USD4,204.22 paid to the plaintiff's other interline partners;

(c) USD4,541.94 for the Gabriel System; and

(d) SGD907.22 for the SingTel bills,

under the Interline Sales Agreement and/or the Protocol.

14 The defendant's liability in relation to the sums paid to British Airways and the plaintiff's other interline partners would depend on:

(a) whether the defendant had agreed to indemnify the plaintiff for such sums under the Interline Sales Agreement and/or the Protocol;

(b) whether the defendant had knowingly issued tickets which included fictitious destinations that the passengers did not intend to fly to thereby causing the plaintiff's liability for fare differences to its interline partners;

(c) whether British Airways ought to bear its own losses; and

(d) whether the amount the plaintiff paid to its interline partners, in particular British Airways, was excessive.

15 As for the defendant's liability in relation to the Gabriel System and SingTel bills, this would

depend on whether the defendant agreed to indemnify the plaintiff for those sums under the Passenger Sales Agreement or by a course of conduct.

The parties' arguments

16 In respect of the alleged incorrect issue of tickets, the plaintiff's case, in a nutshell, is that the defendant had agreed to indemnify the plaintiff for the fare differences arising from tickets issued by the defendant (irrespective of whether there is fault or contractual breach on the part of the defendant) under cl 6 of the Interline Sales Agreement read with cll 3 and 4 of the Protocol. In any event, the plaintiff argues that the defendant had issued the tickets with fictitious routes, knowing that the passengers were not going to fly the complete route. The plaintiff supports this argument by referring to the unusually complex routes stated in the tickets, the number of tickets booked for such routes, as well as the fact that the defendant would or should have known that parts of the route could not be flown because the plaintiff had no interline agreement with the airline concerned to fly particular sectors of the route. Further, the plaintiff argues that the amount paid to British Airways was not excessive because British Airways was entitled to claim the full sector fare from the plaintiff under their interline agreement with the plaintiff as well as the IATA rules.

17 On the other hand, the defendant denies that it had issued tickets which included fictitious destinations – it contends that it had merely complied with the requests made by the passengers concerned. The defendant further argues that even if there had been an error in the issue of the tickets, the plaintiff had ratified the error because the plaintiff was aware of the fare differences from the regular sales reports tendered to it by the defendant which were accompanied by the passengers' unused ticket coupons. The defendant also alleges that the plaintiff had been wrong to pay the sum it did to British Airways because British Airways was responsible for its own loss – it ought to have checked that the passengers had flown in the correct sequence before allowing them to board. In any event, the defendant submits that British Airways' claim was excessive because the fare difference ought to have been computed on the basis of a round-trip fare instead of a full sector fare.

18 As for the Gabriel System and the SingTel bills, the plaintiff bases its claim on cl 7.1 of the Passenger Sales Agreement (which provides that the plaintiff will not be responsible for telecommunication charges incurred by the defendant) and, alternatively, on the defendant's conduct of having paid those bills during the course of its agency relationship with the plaintiff. The defendant's only rejoinder in its pleadings is that because it was not a party to the contracts relating to the Gabriel System and the SingTel line, it cannot be made liable for sums incurred under those contracts. However, during the course of the trial, the defendant's case became more clearly enunciated – because it had not used the Gabriel System nor the SingTel line (since the plaintiff had denied the defendant access to the Gabriel System after the termination of the defendant's agency) and because it was up to the plaintiff as contracting party to terminate both facilities, the defendant ought not to be made liable for the sums incurred.

Decision of the court

19 I shall deal with the four issues identified in [14] seriatim.

Issue 1: Whether the defendant agreed, under the Interline Sales Agreement and/or the Protocol, to indemnify the plaintiff for payments made to its interline partners for any incorrect issue of interline tickets

20 It is common ground between the parties that the defendant agreed to bear responsibility to the plaintiff for "under-collection" in fares. In my view, based on the Interline Sales Agreement and

the Protocol, "under-collection" included the shortfall in the fares constructed based on fictitious routes as compared to the fares that would have been charged based on the actual route flown. For ease of reference, I set out the relevant clauses that the plaintiff seeks to rely on to establish its case that the defendant agreed to indemnify it for fare differences arising from tickets issued out of its office on the plaintiff's ticket stock, irrespective of fault on the part of the defendant:

