

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
On the 7th day of August, 2006

British Airways, PLC

Violations of 49 U.S.C. §§ 41310, 41705 and 41712

Docket OST 2006-23528

Served August 7, 2006

CONSENT ORDER

This order concerns apparent violations of the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705,¹ which prohibits discrimination in air travel against individuals with disabilities. Since the apparent ACAA violations occurred in foreign air transportation they would constitute violations of 49 U.S.C. § 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation. ACAA violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. This order directs British Airways, PLC (British Airways) to cease and desist from future violations of the ACAA and assesses a compromise civil penalty of \$50,000 for such violations. Of this amount, \$45,000 will be credited to British Airways for expenditures on re-training on when it is appropriate to require an attendant for its personnel who deal directly with the traveling public on flights operating from the U.S.

BACKGROUND

The investigation by the Enforcement Office into British Airways' compliance with the ACAA began with four informal complaints filed with the Enforcement Office by complainants identified here as "A", "B", "C" and "D",² individuals with mobility-related disabilities. Each complainant was denied travel on British Airways because he/she was

¹ In April 2000, the ACAA was extended to foreign air carriers pursuant to the Wendell H. Ford Aviation Investment & Reform Act for the 21st Century. (Air-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000)

² The identification of the individuals is unnecessary for the purposes of this consent order and is being withheld for privacy reasons.

not traveling with an attendant. All four complaints involve passengers who were traveling between the United States and a foreign point.

Ms. A was scheduled to travel from New York to London on March 5, 2003. She is paraplegic³ and uses a wheelchair for mobility. Ms. A is able to use her upper body and can transfer from her wheelchair to an aisle chair and from the aisle chair to the aircraft seat. Ms. A arrived at the airport for her flight, checked her luggage, tagged her wheelchair to be placed in the luggage compartment and was escorted to the gate. As she was transferring to the British Airways aisle chair she was told that she would be unable to take her scheduled flight because she did not have an escort. Ms. A questioned British Airways personnel as to the reason she was not informed of her need for an escort when she requested the aisle chair in February when making her reservations. Ms. A stated that during the entire process no one informed her of the reason she could not travel without an attendant and was denied boarding.

Mr. B was scheduled to travel from Detroit, Michigan to Egypt on January 9, 2005. Mr. B has spastic paraplegia and uses a wheelchair for mobility. He can walk short distances and transfer from a wheelchair to an aisle chair. Mr. B regularly travels alone and he traveled on October 5, 2004, from Egypt to Detroit on British Airways without incident. However, on January 9, 2005, British Airways' personnel told Mr. B that they could not allow him to travel on his flight that day because they did not have anyone to lift him from his aircraft seat to the aisle chair. Mr. B then informed the British Airways personnel that he did not need anyone to lift him because he could transfer without help. Mr. B was still denied boarding.

On March 12, 2005, Ms. C was denied boarding on her scheduled British Airways flight from Atlanta, Georgia to London since she did not have an attendant. Ms. C has muscular dystrophy and uses a wheelchair for mobility. Ms. C is very active and travels regularly. She has upper body strength and is able to transfer from her wheelchair to an aisle chair and from the aisle chair to the aircraft seat. When Ms. C was checking in at the airport for her flight, she expressed concern that a long layover in London (her final destination was Madrid) would be difficult because she was not able to push herself in her manual wheelchair. British Airways personnel asked Ms. C if she was traveling alone and whether she would need assistance on the aircraft. Ms. C responded that she would only need assistance getting onto the aircraft and to the restroom if necessary. The British Airways supervisor then briefly stepped away and came back to inform Ms. C that he was unable to get medical clearance for her to board the aircraft because British Airways has a corporate policy that prohibits disabled passengers with "special needs" from traveling without an escort. The supervisor also informed Ms. C that she could travel the next day if she could find someone to travel with her but that person would have to pay the going rate as of that day.

