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 March, 2003

Complaint of

Kyle Heck *v.*
Southwest Airlines, Inc.

Violations of 49 U.S.C. § 41705

Served March 7, 2003

OST 2002-14037

ORDER DISMISSING COMPLAINT

On December 9, 2002, Kyle Heck filed a third-party enforcement complaint under section 302.401 of the Department's Procedural Rules (14 CFR 302.401) against Southwest Airlines, Inc. (Southwest), alleging that the carrier discriminated against him as a disabled passenger on at least two occasions. The complainant is an adult who, owing to Down Syndrome and mental retardation, has the mental capacity of a minor. As a mentally disabled person, Mr. Heck should be eligible, according to the complaint, for the boarding and disembarking assistance and custodial supervision which the carrier provides under its unaccompanied minors policy. The carrier denies that it is obligated to provide this service to a disabled adult individual under 14 CFR Part 382, the Department's rule implementing the Air Carrier Access Act (ACAA). We agree with the arguments presented by the respondent and find no grounds for determining that Southwest's refusal to extend all the services it provides to unaccompanied minors to Mr. Heck, or other mentally disabled adult travelers, violates the rights of the complainant as a disabled individual.

Referring specifically to two trips which Mr. Heck made on Southwest in 1998 and 2002, the complaint states that the carrier's refusal to extend its unaccompanied minor policy to the complainant has resulted in "undue harm, safety hazards, and inconvenience to Kyle and his parents." During his 1998 trip, Mr. Heck was left unattended at the Phoenix air terminal for two hours when the flight on which he traveled arrived early and his father, who was to meet him at the airport, was delayed in traffic. Mr. Heck, left unsupervised by Southwest personnel at the gate of the arriving flight, then wandered to other parts of the airport and was only located after a search by airport security personnel. On a trip in September 2002, a Southwest gate agent, according to the complaint, brusquely refused the request of Mr. Heck's father that his son be treated as an unaccompanied minor, although the complainant apparently traveled without further incident on this occasion.

Mr. Heck believes that the provisions of Part 382 mandate that Southwest provide him with the same services available to minors under the carrier's unaccompanied minors policy. In taking this view, Mr. Heck relies primarily on 14 CFR 382.7(c), which requires that carriers modify their "policies, practices and facilities as needed to ensure nondiscrimination" so long as the modification is not an undue burden and does not require a fundamental alteration of the carrier's programs. An extension of the unaccompanied minors program, Mr. Heck contends, would not represent an undue burden or a fundamental change in the carrier's current program and hence is required under section 382.7(c). Such an extension, Mr. Heck contends, would enable mentally disabled individuals like himself to travel more readily and with fewer potential disruptions and would avoid the alternative, suggested by the carrier, that the individual fly only with an attendant. Mr. Heck claims that it is reasonable to replace a policy that is age-based, as is Southwest's current program for unaccompanied minors, with one that is based on cognitive ability. Furthermore, Mr. Heck asserts that such a policy would not impose a requirement that a carrier's staff make judgments regarding mental acuity of passengers but that the passengers could be made responsible for providing documentation of any mental impairment.

In its response, filed January 24, 2003, Southwest maintains that it is not obligated under Part 382 to provide Mr. Heck service as an unaccompanied minor. The carrier argues that the regulation spells out the requirements for passenger assistance in boarding and deplaning in section 382.39, but that neither in that section nor elsewhere does Part 382 refer to supervisory or custodial care similar to that provided to unaccompanied minors. Contending that it fully complies with the requirements of section 382.39, the carrier asserts that extending the service provided to unaccompanied minors to others whose cognitive abilities may be the equivalent of minors would lead to the carrier having to assess the mental maturity of every passenger. Southwest contends that such a task would, contrary to the provision of section 382.7(c) that carriers are "not required to make modifications that would constitute an undue burden or would fundamentally alter their program," involve a fundamental realignment of the carrier's current program for unaccompanied minors as well as an expenditure of significant resources.[1]

On reviewing the complaint and the carrier's response, we have decided to dismiss Mr. Heck's complaint. We can find no basis for imposing on Southwest, or any air carrier, the responsibility of supervising an adult passenger of limited cognitive ability with the level of attention and control that must be provided with respect to an unaccompanied minor. At least two factors distinguish the two classes of passengers. Carriers' unaccompanied minor policies are intended for a class of passengers determined by chronological age, a relatively objective standard, and have not been established or

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[1] The carrier also points out that on two occasions in the past involving Southwest informal complaints on behalf of mentally impaired individuals have been submitted to the Office of Aviation Enforcement and Proceedings (Enforcement Office) that urged the extension of unaccompanied minor services to such passengers. In both cases, the Enforcement Office issued letters stating that it found no evidence of a violation of Part 382.

maintained in response to a government mandate. Carrier programs to assist disabled travelers, on the other hand, are required by the ACAA and 14 CFR Part 382. Part 382 sets out specific standards for treatment of disabled passengers, none of which includes explicitly or by implication the close supervision and control of adult passengers comparable to that provided for minor children under unaccompanied minor programs. Adult individuals of limited mental development may be considerably less tractable and more difficult to restrain or supervise in the confines of an aircraft or in certain airport situations than small children. We do not believe that the ACAA or Part 382 was intended to impose on air carriers the level of responsibility now entailed in airline unaccompanied minor programs in which the carrier's employees, for example, might have to restrain disabled individuals physically or obtain signed documents to transfer custody of disabled adults to relatives or other guardians.[2] We conclude, therefore, that mandating the extension of the unaccompanied minor policy or a similar policy to mentally disabled adults would constitute an unreasonable burden on Southwest and a fundamental alteration of an existing program as described in section 382.7(c) and is not warranted under the ACAA or Part 382.[3]

ACCORDINGLY, I dismiss the third-party complaint in this docket.

This order is issued under authority assigned in 14 CFR 302.406(b) and shall be effective as the final action of the Department within 30 days after service.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

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

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[2] Carriers may, however, elect voluntarily to assume responsibility for certain disabled passengers. (See, 14 CFR 382.35 regarding the requirement, at the carrier's discretion, that certain passengers travel with an attendant.)

[3] Finally, the Department has no authority to award either monetary damages or attorneys' fees, which Mr. Heck seeks.

U.S. Department of Transportation
Office of the Secretary of Transportation

Memorandum

Subject: Order Dismissing Petition for Rulemaking — Date: March 18, 2003

From: ~~Samuel Podberesky~~ ~~Assistant General Counsel for~~ Aviation Enforcement and Proceedings — Reply to Attn. of: D.Chesley C-70/66792

To: Dorothy Y. Beard
Chief, Dockets and Media Management, M-30

Please issue the attached order dismissing the petition for rulemaking in Docket OST 2003-14334. We will serve copies on the petitioner.

Attachment