(a) Under cl 6 of the Interline Sales Agreement –

> *[The defendant] will be responsible for under-collection and fare differences arising from tickets issued out of its offices*. [The plaintiff] will invoice [the defendant] for such differentials and will provide documentary evidence i.e. copy of Interline Billings received to substantiate them. [emphasis added]

(b) Clause 3 of the Protocol provides –

> *The [defendant] will be obliged to cover all under-collection that has arisen as a result of issuing the tickets what become the reason for [the plaintiff's] interline partners to bill [the plaintiff] using full applicable sector fare which is contrary to IATA rules and regulations*. The total amount of claims on July 10, 2001 is 456.233,19 USD. The [defendant] has provided [the plaintiff] delegation proof that such tickets have been issued according to IATA fare construction rules and copies of fare calculations were also provided to prove the case. [The plaintiff's] tickets were issued in accordance to Para 5 of the [Interline Sales Agreement] signed between [the plaintiff] and the [defendant]. *The [defendant] acknowledges that it will be responsible to pay the total amount of claims in case of no adjustment between [the plaintiff] and its interline partners which is in accordance to Para 6 of the [Interline Sales Agreement]*. The [defendant] suggested to [the plaintiff] that both parties should work together to overcome any unprecedented issues raised by [the plaintiff's] Interline partners and to overcome all problems together for mutual benefit. [The plaintiff] requested the [defendant] to forward to [the plaintiff's] Financial Department a letter with supporting documents. [emphasis added]

(c) Clause 4 of the Protocol reads as follows –

> The total billed amount from [the plaintiff's] interline partners for the period of Oct 1999 to Apr 2001 is 418.099,19 USD. *The [defendant] is responsible to cover any differences between the amount of remittances regarding sales reports and the amount of billing [the plaintiff] by interline partners*; this is in accordance to Para 6 of the said [Interline Sales Agreement]. The [defendant] reminded [the plaintiff's] delegation that in accordance to local income tax laws, [the plaintiff] will have to provide copies of Interline billing to the [defendant] who will need to have these documents filed substantiate such claims.

Principles of contractual interpretation

21 In construing terms of a contract, the court must place itself in thought in the same factual matrix as that in which the parties were at the time of the contract. Thus evidence may be admitted of the factual background existing at or before the date of the contract including evidence of the genesis and the objective aim of the transaction: *Prenn v Simmonds* [1971] 1 WLR 1381 at 1385. The object of the court is to determine, objectively, the mutual intention of the parties based on the "meaning the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties at the time of the contract": *MAE Engineering Ltd v Fire-Stop Marketing Services Pte Ltd* [2005] 1 SLR 379 at [17]. In general, the

words of the contract are to be understood in their natural and ordinary meaning, bearing in mind the context in which the contract had been made; even if the plain language of the contract appears otherwise clear, the construction placed on such language should not be inconsistent with the context in which the contract was entered into if the context is clear: *Sandar Aung v Parkway Hospitals Singapore Pte Ltd* [2007] 2 SLR 891 at [29].

22 Another principle of interpretation that is of relevance to this case is the *contra proferentum* principle, described by Lord Mustill in *Tam Wing Chuen v Bank of Credit and Commerce Hong Kong Ltd* [1996] 2 BCLC 69 at 77 (approved by the Singapore Court of Appeal in *Tay Eng Chuan v Ace Insurance Ltd* [2008] SGCA 26 at [34]) as follows:

> [A] person who puts forward the wording of a proposed agreement may be assumed to have looked after his own interests, so that if the words leave room for doubt about whether he is intended to have a particular benefit there is reason to suppose that he is not.

23 In this case, the objective aim of the Interline Sales Agreement may be ascertained from its preamble, which states:

> Further to the Passenger Sales Agreement concluded between UZBEKISTAN AIRWAYS and JETSPEED TRAVEL PTE LTD on 29th day of January 2000, and having in view Uzbekistan Airways targets for its Singapore operation, namely, a substantial increase of traffic travelling on Uzbekistan Airways flights from Singapore as well as to the increase of Interline Sales with the Interline Partners of Uzbekistan Airways. This agreement shall be valid for a minimum term of 5 (FIVE) years with subsequent extensions if all conditions have been complied with by Jetspeed Travel as per the following …

This shows that the background to the plaintiff allowing the defendant to sell Interline tickets was that the plaintiff wanted:

(a) to increase the traffic on Uzbekistan Airways flights from Singapore; and

(b) to increase the sale of interline tickets.