Mr. D was scheduled to travel with British Airways from Los Angeles, California to London, England on May 15, 2006. However, when Mr. D attempted to board his flight

³ Paraplegics have full use of their arms and hands and would under normal circumstances be able to assist in their own evacuation.

from Los Angeles to London, he was informed by British Airways' personnel that he would be unable to travel because he could not walk to the restroom onboard the aircraft. Mr. D, who uses a wheelchair for mobility, is able to "scoot" from his aircraft seat to the aircraft lavatory if necessary. It is also worth noting that Mr. D traveled by air from Phoenix, Arizona to Los Angeles without incident that same day. Nevertheless, British Airways sent Mr. D to a hotel in Los Angeles to spend the night and scheduled transportation for the next day on another carrier home to Phoenix.

Based on the serious nature of these complaints, the Enforcement Office conducted an investigation of British Airways and determined that its decision to deny boarding to the above-referenced complainants is inconsistent with the requirements of the ACAA because British Airways incorrectly determined that Ms. A, Mr. B, Ms. C and Mr. D could not travel without an attendant and improperly denied them boarding.

ANALYSIS

The complaints that formed the basis of this case involve incidents occurring after April 5, 2000, the date the applicability of the ACAA was extended to foreign airlines by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21). In May 2001, the Department's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) gave notice that it intends to use the provisions in 14 CFR Part 382 (the Department's rule implementing the ACAA which does not by its terms address foreign air carriers except in one narrow area involving the reporting of disability-related complaints received by foreign air carriers) as guidance in investigating any complaints it receives of ACAA non-compliance by foreign air carriers.⁴ In that regard, section 382.35 explains that a carrier must not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation unless the carrier determines that an attendant is essential for safety. More specifically, an attendant must not be required for a passenger with a mobility impairment if that person can assist in his or her own evacuation of the aircraft.

In the above referenced-cases, British Airways plainly failed to ask questions sufficient to enable it to render a determination regarding whether Ms. A, Mr. B, Ms. C, or Mr. D could have assisted in their own evacuation. Merely asking whether the individual would be traveling with an attendant or whether he/she could walk without assistance is insufficient to determine whether an attendant is necessary for safety purposes. British Airways summarily and abruptly denied travel to all four passengers and left them with no option but to find an attendant and reschedule their flight or arrange a flight on another carrier⁵.

⁴ The Department issued a proposed rule to extend the applicability of Part 382 to foreign air carriers on November 4, 2004. The Department is currently reviewing public comments on the proposed rule. See OST-2004-19482 at <http://dms.dot.gov> and 69 FR 64363.

⁵ British Airways has asserted that its refusal to transport these passengers is consistent with the UK Code of Practice issued by the UK Department for Transport as that Code provides that an airline may require an escort or companion when it is clear that a disabled person is not self-reliant. A self-reliant passenger is

Therefore, under the circumstances described above, the Enforcement Office believes that British Airways' failure to transport Ms. A, Mr. B, Ms. C, and Mr. D was based solely on their disability and was a violation of the ACAA and unlawful discrimination in violation of 49 U.S.C. § 41310. Such violations would also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712.

In mitigation and explanation, British Airways states that its policy and goal is to transport all passengers, including disabled passengers covered by the ACAA, safely and in accordance with applicable law. As a UK airline, British states it is subject in these cases to at least three regulatory regimes, including the ACAA, the UK Code of Practice and the EU legislation entitled, "The Rights of Persons with Reduced Mobility when Traveling by Air". British Airways states that all three regimes prohibit "discrimination" against disabled passengers. The Department's regulations, which currently serve as guidelines for foreign carriers, require, in pertinent part, that passengers with mobility-related disabilities be able to travel without an attendant, unless they cannot "assist in their own evacuation." British Airways points out that the UK Code of Practice provides that UK carriers also consider such factors as whether the passenger can self-feed, self-medicate, go to the toilet or lift without assistance before they can travel without an assistant.

