



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

Issued by the Department of Transportation  
on the 19th day of January, 2021

**Third Party Complaint of**

**Abraham Gutnicki**

**v.**

**United Airlines, Inc.**

**Docket DOT-OST-2020-0048**

**Served January 19, 2021**

**Third Party Complaint of**

**Scott J. Reiners**

**v.**

**United Airlines, Inc.**

**Docket DOT-OST-2020-0064**

**Served January 19, 2021**

**ORDER OF DISMISSAL**

On May 11, 2020, Abraham Gutnicki filed a third-party complaint against United Airlines, Inc. (United). Mr. Gutnicki contends that United violated 49 U.S.C. § 41712, the statutory prohibition against unfair and deceptive practices, by failing to provide a refund after cancelling his flight. On June 5, 2020, Scott J. Reiners filed a formal complaint against United alleging the same issue of failing to provide a refund after cancelling his flight. We have consolidated these complaints for disposition pursuant to 14 CFR § 302.404(d)<sup>1</sup> and dismiss these complaints for the reasons provided in this order pursuant to 14 CFR § 302.406(a)(2).<sup>2</sup>

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<sup>1</sup> 14 CFR § 302.404(d) states that “[t]wo or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they may involve more than one respondent.”

<sup>2</sup> 14 CFR § 302.404(a)(2) states that one of the options available to the Assistant General Counsel is to “[i]ssue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.”

## **Gutnicki Complaint**

On May 11, 2020, Mr. Gutnicki filed a formal complaint with the U.S. Department of Transportation (Department or DOT). Mr. Gutnicki states that on February 2, 2020, he purchased from United six tickets for roundtrip flights from Chicago O'Hare International Airport (ORD) to Orlando International Airport (MCO), departing on April 6, 2020 and returning on April 19, 2020, for a total of \$2,680. Mr. Gutnicki states that, in March 2020, he received notice that the April 6, 2020 ORD to MCO flight, UA754, was cancelled and that he was automatically rebooked on an alternate flight without his approval. Mr. Gutnicki asserts that he did not accept the change and demanded a refund. Mr. Gutnicki alleges that United denied his request for a refund because the carrier was able to re-accommodate Mr. Gutnicki on another flight that would enable him to arrive at MCO within six hours of his original flight.

Mr. Gutnicki contends that according to the Department's rules and the April 3, 2020 "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (April 3, 2020 Notice),<sup>3</sup> he is entitled to a full refund because United cancelled his originally booked flight from ORD to MCO, UA754. Mr. Gutnicki asserts that United changed its definition of "cancelled flight" to avoid providing him a full refund. Mr. Gutnicki requests that the Department do the following: (1) investigate United's actions; (2) require United to produce all notes, PNR annotations, call recordings, credit card disputes, and other materials related to this matter; (3) order United to comply with applicable Department regulations; (4) order United to provide him a full refund plus interest; (5) require United to search its records for other customers similarly situated, including those who complained about refunds for cancelled flight, and require United to provide the details of such customers and complaints to the Department, and provide each customer a full refund plus interest; and (6) impose appropriate civil penalties on United.

## **Reiners Complaint**

On June 5, 2020, Mr. Reiners filed a formal complaint with the Department. Mr. Reiners states that on September 2, 2019, he purchased from United two tickets for non-stop flights on July 2, 2020 from Newark Liberty International Airport (EWR) to Amsterdam Airport Schiphol (AMS), and two tickets for non-stop flights on July 25, 2020 from Josep Tarradellas Barcelona–El Prat Airport (BCN) to EWR, for a total of \$1,749.56. Mr. Reiners states that in April 2020, United cancelled the July 25, 2020 flight from BCN to EWR, UA121, and he submitted a refund request on [www.united.com](http://www.united.com). Mr. Reiners asserts that in May 2020, United offered him an alternate flight from BCN to EWR on July 25, 2020. Mr. Reiners explains that the alternate flight departed from BCN several hours earlier than the original flight, had a connection in Frankfurt, Germany, and arrived at EWR later than the original flight. Mr. Reiners states that he did not accept the alternate flight because it was not an acceptable alternative and would have constituted a significant schedule change and that he demanded a refund. Mr. Reiners asserts that United denied his refund request because the carrier offered Mr. Reiners an alternate flight.

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<sup>3</sup> "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (April 3, 2020), available at [www.transportation.gov/airconsumer/enforcement\\_notice\\_refunds\\_apr\\_3\\_2020](http://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020).