The benefit to the defendant may be found in cl 7 of the Interline Sales Agreement which stipulates that the defendant will receive a 6% commission for the interline tickets it sold. However, the Interline Sales Agreement was made subject to the condition that the defendant complied with the terms therein, including cl 6, which imposed responsibility on the defendant for "under-collections and fare differences arising from tickets issued out of its offices".

24 The plain and ordinary meaning of "under-collection" or "fare difference" suggests any shortfall in a fare that is properly due. In the context of a travel agent issuing tickets, this could plausibly encompass the issuance of air-tickets at a lower price as a result of basing them on fictitious routes. The defendant's witness, Gurmit Singh s/o Balwant Singh ("Gurmit Singh"), himself acknowledged that –

> [U]nder-collections may arise because of incorrect fare construction, for example, when the routing does not satisfy stipulate [*sic*] conditions such as maximum mileage or booking class. There would be an "under-collection" because a higher fare should have been applied or the fare should have been constructed differently.

Similarly, although a fare construction is technically correct in the sense that it accurately calculates

the applicable tariffs for each destination, there would be an "under-collection" or a "fare difference" if a route is charted where some sectors were not going to be flown at all. Under cross-examination, Gurmit Singh agreed that this was the case, provided that it was done "intentionally".

25 However, I think the plaintiff goes too far by arguing that cl 6 is an agreement by the defendant to indemnify the plaintiff for all the plaintiff's losses in respect of British Airways, irrespective of fault. Nothing from a plain and ordinary reading of the clause or the context of the clause suggests such an interpretation. Based on cl 6 of the Interline Sales Agreement, the defendant should be held responsible for any under-collection or fare difference resulting from the sale of tickets for fictitious routes at a lower fare than would have been derived for the actual route flown.

26 As for the Protocol, it is even more important to examine the factual background in which it was entered into as well as to determine its purpose because the clauses of the Protocol are evidently not well drafted and do not seem to have a consistent meaning.

The evidence

27 The undisputed events leading up to the signing of the Protocol are briefly as follows:

(a) 5 January 2001 – British Airways sent a letter to the plaintiff formally complaining that the defendant had issued tickets to and from fictitious destinations and expressing its intention to bill the plaintiff full sector fare for any sector subjected to revenue dilution as a result of the incorrect issue of tickets [see PCB at 82-83].

(b) 28 June 2001 – the plaintiff replied to British Airways refusing to accept its debit "according to resolution IATA 789 and RAM ch.A2 para. 1.1.1, para. 3" and arguing that the amount should be based on through applicable fare, not full sector fare.

28 Regarding the signing of the Protocol itself, the evidence of Nadejda Yasenitskaya ("Yasen") was that the Protocol was signed after a meeting on 14 July 2001 as part of attempts by the plaintiff –

> … to negotiate with [the defendant] the issue of compensation for amounts paid by [the plaintiff] to [British Airways] as a result of [the defendant] wrongly applying tariffs for Interline flights.

I bear in mind that Yasen was not one of the persons present at the Protocol meeting.

29 The evidence of Gurmit Singh was that the plaintiff's manager in Kuala Lumpur, Shakir Parpiev ("Shakir"), had telephoned him sometime in February 2001 to inform him that the plaintiff's accounts department had received some queries from British Airways and Lufthansa regarding tickets issued by the defendant. According to Gurmit Singh, Shakir told him that both British Airways and Lufthansa –

> … were not agreeable with the amounts stated on the tickets because of the fare construction applied to the tickets, and that both airlines intended to invoice the Plaintiff a higher value than what they had originally invoiced.

30 Subsequently, in early July 2001, Shakir contacted Gurmit Singh for a meeting to discuss those issues. According to Gurmit Singh, the Protocol was drafted by the plaintiff's representatives and he had insisted on modifying it by adding in certain portions of cll 3 and 4 relating to the defendant's provision of proof that the fare construction was correct and that the plaintiff had to provide the defendant copies of interline billing in accordance with local income tax laws. Gurmit Singh further

stated in his affidavit of evidence-in-chief that –

> [w]hen the Protocol was signed, the general consensus among the parties was that there was a genuine case for rebuttal against BA's and Lufthansa's claims and that I had already substantiated the grounds for such rebuttal.