British Airways avers that the existing multifaceted international regulatory regime raises difficult compliance issues that remain to be resolved. Further, British Airways denies that it behaved in a discriminatory manner in any of the four instances. The carrier states further that it is committed to providing quality service for disabled passengers.

British Airways states that it is willing to settle this matter and agrees to undertake to re-train its airport personnel handling flights operating from U.S. airports regarding the proper standards for accepting persons with mobility-related disabilities without an attendant for flights to the UK. According to British Airways it is already fully committed to vigorous compliance with the applicable laws and requirements regarding the rights of passengers with disabilities, and the re-training will serve to reinforce the company's commitment to these core protections.

After carefully considering all the facts in this matter, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation and without admitting or denying the alleged violations described above, and without waiving any rights,

defined as a passenger that can independently breathe, feed, lift, communicate, toilet and self-medicate. The Enforcement Office disputes British Airways' assertion that Ms. A, Mr. B, Ms. C, and Mr. D are not self-reliant and the Enforcement Office believes that the facts demonstrate that complainants A, B, C, and D are clearly self-reliant. Further, the Enforcement Office believes British Airways' written attendant policy, which was not followed in the covered incidents, violates the ACAA. However, it declines to address this issue in the present consent order since the Department of Transportation is considering foreign laws and guidance on attendants as part of its rulemaking applying the non-discrimination requirement of the ACAA to foreign air carriers.

defenses, or remedies it may otherwise have, British Airways has agreed to a settlement of this matter with the Enforcement Office.

Under this order, British Airways consents to cease and desist from future violations of the Air Carrier Access Act and 49 U.S.C. §§ 41310 and 41712 and agrees to the assessment of a \$50,000 civil penalty. British Airways will be credited \$45,000 for the re-training of its airport personnel regarding the proper standards for accepting persons with mobility-related disabilities without an attendant for flights from the U.S. to the UK⁶. Nothing in this order is intended to preclude British Airways, or any other foreign air carrier, from the legitimate exercise of its discretion to refuse to transport disabled passengers for valid safety reasons. In the circumstances presented in this case, the Deputy General Counsel and the Enforcement Office believe that this settlement is appropriate and serves the public interest and provides an incentive for all carriers to comply with the ACAA and other Federal statutes prohibiting unreasonable discrimination and to ensure proper carriage and treatment of passengers with disabilities.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that British Airways, PLC, acted in a manner inconsistent with the requirements of the Air Carrier Access Act (49 U.S.C. § 41705), 49 U.S.C. § 41310 and 49 U.S.C. § 41712 by failing on four occasions to transport a qualified disabled passenger due to the passenger's disability when no *bona fide* safety reason existed;
3. We order British Airways, PLC, to cease and desist from future conduct inconsistent with 49 U.S.C. §§ 41705, 41310 and 41712;
4. British Airways, PLC, is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the incidents described in paragraph 2 of this order as follows, subject to the credit offset of \$45,000 as provided in subparagraph 4(b) below:
 - a. \$5,000 shall be due and payable 30 days after the service date of this order; and
 - b. \$45,000 shall be credited to British Airways, PLC, in order to re-train its airport personnel that deal with flights operating from the United States.

⁶ Although British Airways has only requested a credit regarding training in connection with flights from the U.S. to the UK, it is the position of the Enforcement Office that the ACAA would apply to all flights between the U.S. and UK.

5. Payment of \$5,000 shall be made within 30 days after the service date of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions. Failure to pay the penalty as ordered will subject British Airways, PLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Within one year after the service date of this order, British Airways, PLC, shall provide written certification to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the training program described in ordering paragraph 4(b). British Airways, PLC, shall also provide a sworn statement from an appropriate company official certifying that the total expenditures were properly made to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement. If within one year after the service date of this order British Airways, PLC, has not provided the required written certification, it shall pay \$45,000 or any lesser amount not covered by such a certification in accordance with paragraph 5, within 30 days of the date the certification was required by this paragraph.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(Seal)

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