



**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 December, 2010**

Société Air France

**Violations of Article 17 of the
Montreal Convention and 49 U.S.C. § 41712**

Docket OST 2010-0005

Served December 23, 2010

CONSENT ORDER

This consent order results from Société Air France's (Air France) policy to refuse reimbursement for certain items of luggage lost in international transit to or from the United States in violation of Article 17 of the Montreal Convention and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712. It directs Air France to cease and desist from future similar violations of Article 17 and section 41712, and assesses the carrier a compromise civil penalty of \$100,000.

Applicable Law

Article 17 of the Montreal Convention states that carriers are liable, up to the monetary limits in the Convention, for loss of or damage to baggage "upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier."¹ It does not make an exception for any class or category of baggage, such as jewelry, electronics, or high-value items. Although the Montreal Convention allows some liability limitations and permits carriers to require a Special Declaration of Interest if the value of the checked items exceeds those liability limitations, blanket exclusions from liability are not permitted. Thus, Article 17, in effect, mandates that, once a carrier accepts checked baggage, it may not limit its liability for any of the contents therein to less than the limit set by the Convention, which is currently 1,131 Special Drawing Rights.² Further, Article 26 of the Montreal Convention states that any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in the

¹ *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999.

² *Convention at Article 22(2) and Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 FR 59017, available at http://airconsumer.dot.gov/rules/Notice_11_09_09.pdf (November 9, 2009).

Convention is null and void. In an industry guidance document dated March 26, 2009, the Department reminded all airlines that in foreign air transportation, Article 17 prohibits them from applying blanket liability exclusions to any class or category of baggage that they have accepted for transport.³ The guidance also reminded carriers that violations of Article 17 constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.⁴

Background

Long after the Office of Aviation Enforcement and Proceedings (Enforcement Office) reminded carriers of the requirements of Article 17, the Enforcement Office received a consumer complaint that indicated that Air France had a baggage policy and practice in place that contravened Article 17 of the Montreal Convention. Specifically, Air France's General Conditions of Carriage stated that Air France is:

[N]ot responsible for valuable, fragile or perishable items such as money, currencies, jewelry, works of art, precious metals, silverware, securities or other valuables, expensive clothes, optical or photographic appliances, computers, electronic and/or telecommunications equipment or appliances.

Air France also referenced these terms on the passenger's ticket jacket and on its website. Air France referenced these terms in letters sent to consumers who complained about lost or missing items from checked luggage. Based upon this information, the Enforcement Office initiated an investigation, reviewing consumer complaints received by Air France concerning liability exclusions related to lost or damaged baggage. Despite the explicit terms of Article 17, and after the Enforcement Office's March 2009 guidance, the Enforcement Office found numerous complaints indicating that Air France applied the terms stated above and that it was Air France's practice under all circumstances to completely deny liability for the loss or pilferage of certain checked items in a passenger's checked baggage, in contravention of Article 17 of the Montreal Convention.

Mitigation

Air France states that it is committed to addressing and correcting any deficiencies in policies that are, or could be perceived as, contrary to its obligations under the Montreal Convention. Air France states that it modified its policies and practices for addressing claims by passengers for baggage loss to be consistent with the provisions of Article 17 of the Montreal Convention after the Enforcement Office issued its guidance. However, Air France notes that some text contained in certain pre-formatted letters used by its customer relations department were not updated and still included inappropriate

³*Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries*, 74 FR 14837, available at http://airconsumer.dot.gov/rules/webnotice_04012009.pdf (March 26, 2009). The notice gave air carriers ninety (90) days from the date of the notice to revise their tariffs, statements, and policies related to baggage liability.

⁴ *Id.*

references to blanket exclusions permitted under the Warsaw Convention regime. Nevertheless, Air France points out that its review of a sampling of files revealed that in many instances Air France did offer, and the client did accept, compensation for baggage loss consistent with the terms of both the Montreal Convention and Air France's internal procedures. Air France notes that in response to the Enforcement Office's investigation, it took immediate steps to remove the offending language from letters being used by Air France. Additionally, Air France supervisory staff began an ongoing review of letters addressing claims for lost, damaged and pilfered baggage to ensure that the agents are complying and deleting inappropriate text. Air France affirms that these reviews are continuing and are being stringently applied. Air France asserts that it is taking all necessary steps to ensure its continued compliance with Article 17 of the Montreal Convention.

Decision

The Enforcement Office has carefully considered the information provided by Air France but continues to believe that enforcement action is warranted. The Enforcement Office and Air France have reached a settlement of this matter in order to avoid litigation. Air France consents to the issuance of an order to cease and desist from future violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712 of the Department's regulations, and to the assessment of \$100,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and the size and sophistication of the carrier, and serves the public interest. It represents an adequate deterrence to future noncompliance with the Montreal Convention by Air France, as well as by other air carriers and foreign air carriers.

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 Société Air France violated Article 17 of the Montreal Convention by having in place a policy of applying a blanket liability exclusion to certain classes and categories of baggage that it accepted for transport;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Société Air France, has also violated 49 U.S.C. § 41712;
4. We order Société Air France, and all other entities owned or controlled by or under common ownership with Société Air France, and their successors and assignees, to cease and desist from violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712;

5. Société Air France is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$50,000 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$50,000 shall become due and payable if Société Air France violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Société Air France, may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject Société Air France, to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Payment 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 in accordance with the attached instructions.

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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