Also Gurmit Singh said that he was told by Shakir that the plaintiff's delegation was –

> … required by their head office to ensure that the Protocol was entered into with the Defendant, and he also said that the Defendant should not worry about signing the Protocol since the Defendant felt confident about being able to rebut BA's and Lufthansa's claims.

Gurmit Singh added, in cross-examination, that he was under "psychological pressure" to sign the Protocol from the plaintiff's delegation. However, the fact remains that Gurmit Singh was able to negotiate for the inclusion of certain terms in the Protocol before signing. In my view, he signed the Protocol voluntarily after negotiation. The Protocol is therefore binding on the defendant.

Interpreting the Protocol

31 As a preliminary point, cl 3 of the Protocol states in part that the defendant "will be *obliged to cover all under-collection that has arisen as a result of issuing the tickets what* [*sic*] *become the reason for [the plaintiff's] interline partners to bill [the plaintiff]…*". From the wide ambit of this clause, it is apparent that "under-collection" was intended to include a situation where the defendant had issued tickets based on routes that were not flown, and was not limited to exchange rate fluctuations, the failure to take into account tax and technically incorrect fare constructions relating to mileage or booking class as the defendant contended in respect of the Interline Sales Agreement. The Protocol contains no such limitation. In this respect, cl 3 of the Protocol supports my interpretation of cl 6 of the Interline Sales Agreement.

32 I accept that the Protocol does contain language to suggest that the defendant will be liable for the *entire* sum the plaintiff's interline partners claim from the plaintiff. These are the statements which the plaintiff emphasises to make its point that the defendant's liability exists irrespective of fault on the defendant's part or any other limitations. However, in the light of the context as well as the objective purpose of the Protocol, the plaintiff's interpretation is untenable and a more reasonable approach must be taken. That is, the defendant ought only to be responsible for "under-collection" and "fare differences" resulting from collecting less than the sum the plaintiff's interline partners would have been *entitled to* based on the industry rules.

33 The portions of the Protocol that suggest the defendant is liable for *any* sum claimed by the plaintiff's interline partners are as follows:

(a) The first sentence in cl 3 which states that the defendant –

> … will be obliged to cover all under-collection that has arisen as a result of issuing the tickets what become the reason for [the plaintiff's] interline partners to bill [the plaintiff] using *full applicable sector fare which is contrary to IATA rules and regulations*" [emphasis added];

(b) The sentence in cl 3 which provides that the defendant –

> … acknowledges that it will be responsible to pay the *total amount of claims in case of no*

adjustment between [the plaintiff] and its interline partners …" [emphasis added];

and

(c) The second sentence of cl 4 which stipulates that the defendant is to be –

> … responsible to cover any differences between the amount of remittances regarding sales reports and the amount of billing [of the plaintiff] by [its] interline partners.

However, a closer look at these sentences as well as their context and background reveals that such a broad interpretation cannot be correct.

34 First, with respect to the first sentence of cl 3, reading it as imposing an obligation on the defendant to cover any sum the plaintiff's interline partners bill the plaintiff, *even if* such sums are contrary to IATA rules and regulations, would be absurd in light of the factual background that about two weeks before the meeting when the Protocol was signed, the plaintiff had protested against the amount claimed by British Airways basing its protest on IATA Resolution 789 and the IATA Revenue Accounting Manual. It must be the case that, at the time, the plaintiff recognised that the IATA rules and regulations ought to be complied with and fully expected British Airways to comply with them. Thus, I come to the conclusion that the function of the latter part of the sentence is more appropriately treated as describing how the defendant's obligation has arisen, rather than as describing the obligation itself.

35 Second, the context of these statements qualifies their broad literal meaning. The first sentence of cl 3 refers to "under-collection" which is the term used in cl 6 of the Interline Sales Agreement. "Under-collection" should therefore be understood in the same way as in the Interline Sales Agreement rather than be given an overly wide and untenable meaning. The other two portions of the Protocol ought also to be constrained by the Interline Sales Agreement. The later part of the fifth sentence of cl 3 states that the responsibility acknowledged by the defendant is "in accordance to Para 6 of the [Interline Sales Agreement]". This was also the case with the second sentence of cl 4. It would appear that by inserting this phrase, the parties intended that the responsibilities undertaken by the defendant as a result of the Protocol do not go beyond cl 6 of the Interline Sales Agreement which makes the defendant liable for the fare difference between British Airways' true entitlement based on the route actually flown and the pro-rated share that it received based on a fictitious route.

