



**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 April, 2022

Third Party Complaint of

**Marc Fernandes, Shanana Islam,
Sabiha Islam, Bakiul Islam, Anshul
Agrawal, and the Sahu Family**

v.

Aeroflot Airlines

**Violations of 49 U.S.C. 40127, 41310, 41702,
and 41712**

Docket DOT-OST-2018-0137

Served April 12, 2022

**ORDER DISMISSING THIRD-PARTY COMPLAINT AND REQUEST TO COMMENCE
ENFORCEMENT PROCEEDINGS**

On March 22, 2018, the law office of Lewis Baach Kaufmann Middlemiss PLCC and Muslim Advocates filed a joint third-party formal complaint on behalf of five United States citizens and legal permanent residents¹ under 14 CFR 302.404 against Aeroflot Airlines (“Aeroflot”) for alleged violations of 49 U.S.C. §§ 40127, 41310, 41702, and 41712. On June 20, 2018, the same parties filed a similar complaint on behalf of the Sahu family.² The passengers (collectively, the “Complainants”) allege that Aeroflot subjected them to discriminatory treatment because Aeroflot’s personnel refused to allow Complainants, who are of South Asian descent and were returning to the United States from India via Moscow, to travel on a connecting flight to New York. Complainants also allege that Aeroflot’s personnel threatened to “deport” them back to

¹ The first complaint was filed on Docket Number DOT-OST-2018-0043. The passengers named in the first complaint are Marc Fernandes, Anshul Agrawal, and the Islam family.

² The second complaint was filed on behalf of the Sahu family on Docket Number DOT-OST-2018-0088. On October 18, 2018, after reviewing information provided by all parties involved in this proceeding, the Department consolidated the two complaints on Docket Number DOT-OST-2018-0137.

India, but provided certain “White” customers preferential treatment. This order dismisses the complaint on the merits for the reasons stated below.

Complaint

In their respective complaints, Complainants set forth the following statements of facts that we have summarized below:

1. On January 7, 2018, Complainants, who are all United States citizens or legal permanent residents are of South Asian descent (Indian) and were scheduled to return to the United States on an Aeroflot flight after their respective trips to India. The scheduled itinerary was from New Delhi, India, to New York’s John F. Kennedy Airport (JFK) via a connecting flight at Sheremetyevo International Airport in Moscow, Russia.
2. According to the complaints, upon arrival in Moscow, Complainants learned that their connecting Aeroflot flights, SU100 and SU102, to JFK were cancelled due to inclement weather in the New York area.
3. Complainants state they asked Aeroflot agents multiple times for a status update on a flight to New York and were informed that no seats were available on a later Aeroflot flight or on any of Aeroflot’s partner airlines’ flights.
4. According to the Complainants, one of Aeroflot’s female agents told them that they would receive priority booking on a flight to New York, but she later treated them rudely, ignored them and did not place them on a flight.
5. Complainants state one of Aeroflot’s male agents treated them poorly and informed them that they could not stay in the airport for more than 24-hours due to Russian regulations and would not be issued transit visas. Complainants state the agent informed them that their only choice was to “go back to India” on a later flight or be forcibly “deported” to India by Russian officials.
6. Complainants state they informed Aeroflot’s male agent that they were United States citizens and/or residents and, as such, could not be “deported” to India. Complainants state they showed the agent their United States passports, but Aeroflot’s agent refused to listen and threatened the Complainants with civil and criminal sanctions.
7. Complainants also state they called the United States Embassy in Moscow and the embassy informed them that it was illegal for Aeroflot to deport United States citizens to third countries against their will, at which time Aeroflot’s male agent threatened to ensure that the carrier would not provide them with any other tickets if “they made more trouble.” According to Complainants, they relayed the agent’s “threat” to the embassy and were told by embassy officials to avoid deportation, which could lead to serious legal ramifications.
8. Complainants state that Aeroflot personnel placed them on a flight back to India, which was their original flight’s point of origin, and they subsequently experienced poor treatment from

Aeroflot personnel in receiving accommodations and rebooking flights back to the United States. The Sahu complaint also alleges evidence of discrimination because the return flight to India was filled solely with individuals of apparent South Asian descent, even though the Sahus had seen that the incoming flight to Moscow comprised an estimated 30-40% White travelers.