Mr. Reiners contends that according to the Department's rules and guidance, he is entitled to a full refund because United cancelled his original flight from BCN to EWR, UA121. Mr. Reiners also alleges that United failed to maintain an up-to-date designation of an agent for service of notice and process as required by 49 U.S.C. § 46103. Mr. Reiners requests the Department to take the same actions set forth in Mr. Gutnicki's complaints and to require United to update its designation of an agent for service of notice and process.<sup>4</sup>

### **Supplemental Filings**

On May 28, 2020, Mr. Gutnicki filed a Motion for Default Judgment. Mr. Gutnicki states that on May 11, 2020 he served via email his complaint against United, and that on May 12, 2020, the complaint was assigned a docket number and posted to regulation.gov. Mr. Gutnicki asserts that pursuant to 14 CFR § 302.409, United is in default because the carrier failed to respond to the complaint within 15 days, as required by 14 CFR § 302.408. On May 31, 2020, United requested an extension of 15 days, until June 15, 2020, to file an answer. The Department's Office of Aviation Consumer Protection (OACP)<sup>5</sup> granted United's request on June 4, 2020.

### **Answers of United**

United filed its Answer to Mr. Gutnicki's complaint on June 15, 2020. United asserts that Mr. Gutnicki is not entitled to a refund under United's policy because Mr. Gutnicki's flight from ORD to MCO on April 6<sup>th</sup> was not cancelled; instead he was subject to a schedule change. United explains that sometimes United must make schedule adjustments to accommodate changes to aircraft and routes, including changing the frequency of flights. United explains further that in the event of a schedule change, United will rebook the customer on an alternative flight, and if the customer is not satisfied with the changes, the customer may request alternative travel options or compensation, including a refund in the event the schedule change is significant. The carrier states that before the COVID-19 public health emergency, United's internal guidance stated that its customer service agents were able to grant refunds to passengers who could not be re-accommodated within two hours of their original flight. The carrier further states that during the COVID-19 public health emergency, customer service agents were instructed to provide a passenger a cash refund if United could not re-accommodate the passenger within six hours. United contends that its definitions of cancellation and significant schedule change are reasonable and that the Department stated in its May 12, 2020 "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (May 12, 2020 Notice)<sup>6</sup> that airlines may develop reasonable interpretations of cancellation and significant change because those terms are not defined in the context of ticket refund.

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<sup>4</sup> United filed an updated Designation of Agent for Service of Notice, Process, Orders, Decisions, and Requirements and Process on June 11, 2020.

<sup>5</sup> The Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.

<sup>6</sup> "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (May 12, 2020), available at [www.transportation.gov/airconsumer/FAQ\\_refunds\\_may\\_12\\_2020](http://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020).

United asserts that Mr. Gutnicki's original flight from ORD to MCO on April 6<sup>th</sup>, UA754, was removed from the schedule due to a change in flight frequency and that Mr. Gutnicki was rebooked on an alternate flight that was scheduled to depart ORD on April 6<sup>th</sup> two hours and forty-two minutes earlier than UA754. The carrier states that after Mr. Gutnicki did not accept the alternative flight, it offered two options to Mr. Gutnicki: (1) keep the value of the unused tickets for future credit for twenty-four months from the date of issuance, or (2) a United travel voucher valid for travel on any United or United Express flight within twenty-four months. Mr. Gutnicki refused the options. United contends that Mr. Gutnicki was not entitled to a refund because United was able to re-accommodate him on a flight less than six hours from his original flight, which did not constitute a significant schedule change. United notes, however, that as a result of recent changes in its guidance, United will provide Mr. Gutnicki a refund. For the foregoing reasons, United denies that Mr. Gutnicki is entitled to any relief and asserts that further action by the Department is unnecessary.

United filed its Answer to Mr. Reiners' complaint on June 22, 2020. United provides the same explanation of its policy regarding schedule changes as stated in its Answer to Mr. Gutnicki's complaint. The carrier states that Mr. Reiners' original flight from BCN to EWR on July 25, 2020, UA121, was removed from the schedule due to a change in flight frequency. United asserts that it provided Mr. Reiners the opportunity to rebook on another flight but Mr. Reiners did not accept this opportunity. The carrier states that it then offered to Mr. Reiners the option to keep the value of the unused tickets for future credit for twenty-four months from the date of issuance but Mr. Reiners refused both options. United explains that on June 5, 2020, it updated its guidance and instructed its customer service agents to provide refunds to passengers who could not be re-accommodated within two hours of their original flight. The carrier states that this change in guidance applies to all passengers, both prospectively and retrospectively. United asserts that consistent with this change, it provided a cash refund to Mr. Reiners for the tickets at issue.

For the foregoing reasons, United contends that Mr. Reiners' cause of action is not justiciable because it is moot and asserts that further action by the Department is unnecessary.

### **Additional Filings**

On July 10, 2020, OACP requested that United provide documentary evidence that it had provided Mr. Gutnicki and Mr. Reiners refunds. United complied on July 17, 2020.