36 Third, the Protocol was intended to represent a product of a particular stage of negotiation between the plaintiff and the defendant as to how to settle the claims faced by the plaintiff; it was not meant to be the final word on the matter. The clauses of the Protocol bear this out, with one portion of cl 3 stating that:

> The [defendant] suggested to [the plaintiff] that both parties should work together to overcome any unprecedented issues raised by [the plaintiff's] Interline partners and to overcome all problems together for mutual benefit. [The plaintiff] requested the [defendant] to forward to [the plaintiff's] Financial Department a letter with supporting documents.

37 Finally, it must be borne in mind that the Protocol was entered into as a result of one day of negotiations, with the plaintiff having drafted most of it. Any ambiguity must therefore be resolved against the plaintiff. For these reasons, I am of the view that the Protocol was not intended to modify the defendant's obligations under the Interline Sales Agreement but merely to clarify that "under-collection" would also cover the situation where the defendant had collected less than what

British Airways was entitled to by issuing tickets for fictitious routes. It was this "under-collection" that the defendant bore responsibility for.

Issue 2: Whether the defendant knowingly issued tickets which included destinations that passengers did not intend to fly

38 Having considered the evidence, I find that the defendant knowingly issued tickets to passengers for routes that were not intended to be flown. I base this finding not only on the following facts:

(a) That many of the routes were unusually complex;

(b) That many tickets were issued using the same complex routes; and

(c) That the tickets were invariably issued in weak currencies from points to which lower fares would apply,

but also on the fact that the routes included sectors requiring carriage by airlines with whom the plaintiff had no interline agreement. (The plaintiff counted more than 20 such airlines.) It was obvious therefore that such sectors would not be flown. I reject the defendant's excuse that it had no knowledge that such interline agreements did not exist.

Issue 3: Whether British Airways ought to bear its own losses

39 The question whether British Airways ought to bear its own losses has two parts – first, whether British Airways had a duty to ensure that the passengers it carried were flying in sequence; second, if so, whether British Airways was in breach of such a duty. Here, in my view, the enquiry need not go beyond the first part because, based on the IATA rules and the plaintiff's bilateral interline agreement with British Airways, the latter had no such duty; where the tickets were issued based on a fictitious route in contravention of the industry's rules the duty lay with the issuer.

40 I note at this juncture that neither party called any expert evidence on how the IATA Rules and Regulations ought to be interpreted. Resolution 789, which is the particular rule in issue, states in relevant part that:

1. As of the date of issue, the Member whose ticket is issued shall be responsible for the accuracy of the fare shown thereon in relation to the journey and class to be performed, and in all other relevant particulars.

…

3. In respect to a flight coupon whereon the flight number, date and class and confirmed reservation has been entered, the carrying carrier *may accept for uplift without further check*, except that in case of a fare increase becoming applicable after the date of issue, … [emphasis added]

[the exception is not applicable on the facts]

41 In his own evidence, Gurmit Singh referred to IATA Resolution 789 and stated that –

[t]he final responsibility of ensuring that such IATA rules are complied with, and that the correct applicable fares and taxes have been charged to the passenger by their issuing agent, *rests with*

the airlines concerned. This is confirmed by "IATA Resolution 789 – Responsibility for Travel at the Correct Fare" … [emphasis added]

This is an implicit acknowledgment that the plaintiff, being the "Member whose ticket is issued" in para 1 of Resolution 789 had to bear responsibility for the accuracy of the fare on the ticket and, on a related point, assuming that the ticket was not issued correctly, that British Airways being the "carrying Member" in para 3 of Resolution 789, was entitled to accept a passenger for "uplift without further check" where the flight number, date and class and confirmed reservation had been entered on the flight coupon. It was contradictory for the defendant to say that British Airways bore the responsibility for ensuring that the passengers flew in sequence. Gurmit Singh conceded as much under cross-examination.

42 Despite that, the defendant argued that based on cl 2.2.3 of the bilateral interline agreement between the plaintiff and British Airways and his understanding of the practice of airline counter staff, the responsibility for passengers flying out of sequence lay with British Airways. First, I point out that the defendant's understanding of the practice of airline counter staff is not good evidence because Gurmit Singh did not have any proper foundation or basis for such an understanding. He conceded this under cross-examination. In the absence of evidence of the general practice of airlines or British Airways' actual practice and in the light of para 3 of Resolution 789, there was no basis for saying that British Airways would accept responsibility for passengers flying out of sequence.