9. Complainants state that Aeroflot's personnel treated "White" passengers differently by rebooking them on flights to JFK or to the United States via alternate routes, providing them access to the lounge area, and not warning them about Russia's 24-hour transit rule.
10. Complainants allege that Aeroflot's personnel treated them differently than "White" passengers because they were perceived to be of South Asian descent.

Alleged Violations of 49 U.S.C. §§ 40127(a), 41301(a), 41702 and 41712(a)

Complainants state that Aeroflot repeatedly and systematically targeted and discriminated against South Asian Travelers in violation of 49 U.S.C. §§ 40127(a),³ 41310(a),⁴ and 41702.⁵ Complainants also allege that Aeroflot engaged in unfair practices and unfair methods of competition in air transportation, in violation of 49 U.S.C. § 41712(a).⁶

Answer(s) of Aeroflot- Russian Airlines

In the carrier's April 23, 2018, and August 1, 2018, answers to the respective complaints Aeroflot denies all claims of discrimination and sets forth the following statements of facts that we have summarized below:

1. Aeroflot states that Complainants' claims are not supported by the information contained in their complaint. As such, Aeroflot requested that the Department dismiss the complaints without further investigation or order pursuant to 14 C.F.R. § 302.406(a)(2).
2. Aeroflot states that the carrier is required to follow all Russian and other applicable laws, including a Russian law providing that Aeroflot must ensure that no transit passengers remain in the transit area of the airport for more than 24 hours after arrival (24-hour transit rule).⁷

³ 49 U.S.C. § 40127(a) prohibits an air carrier or foreign air carrier from subjecting a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.

⁴ 49 U.S.C. § 40301(a) prohibits "[a]n air carrier or foreign air carrier [from subjecting] a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination."

⁵ 49 U.S.C. § 41702 provides that "[a]n air carrier shall provide safe and adequate interstate air transportation."

⁶ 49 U.S.C. § 41712 prohibits an air carrier or foreign air carrier from engaging in unfair or deceptive practice or unfair methods of competition in air transportation or the sale of air transportation.

⁷ Aeroflot cites to Article 31 § 2 of Russian Federation law and the Order of the Ministry of Transportation of Russian Federation No 21 dated 29.01.2010, article 4.2 stating that "a transit passenger without a Russian visa, who

Aeroflot also states that the carrier does not have authority to issue transit visas on behalf of the Russian Federation.⁸

3. Aeroflot states that due to a January 7, 2018, massive snowstorm in the New York City area, the carrier was forced to cancel flights SU100 and SU102⁹ from Moscow to the United States and notes that the carrier had to rebook a total of 580 passengers, including Complainants, within the 24-hour limitation. Aeroflot notes that several passengers who traveled from New Delhi to Moscow on Flight SU233 were placed in the last remaining seats on the one flight (Flight SU122)¹⁰ to JFK that left Moscow within the 24-hour period, including 12 Indian passengers, 12 U.S. Citizens, and one dual citizen passenger. Aeroflot states that three other affected passengers had appropriate visas and were rerouted through Israel and China.
4. In addition, Aeroflot states that 57 passengers were flown back to India, including Complainants and 16 other U.S. citizens, of which all the passengers held visas or other documents that permitted them to return to India. Aeroflot states those passengers were rebooked on either Aeroflot Flight SU232 or SU234 from Moscow to New Delhi in order to avoid violating Russia's 24-hour transit rule.
5. Aeroflot also states that the male Aeroflot agent in Moscow attempted to explain that passengers without confirmed tickets on flights leaving Moscow within 24 hours had to return to New Delhi (or another destination point) in order to avoid legal issues in Russia, including possible deportation by the Russian government. Aeroflot notes that English was not the agent's primary language and acknowledges that he may have been unsuccessful in effectively communicating with Complainants. Aeroflot states that the agent did not threaten to "deport" any passenger, but was working hard to ensure that no passenger remained in Moscow longer than 24 hours without a visa. Aeroflot also notes that another (female) agent was unable to book Complainants on the full flight from Moscow to New York.
6. Aeroflot states that the carrier treated no "White" passengers differently than those of South Asian descent and notes that the carrier is unaware of any "White" passengers who were permitted to stay in Moscow for over 24 hours without a transit visa. Aeroflot also states that passengers can only access the lounge if certain criteria are met and Complainants do not allege that they tried to gain access to the lounge and were denied, or had the necessary credentials to access the lounge. Aeroflot notes that Complainants do not provide any identifying

has valid documents permitting the entrance to a destination country and ticket with confirmed date, has a right to stay in [the] transit zone of an international airport, but no longer than 24 hours after arrival."

