C-10 Wrote
C-30 Reviewed
Disability

Order 2002-3-10
Served: March 12, 2002

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

Issued by the Department of Transportation
on the 12th day of March, 2002

NORTHWEST AIRLINES, INC. Violations of 14 CFR Part 382, and 49 U.S.C. §§41310, 41702, 41705, and 41712 Enforcement Proceeding	**Docket OST-01-10598**

ORDER

On February 11, 2002, Chief Administrative Law Judge Ronnie A. Yoder served a settlement approval order in the above-captioned proceeding. He approved, under his delegated authority at 14 CFR §385.11(d), a proposed settlement reached between the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (the Enforcement Office) and the respondent, Northwest Airlines, Inc. on the formal enforcement complaint brought by an attorney from the Enforcement Office. The complaint alleged that Northwest had repeatedly failed to provide adequate wheelchair and other required assistance to travelers with disabilities in violation of Department regulations implementing the Air Carrier Access Act (ACAA) as well as other statutes of the transportation code. 14 CFR Part 382; 49 U.S.C. §§41705, 41702, 41310 and 41712.

The order becomes the final action of the Department on March 13 unless the Department takes its own review or a review petition is otherwise filed. A request to enter the proceeding and to oppose the settlement has been filed by a disabled Northwest passenger, Ms. Louise M. Caplan. Answers to the motion have been filed by Northwest as well as the Enforcement Office.

obligations to carry disabled passengers. On the other hand, the settlement will not take away any procedural rights given Ms. Caplan under the ACAA to an investigation of her own complaint against Northwest.

ACCORDINGLY,

1. We deny the petition of Ms. Louise M. Caplan to intervene, as well as her requests to file otherwise unauthorized documents, namely, her petition to intervene and her opposition to the proposed consent order;

2. We allow the proposed settlement approval order of Chief Administrative Law Judge Yoder, served February 11, 2002, to become a final Department order; and

3. We will serve a copy of this order on the persons on the attached service list.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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http://dms.dot.gov

Attachment

Service List
Enforcement Proceeding
Docket OST-01-10598

Frank J. Costello
Nisha Saxena
Counsel for Northwest Airlines
Zuckert, Scoutt & Rassenberger, L.L.P.
888 Seventeen St. , NW
Washington, D.C. 200006-3309

Stanley S. Sandiford
Corporate Counsel
Northwest Airlines, Inc.
5101 Northwest Drive
St. Paul, MN 55111-3034

Linda G. Cook
4326 Rabbit Foot Lane
Richmond, VA 23236-1153

Emma P. Duggan
106 Lee Highway
Roanoke, VA 24019

Louise M. Caplan
5338 Soledad Mountain Road
San Diego, CA 92109

$40,000 for the cost of providing a link from AirTran's website to information regarding the Department of Transportation's toll-free Hotline to educate and assist individuals in resolving disability-related air travel problems; and (3) $40,000 of the lost revenue to AirTran of seat space lost by installing closets large enough to stow the largest standard-size wheelchair on board its newly ordered Boeing 737-700 aircraft, rather than continuing the use of the seat stowage method on such aircraft. In addition, this order directs that AirTran notify the Enforcement Office within 30 days if it changes its designated space for the stowage of passenger's standard-size folding wheelchairs. Finally, this order directs that AirTran complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order.

This consent order and the civil penalty assessed take into account AirTran's adoption of the seat stowage method for its existing aircraft and its voluntary installation of closet space large enough to stow a standard-size wheelchair on all of its newly ordered Boeing 737-700 aircraft. We further believe that this consent order and the penalty it assesses will provide a strong incentive for AirTran and other carriers to comply with the ACAA and 14 CFR Part 382.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 382.15.

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 AirTran Airways violated the requirements of 14 CFR § 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folded wheelchair in the passenger cabin of its new aircraft with at least 100 seats;

3. We find that AirTran Airways, by committing the violation described in ordering paragraph 2, violated the Air Carrier Access Act, 49 U.S.C. § 41705;

4. We find that to the extent the violations described in ordering paragraph 2 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;

5. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;

6. AirTran Airways and its successors and assigns are ordered to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2;

7. AirTran Airways is assessed a civil penalty of $125,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 6, of which:

    a. $20,000 shall be due and payable 30 days after the service date of this order;

b. $25,000 shall be credited to AirTran for expenditures made in developing training materials, in conjunction with the Southeast Disability and Business Technical Center, addressing general issues involving service to air travelers with disabilities;

c. $40,000 shall be credited to AirTran for the cost of providing a link from AirTran's website to 14 CFR Part 382 and information regarding the Department of Transportation's toll-free Disability Hotline to educate and assist individuals in resolving disability-related air travel problems; and

d. $40,000 shall be credited to AirTran for the costs associated with the seat space lost in connection with its installation of closets large enough to stow the largest size standard wheelchair on board its undelivered Boeing 737-700 aircraft, rather than continuing to use the seat stowage method on board such aircraft. If the carrier fails to install a closet large enough to stow one passenger's large standard-size wheelchair (36" inches in height by 13 inches in width when folded by 50 inches in length) on all of its Boeing 737-700 aircraft to be delivered over the next 5 years after the service date of this order, this amount shall be due and payable as described in ordering paragraph 9 below;

8. Within 30 days after the service date of this order, AirTran shall provide DOT with a statement with supporting documentation verifying the cost of each offset listed in paragraph 7 above. The statement shall show the cost of each offset, a detailed explanation of the method used by AirTran to determine the cost of each offset, and a sworn statement from an appropriate company official certifying that the descriptions and documentation are true and complete to the best of that official's knowledge;