43 Counsel for the plaintiff also made the valid point that an airline would usually not be alerted to a passenger having flown out of sequence if there were no unused coupons in relation to a preceding leg of the journey to alert the airline; as for the leg of the journey following on from the British Airways flight, it would have been impossible for British Airways to ascertain at the time of boarding whether the passenger had any intention to fly that leg. It cannot be, therefore, that British Airways had a duty to ensure that the passengers were flying in sequence. Such a contention is even more egregious considering that the defendant knowingly issued such tickets for a fictitious route in breach of the IATA rules.

44 In any case, contrary to what the defendant argued, cl 2.2.3 of the plaintiff's bilateral interline agreement with British Airways does not impose any obligation on British Airways to ensure that the passengers it carries are flying in sequence. Clause 2.2.3 provides as follows:

> Flight coupons shall be honoured only in sequence as shown on the carbonised passenger coupon(s) or the A i ^ passenger receipt(s) and such flight coupon(s) shall not be accepted for carriage, exchange or refund, and are not valid unless accompanied by the passenger coupon and additionally for ATBs, the passenger receipt.

Based on my reading of this clause, no obligation is imposed on British Airways to ensure that the passengers are flying in sequence. Rather, this clause appears to me to confer a *right* on the carrying airline to dishonour flight coupons that are out of sequence. Such an interpretation is confirmed by looking at the context of the provision.

45 Clause 2.2.3 is contained under section 2 headed "Issuance of tickets and MCO'S", and sub-section 2.2 headed "Acceptance". The context of the provision may be appreciated by looking at cll 2.2.1 and 2.2.2. The former contains the agreement of each party to the agreement to accept tickets and other documents issued by the other party and to transport passengers and baggage as stipulated in the tickets. The latter states that the issuing office has to deliver the ticket to the passenger with all the flight coupons intact, failing which the issuing office will be responsible for any fare difference from the actual origin of travel.

46 The context makes clear that cl 2.2.3 ought to be understood as one of the conditions governing the parties' obligation to accept passengers holding flight coupons issued by the other party. That is, there is no such obligation to accept passengers when he does not fly in sequence. Further, if one party has failed to issue a ticket with all flight coupons intact, that party has to be responsible for any fare difference arising from such wrongful issue. This is the true meaning of cl 2.2.3 read together with the two preceding cll 2.2.1 and 2.2.2.

47 Therefore, the defendant's case that British Airways had a duty or responsibility to ensure that the passengers it carried were flying in sequence must fail. Under IATA Resolution 789, British Airways was entitled to accept the passengers without further checks when the flight number, date and class and confirmed reservation had been entered on the flight coupon. Consequently, British Airways did not have to bear its own losses and was entitled to seek compensation from the plaintiff.

Issue 4: Whether the amount claimed by British Airways was excessive

48 The defendant's case is that the amount claimed by British Airways was excessive because the invoices were calculated based on full sector fare, which was considerably more than a round-trip fare. The defendant argued that, based on the IATA Revenue Accounting Manual, Chapter A2, cl 1.1.1, where an under-collection has been made the fare raised should be to the "lowest official fare applicable to the journey performed", which, in this case, is a round-trip fare. The plaintiff's case, apart from the earlier rejected claim that the defendant was liable for all the differences in billings, was that it could not demand that British Airways claim only for a round-trip fare. Yasen explained at trial, taking the example of a flight for the route of Colombo-Singapore-London-Reykjavik-London-Singapore-Colombo, that because the journey was interrupted by a passenger's failure to fly from London to Reykjavik, the return fare calculation was not applicable. Yasen also testified in cross-examination that the plaintiff had tried to negotiate with British Airways to reduce the fare raised to one based on a round-trip fare but to no avail.

49 The defendant's case is more persuasive than the plaintiff's on this issue. First, although the plaintiff testified that once a trip was broken, the return fare calculation was not applicable, she did not base this on any known rules. It is in fact unclear where her understanding on this issue came from. There was no evidence adduced in support of the plaintiff's contention in this respect. There is also no other evidence of any communication between the plaintiff and British Airways on the issue of a round-trip fare other than Yasen's testimony under cross-examination. So it is unknown what reason British Airways gave for refusing to use a round-trip fare calculation.