⁸ Aeroflot cites to Russian Federal Law No. 154-FZ dated 05.07.2010 "Consular Statute of Russian Federation", Article 23, in which the issuance of Russian visas for foreign citizens and stateless citizens is exercised by [a] consular officer or diplomatic representative."

⁹ Per Aeroflot's response, Flight SU100 had 179 passengers and Flight SU102 had 401 passengers. This number includes all the passengers who traveled on the flight from New Delhi to Moscow, Russia, as well as passengers from other flights who needed to depart the Moscow airport prior to the 24-hour limitation.

¹⁰ Per Aeroflot's response, this flight departed on January 7, 2018 at approximately 8:15 p.m. local time.

information about the “White” passengers who they state Aeroflot allowed to stay in the airport over 24 hours or provided access to the lounge.

7. According to Aeroflot, all Complainants were flown back to New Delhi on January 7, 2018. Aeroflot also states, among other things, Complainants suggestion that discrimination occurred because the Aeroflot flight to New Delhi “appeared” to be solely filled with individuals of South Asian decent is speculation that is unsupported by any facts.
8. Aeroflot states that the carrier’s ground personnel in New Delphi and agents in Aeroflot’s office in Connaught Place were available to assist them upon their arrival in India. Aeroflot states that four complainants were rebooked on a January 11, 2018, flight from New Delhi to Miami via Moscow, but they declined to take that flight and took another carrier to the United States. According to Aeroflot, another Complainant was rebooked on a January 13, 2018 flight for New Delphi to New York via Moscow, the Sahu Family chose to take another carrier to the United States, and all Complainants were reimbursed for their personal expenses and flights.
9. Aeroflot states that Complainants claim of discrimination is based on speculation and hearsay and fails to take into account the extraordinary circumstances that existed at the time because of the multiple flight cancellations to New York/JFK.
10. Aeroflot states that there are no facts supporting a violation of 49 U.S.C. §§ 40127, 41310, or 41712¹¹ and notes that there is no pattern of discrimination alleged or egregious conduct supported by any evidence. Aeroflot also states Complainants allege that the carrier discriminated against them because Aeroflot complied with Russian visa laws in a Russian airport in a Russian city and notes that Aeroflot must comply with those Russian visa laws.

For the foregoing reasons, Aeroflot denies that the Complainants are entitled to any relief and requests that the complaint be dismissed in its entirety without further investigation or action.

Decision

The Department, after carefully reviewing Complainants’ formal third-party complaints, the pleadings filed in the dockets by both parties, and supplementary information provided by the parties,¹² finds good cause to accept all pleadings as filed by both parties and dismisses the case, with prejudice.

Based on all the information reviewed by the Department, Complainants have not demonstrated that Aeroflot’s decision not to accommodate them on a connecting flight from Moscow to Russia and to re-route them back to India was due to discriminatory factors neither have they provided

¹¹ Aeroflot states that 41702 is inapplicable to Aeroflot as a foreign air carrier, as that regulation applies to “air carriers” that are citizens of the United States.

¹² On December 14, 2018, the Department requested that both parties provide us with a copy of the video referenced in the pleadings and that Aeroflot provide us with the carrier’s procedures for determining which affected passengers to place on the one flight from Moscow to JFK that departed within the 24-hour transit law time frame.

sufficient information regarding the particular “White” passengers who were treated differently. Additionally, while the video provided to the Department does show that Aeroflot’s agent was clearly frustrated by the situation, the footage does not demonstrate that his actions or behavior were discriminatory in nature.

In light of the allegations set forth by Complainants, demonstrated by the facts asserted in Aeroflot’s certified answers, the complaint is not sufficient to warrant further investigation.

ACCORDINGLY, I dismiss the third-party complaint in docket DOT-OST-2018-0137 with prejudice.

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

BY:

LIVAUGHN CHAPMAN, JR.
Deputy Assistant General Counsel
Office of Aviation Consumer Protection

CERTIFICATE OF SERVICE

I hereby certify that I have on this 12th day of April, 2022, caused this Dismissal Order to be sent via email, read receipt requested, to each of the individuals listed below and no indication was received that such transmission failed:

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