### **Applicable Law**

Under 49 U.S.C. § 41712, the Department has the authority to prohibit unfair or deceptive practices by airlines and ticket agents in air transportation or the sale of air transportation. As a U.S. carrier that operates flights to, within and from the United States, United is engaged in air transportation for purposes of section 41712.<sup>7</sup> As explained in the April 2020 and May 2020

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<sup>7</sup> 49 U.S.C. § 40102(a)(5) defines "air transportation" as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." 49 U.S.C. § 40102(a)(23) defines "foreign air transportation" as "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of

enforcement notices regarding airline refund policies and practices during the ongoing COVID-19 public health emergency,<sup>8</sup> the Department has long taken the view that a carrier's refusal to refund passengers in circumstances where the carrier has cancelled the flight for whatever reason or has made a significant schedule change or other materially adverse change in the quality of the flight service to be provided to the passenger and the passenger does not wish to accept a voucher for future travel or the alternative carriage offered by the airline is an unfair business practice in violation of section 41712, whether or not the passenger has purchased a non-refundable ticket. For example, in a rulemaking notice published in 2011, the Department stated:

We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996 (see <http://airconsumer.dot.gov/rules/guidance>), the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action.<sup>9</sup>

The Department further explained that it “continue[s] to believe that there are circumstances in which passengers would be due a refund, including a refund of non-refundable tickets and optional fees associated with those tickets, due to a significant flight delay.”<sup>10</sup> An airline's practice is “unfair” to consumers within the meaning of section 41712 if it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.<sup>11</sup>

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR § 259.5, U.S. and foreign carriers operating at least one aircraft having a seating capacity of 30 or

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mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.” 49 U.S.C. § 40102(a)(25) defines “interstate air transportation” as “the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft— (A) between a place in— (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii.”

<sup>8</sup> April 3, 2020 Notice, available at [www.transportation.gov/airconsumer/enforcement\\_notice\\_refunds\\_apr\\_3\\_2020](http://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020); May 12, 2020 Notice, available at [www.transportation.gov/airconsumer/FAQ\\_refunds\\_may\\_12\\_2020](http://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020).

<sup>9</sup> 76 FR 23110, 23129 (Apr. 11, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> See DOT Final Rule, “Defining Unfair or Deceptive Practices,” 85 FR 78707, 78717 (Dec. 7, 2020).

more seats must adopt a Customer Service Plan and adhere to the Plan's terms.<sup>12</sup> Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by section 41712. Section 259.5(b)(5) states: "Where ticket refunds are due, providing prompt refunds, as required by 14 CFR § 374.3 and 12 CFR part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation." Failure to adhere to the refund payments in section 259.5 is a violation of Federal law.

### **Decision**

As stated above, prior to the COVID-19 public health emergency, United granted refunds to passengers who could not be re-accommodated within two hours of their original flight. After the onset of the COVID-19 public health emergency in mid-March 2020, United made a change to its policy that negatively affected consumers and only provided refunds to passengers that could not be re-accommodated on other United flights within six hours of their originally scheduled flight. United admits in its Answers that it retroactively applied this policy to the complainants and only offered the complainants vouchers or credit.

OACP reviewed United's refund practices and confirmed that United was applying a new refund policy that disadvantaged passengers who purchased tickets under United's previous, more generous policy. OACP advised United that by changing its refund policy and applying it retroactively, it considered United to be engaging in an unfair and deceptive practice and violating the Department's rule requiring carriers to provide prompt refunds when due. United has reversed its refund policy and provided refunds to passengers who could not be re-accommodated within two hours of their original flight, including Mr. Gurnicki and Mr. Reiners. In addition, United agreed to offer refunds to passengers who were previously provided vouchers for flights that the carrier cancelled or changed by more than two hours from the original flight and has updated its contract of carriage provisions and website accordingly. Finally, United ensured that the appropriate United personnel properly implemented the revised refund policy.

Although United retroactively applied its revised refund policy, which negatively affected consumers and only provided refunds to passengers that could not be re-accommodated on other United flights within six hours of their originally scheduled flight, in response to the Department's investigation regarding this matter, United promptly changed its policy and took other corrective action. OACP explained in its April 3, 2020 Notice and May 12, 2020 Notice of its intention to exercise prosecutorial discretion and provide carriers an opportunity to become compliant before taking further action. Given United's actions to come into compliance with the refund obligation and provide affected consumers refunds, including Mr. Gutnicki and Mr.

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<sup>12</sup> This obligation is separate from the requirements in section 259.6 relating to posting the Customer Service Plan on the covered carrier's website. Under section 259.6(b), "each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers, and that is required to adopt a customer service plan, shall post its current customer service plan on its website in easily accessible form."

Reiners, we are refraining from pursuing enforcement action against United and dismiss both complaints.

ACCORDINGLY, we dismiss the Complaints filed in Dockets DOT-OST-2020-0048 and DOT-OST-2020-0064 with prejudice.

This order is issued under 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 Mr. Gutnicki and Mr. Reiners.

**BY:**

**BLANE WORKIE**  
**Assistant General Counsel for**  
**the Office of Aviation Consumer Protection**

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