50 The only rule the court has to go on is cl 1.1.1 of the IATA Revenue Accounting Manual, Chapter A2, which both parties accept is applicable to the present situation. I set out the clause in relevant part:

> 1. BASIC BILLING RULES
>
> 1.1 Billing Passenger Flight Coupons
>
> 1.1.1 Subject to paragraphs 1.2.1 and 1.2.2 below, and to any rules relating to voluntary or involuntary rerouting (see IATA Resolution 735d and 736), the amount to be billed by the honouring airline to the issuing airline is the fare (or prorate thereof) due to the carrier shown in the "Fare Calculation" area or "From/To" panel, or where there is no entry, in the "Carrier" box in the "Good for Passage" section. The fare (or prorate thereof) shall be calculated in accordance with the original information as to routing, carrying airlines, coupon and fare basis/ticket designators and fare calculation points shown on the flight coupon.

Where an *incorrect fare has been collected*, the fare shall be determined as per RAM Chapter A2, paragraph 3 *and the following shall apply*:

…

Where *an under collection has been made, the fare shall be raised to the lowest official fare applicable to the journey performed*.

[emphasis added].

51 Unfortunately, neither of the parties has produced the entire IATA Revenue Accounting Manual nor provided assistance to the court as to whether any official definition exists for "lowest official fare". In the absence of such tools of interpretation, the court can only do its best to interpret cl 1.1.1 based on the ordinary meaning of the words, taking into account their context.

52 This clause essentially provides that where an incorrect fare has been collected, as was the case here because the correct fare should have been based on the actual route flown and not a fictitious one, the fare should be raised to the "lowest official fare applicable to the journey performed". On a literal reading, the "lowest official fare applicable to the journey performed" would, staying with the example used by the plaintiff's witness, refer to the lowest possible fare calculation for the Singapore-London-Singapore route, which would be a round-trip fare. The context of the clause does not contradict this reading or suggest that any other meaning is more appropriate.

53 The defendant argued that certain correspondence between the plaintiff and British Airways showed that the plaintiff recognised that full sector fare was actually not the appropriate basis of calculation under the IATA rules and that the round-trip fare was more appropriate. First, the defendant said that the plaintiff's letter to British Airways dated 28 June 2001 showed that the plaintiff disputed British Airways' right to bill full sector fare. That was so but the alternative therein suggested by the plaintiff, "normal through applicable fare" is not necessarily the round-trip fare; Yasen testified under cross-examination that "through applicable fare" referred to the pro-rated fare that British Airways was entitled to (assuming that all sectors were flown) and that it was in fact wrong to have expected British Airways to bill based on normal applicable through fare since not all the sectors were flown. The plaintiff's letter therefore did not show that the plaintiff believed that the round-trip fare ought to be applicable under the IATA Revenue Accounting Manual. However, a second letter relied upon does support the defendant's contention that under the IATA Revenue Accounting Manual, full-sector billing ought not to be used when the actual journey flown was known. This was British Airways' reply dated 10 August 2001 to the plaintiff's letter, stating:

I appreciate your request that we recalculate the value based on the actual fare for the journey completed, but regret that as the journey was ticketed on your ticket stock, I am unable to perform this calculation.

As I do not have the complete information regarding the actual flown journey, I have no alternative but to bill based on a full sector fare and to request that you reject the difference between the value billed and the correct prorate of the fare for the actual journey flown. As in this case the Agent has contravened fare construction rules by the inclusion of points not flown by the passenger, we would ask you to support your rejection with system information or copy PNRs to prove the actual journey travelled.

54 This reply suggests that if British Airways had been made aware of the actual journey flown (and this was proved by supporting documents), it would have been prepared to recalculate the fare

based on the actual journey flown and not apply full-sector billing. It is not disputed that the plaintiff did not in fact provide system information or copy PNRs to British Airways to prove the actual journey travelled.

