



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

Issued by the Department of Transportation
On the Twenty-Third day of August, 2013

Frank Drum

Complainant

v.

**Southwest Airlines Co. and
PrimeFlight Airline Services**

Respondents

DOT OST 2013-0093

Served August 23, 2013

ORDER TERMINATING PROCEEDINGS

This order concerns alleged violations by Southwest Airlines Co. (Southwest) and PrimeFlight Airline Services (PrimeFlight) of the Air Carrier Access Act, 49 U.S.C. § 41705, (ACAA) and the regulations found at 14 CFR Part 382. By this order, the Office of Aviation Enforcement and Proceedings (Enforcement Office) declines to institute a formal enforcement proceeding and thereby dismisses the instant case.

On May 2, 2013, the Service Employees International Union (SEIU) filed a formal complaint on behalf of Complainant, Frank Drum, with the Assistant General Counsel for Aviation Enforcement and Proceedings, pursuant to 14 CFR 302.404, alleging violations of the ACAA and Part 382. Complainant alleged that Southwest and PrimeFlight [hereinafter Respondents] (1) failed to provide training to proficiency concerning the requirements of Part 382, other applicable regulations, and Southwest's procedures, as required by 14 CFR 382.141(a)(1)(i)-(ii); (2) failed to provide training in recognizing requests for communication accommodations from individuals with hearing or vision impairments, as required by 14 CFR 382.141(a)(3); and (3) failed to provide equipment in sound working condition, as required by 14 CFR 382.51(b)(2).

On June 20, 2013, Respondents filed a joint answer in response to the formal complaint pursuant to 14 CFR 302.405. Respondents stated that Complainant received the required training in accordance with Part 382, which included communication with individuals with visual and hearing impairments. As documentary evidence of the training, Respondents submitted training logs and verifications signed by Complainant as well as completed tests that demonstrated his proficiency in the ACAA and Part 382. Furthermore, according to Respondents, Southwest has contracted with Aviation Mobility LLC (Aviation Mobility) to provide and maintain the wheelchairs and other equipment used to provide assistance to passengers, and Aviation Mobility has kept the equipment in sound working order. Respondents included documentary evidence of Aviation Mobility's maintenance. Respondents requested that the Department dismiss the Complaint with prejudice.

The Enforcement Office has thoroughly considered the pleadings and supporting documents on file in this proceeding.¹ It takes allegations that an airline has failed to train its employees in accordance with Part 382 very seriously. The allegations regarding the insufficiency of training received by Complainant, however, are not supported by the evidence. The Complaint is misleading and meritless. The Enforcement Office has, therefore, determined that any further investigation into the Complainant's allegations is unjustified and unnecessary. Moreover, the Enforcement Office is placing SEIU on notice that if, in the future, SEIU files an unsubstantiated complaint that contains misleading statements or otherwise exhibits unprofessional conduct, the Enforcement Office will pursue action to bar the SEIU from practicing before the Department under 14 CFR 300.20.²

ACCORDINGLY, I decline to institute a formal enforcement proceeding in this case.

¹ The Enforcement Office notes that the Complainants filed a Notice of Voluntary Discontinuance that is procedurally deficient for its intended purpose. Therefore, the office will not consider that document as a responsive pleading properly filed in this matter.

² SEIU filed similar complaints on behalf of complainants in June 2007 and February 2008, docket numbers OST-2008-0082 and OST-2008-0081, which were dismissed by the Enforcement Office for procedural deficiencies. In addition, SEIU improperly submitted a complaint in August 2009 but never formally filed it, even after the Enforcement Office sent a letter to the complainants explaining the deficiencies.

This order is issued under the authority assigned in 14 CFR 302.406(a)(2) and shall be effective as the final action of the Department within 30 days after service. Copies will be served on all parties.

BY:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document on the following persons in accordance with the Department's Rules of Practice.

Omar V. Guerrero
Senior Trial Attorney

Dated: August 23, 2013

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