9. Within one year after the service date of this order, AirTran shall provide written certification to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the accommodation programs described in ordering paragraphs 7(b) through (d). If by this date AirTran has not made the expenditures covered in ordering paragraphs 7(b) and (c) in full, it shall pay the amounts not expended in accordance with ordering paragraph 14, within 30 days of the date of the certification required by this paragraph. With respect to the accommodation program specified in paragraph 7(d), AirTran shall provide the required written certification within one year after the service date of this order for the first covered year. AirTran shall submit all subsequent certifications on the last Monday in October of that year for the prior covered year;

10. AirTran shall, upon request, offer passengers who use manual folding wheelchairs the option of stowing their wheelchairs inside the cabin of the aircraft, either in the overhead bin, in the row of passenger seats designated by AirTran for wheelchair stowage, or elsewhere in the cabin of the aircraft in accordance with 14 CFR Part 382;

11. AirTran shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;

12. AirTran Airways shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs on its Boeing 717 and Boeing 737 aircraft, or other aircraft governed by 14 CFR 382.21(a)(2); and

13. Payments made pursuant to this order shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. Instructions on the payment of civil penalties are attached. Failure to pay the penalty as ordered will subject AirTran Airways to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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

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http://dms.dot.gov/reports/reports_aviation.asp

CHECKLIST: AIRCRAFT COMPLIANCE WITH DISABILITY RULES

Please fill out and certify as correct the following checklist. Fill out one checklist for each type of aircraft the carrier currently operates. If you do not have enough room on this sheet to provide the requested information, please provide the information on a separate sheet and attach it to the checklist.

Airline Name:

Aircraft type and series (e.g., 737-400):

Number of such aircraft:

PART I GENERAL CONDITIONS FOR INSPECTION

Are the aircraft operated under 14 CFR Part 121? _____

Do the aircraft have 30 or more passenger seats? _____

Are the following true?

1) The aircraft were ordered by the original customer after April 5, 1990 (Yes/No) _____
2) The aircraft were delivered to the original customer after April 5, 1992 (Yes/No) _____
3) The aircraft cabin has been refurbished since April 5, 1990 (Yes/No) _____

If the answers to items (1) through (3) are *all* **no**, stop here; terminate the certification of this particular type of aircraft.

PART II PRELIMINARY INFORMATION

Number of passenger seats: _____ Number of aisles: _____

Date aircraft ordered by original customer: _____

Date delivered to original customer: _____

Original customer: _____

If current operator was not original customer, date aircraft delivered to current operator: _____

_____

Has the cabin been refurbished since April 5, 1990? _____

If yes, date the refurbishment was completed: _____

During refurbishment:

- Were existing seats replaced with newly manufactured seats? _____
- Were closets replaced or new closets installed? _____
- Were lavatories replaced or new lavatories installed? _____

PART III MOVABLE ARMRESTS

Number of passenger aisle seats:

First class: ____ Business class: ____ Coach class: ____ Aircraft Total _____

Number of passenger aisle seats that have a movable armrest on the aisle[1]:

First class: ____ Business class: ____ Coach class: ____ Aircraft Total _____

Number of passenger aisle seats that do not have a movable armrest on the aisle because it was not feasible (for example, the armrest included an integrated tray table or entertainment system):

First class: ____ Business class: ____ Coach class: ____ Aircraft Total _____

Number of passenger aisle seats in exit rows where passengers with disabilities are not permitted to sit:

First class: ____ Business class: ____ Coach class: ____ Aircraft Total _____

How does the carrier ensure that individuals with disabilities, including mobility impairments, readily obtain seating in rows with movable armrests? _____

PART IV ACCESSIBLE LAVATORY

Complete this section only for twin-aisle aircraft. Before inspecting the lavatories, review the following:

§ 382.21 Aircraft accessibility

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

Based on your inspection, is there at least one accessible lavatory as described above? ____

PART V AIRLINE ON-BOARD WHEELCHAIR

Complete this section only for aircraft that have more than 60 seats and an accessible lavatory.[2]

If the aircraft has more than 60 seats *and* an accessible lavatory (as described in Part IV), is the aircraft equipped with a permanent airline on-board wheelchair? Yes/No _____

If yes, briefly describe the location and type of stowage space for this wheelchair (e.g., "closet in front of first class cabin"): _____

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[1] Note: some movable aisle armrests will not lift until a button is pushed or a lever is pulled.

[2] Complete this section if the aircraft (with more than 60 seats) has an accessible lavatory, even if it has only one aisle and thus is not *required* to have an accessible lavatory.

PART VI STOWAGE SPACE FOR FOLDING PASSENGER WHEELCHAIR

Complete this section only for aircraft that have 100 or more passenger seats.

Is there a stowage space in the cabin (for example, a closet) designated for the accommodation of a passenger's folding wheelchair? ____

If yes, briefly describe the location and type of space for this wheelchair (e.g., "closet in front of first-class cabin"). _____

If there is such an area: What are its interior dimensions? _____

What is the weight-bearing capacity of this area? _____

Are there tie downs/restraints in this area? _____

PART VII CERTIFICATION

I certify, subject to penalties under 18 U.S.C. § 1001, that the information provided in this checklist is true and complete to the best of my knowledge.

Certification Date: _____ Certifier's name: _____

Certification location: _____ Certifier's telephone number: _____

Certifier's Signature: _____