55 Therefore, the "under-collection" that the plaintiff was entitled to hold the defendant responsible for should not be calculated based on a full sector fare. Instead, it should be based on the actual journey flown, *ie*, a round-trip fare where only one sector was flown, or a pro-rated amount calculated on a round trip basis where more than one sector was flown. The defendant estimated that based on the actual journeys flown, the amount British Airways was entitled to claim from the plaintiff was approximately GBP203,359 based on current exchange rates, taxes and fares. An estimate was given because, according to Gurmit Singh, the appropriate fare for each of the actual journeys flown as at the material time could not be worked out owing to unavailability of data as to the exchange rates, taxes and fares then prevailing. Gurmit Singh conceded that there was an inconsistency in his evidence in that [22] of his Supplementary AEIC referred to a figure of GBP195,641 whereas the ensuing calculations and [23] reflected the higher figure of GBP203,359 which the defendant was prepared to take. In my view, it is not unreasonable to use this estimate, the plaintiff not having offered any other.

Conclusion

56 I therefore grant judgment to the plaintiff in the sum of GBP203.359 for the aggregate differences in fare between the lowest official fare applicable to each of the actual journeys flown that British Airways was entitled to and the pro-rated amount British Airways received, based on the fictitious routes.

57 I have not discussed the defendant's argument that the plaintiff ought to have issued a third rejection to British Airways so that it could enter into negotiations with British Airways to present the defendant's case that it had merely issued tickets based on the passengers' instructions. Such arguments are irrelevant in the light of my finding that the defendant had knowingly issued tickets for fictitious routes.

58 For the same reasons, I allow the plaintiff's claim for reimbursement in the reduced amount of USD4,204.22 with respect to the other interline tickets.

59 Finally, as regards the plaintiff's claim for the sum of USD4,541.94 in respect of the Gabriel System and the SGD907.22 in respect of SingTel charges, I accept the defendant's argument:

(a) that it was up to the plaintiff, as the contracting party vis-à-vis SingTel and the service provider of the Gabriel System, to terminate the services; and

(b) that the defendant had not made use of the facilities after termination of its agency as the plaintiff had thereafter denied the defendant access to the Gabriel System.

Accordingly, the plaintiff's claim fails in this regard.

60 I also award interest on GBP203,359 and USD4,204.22 from the date of the writ until payment at the rate of 5.33% per annum. Costs to the plaintiff to be taxed unless agreed.

ADDENDUM (further hearing on 14 August 2008)

61 Subsequent to my judgment, by letter dated 11 August 2008, the defendant's solicitors applied

for a further attendance before me to seek clarification on the sum of GBP 203,359 awarded to the plaintiff. The defendant clarified that the estimate of GBP203,359 was a gross figure from which there had to be deducted a sum of GBP66,192.17 which had earlier been received by British Airways. Whilst the plaintiff did not dispute that that sum of GBP66,192.17 had been paid to British Airways, it resisted the deduction nevertheless. I saw no justification for their objection and, accordingly, reduced the sum awarded to the plaintiff to GBP137,166.83.

62 Apart from this change, I did not allow the defendant to re-open the figure of GBP203,359 on the basis that it was only an estimate and was allegedly about 20% higher than the lowest applicable fare at the material time for the actual journeys flown. As the plaintiff pointed out during further arguments, this was the defendant's own estimate which it had declared at the trial that it was prepared to abide by. Even in the defendant's solicitor's letter of 11 August 2008, the defendant was still adopting that figure for the computation of agency fee which it claimed to be entitled to. The plaintiff's counsel therefore objected to the quantification of the lowest applicable fare at the material time for each of the actual journeys flown being sent to the Registrar for assessment.

63 At the further hearing, I also disallowed the defendant's attempt to deduct an amount of GBP12,201.54 in respect of agency fees which it asserted it was entitled to based on the fare for actual journeys flown. It must be remembered that the defendant had already received agency fees based on the tickets issued covering fictitious routes. Had the plaintiff sued for the refund of such fees, I would have been inclined to allow the claim on the basis that an agent is not entitled to remuneration in respect of transactions in relation to which he is in breach of his duties as agent, such breach going to the root of the contract or otherwise justifying the principal's repudiation of the liability to pay (see *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 17th Ed, 2001) at para 7-047). In view of my finding that the defendant had knowingly issued the tickets covering fictitious routes, there was no doubt in my mind that to allow the defendant any increased agency fee, just because of a higher fare payable to British Airways occasioned by the defendant's own breach, would make a travesty of justice.

64 Save for the reduction of GBP203,359 to GBP137,166.83 and the consequential change in the order awarding interest, I re-affirmed my judgment given on 8 August 2008.