



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

Issued by the Department of Transportation
on the 4th day of November, 2022

Etihad Airways P.J.S.C.

**Violations of 49 U.S.C. § 41705
and 14 CFR Part 382**

Docket OST-2022-0001

Served: November 4, 2022

CONSENT ORDER

This order concerns violations by Etihad Airways P.J.S.C. (Etihad) of the requirements of 14 CFR Part 382 (Part 382), with respect to the handling and reporting of disability-related complaints that Etihad received from passengers. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of Part 382 violate the ACAA. This order directs Etihad to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$200,000 in civil penalties.

Applicable Law

Pursuant to the ACAA and Part 382, a carrier may not discriminate against an individual with a disability in providing air transportation. As part of carriers' obligation to accommodate passengers with disabilities, 14 CFR 382.155(d) requires U.S. and foreign air carriers operating passenger service to, from and within the United States with at least one aircraft having a design capacity of more than 60 passenger seats to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. To be considered dispositive, a response must specifically discuss the complaint at issue, specifically admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances, summarize the facts that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, and advise the complainant of his or her right to refer the matter to the Department for an investigation.

Also, under section 382.157, U.S. and foreign air carriers operating passenger service to, from and within the United States with at least one aircraft having a design capacity of more than 60 passenger seats must, among other things, categorize disability-related complaints that they

receive according to the type of disability and the nature of the complaint. These carriers are also required to submit an annual report to the U.S. Department of Transportation (Department) summarizing those complaints.¹ In a notice published in the Federal Register on December 24, 2004, the Department's Office of Aviation Consumer Protection² (OACP) explained that a single piece of correspondence may express more than one complaint.³ It further elaborated that each disability-related problem that an individual complains about in writing must be categorized and reported separately.

The Department's disability regulation also contains training requirements for U.S. and foreign air carriers operating passenger service to, from and within the United States with at least one aircraft having a design capacity of more than 60 passenger seats.

Facts and Conclusions

Etihad is a foreign air carrier based in Abu Dhabi, United Arab Emirates, and operates scheduled passenger service to and from the United States using at least one aircraft having a design seating capacity of more than 60 passenger seats. Therefore, Etihad is subject to the disability complaint handling, disability complaint reporting and training requirements of Part 382 associated with any flight-segment originating or terminating in the United States.

Improper Handling of Disability Complaints

OACP's investigation of Etihad's handling of disability complaints revealed that, between 2017 and 2020, Etihad's responses to disability-related complaints did not meet the requirements of Part 382. Specifically, Etihad's responses to passengers did not specifically admit or deny whether the carrier believed that a violation of Part 382 occurred under the circumstances, summarize the facts that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, and/or advise the complainant of his or her right to refer the matter to the Department for an investigation. In some instances, Etihad's response pre-dated its actual investigation. Prior to 2017, Etihad did not appropriately categorize passenger complaints as being disability-related, and as a result, the Department believes that those complaints could not have been handled by the carrier in a manner consistent with the regulations.

Reporting Inaccuracies

A review of Etihad's annual disability complaint reports submitted to the Department from 2014 to 2020 revealed that the carrier did not accurately report the number of disability-related complaints received during each of those years.

¹ The annual report to the Department is due each year on the last Monday in January. The rule also requires that covered carriers retain a copy of each disability-related complaint that the carriers receive and a record of the action taken on the complaint for three years.

² The office is formerly known as the Office of Aviation Enforcement and Proceedings.

³ 69 Fed. Reg. 77885, 77888 (December 29, 2004).

In its annual reports for 2014, 2015 and 2016, Etihad reported that it received fewer disability-related complaints than the Department received from passengers directly and forwarded to Etihad for response. During this time period, Etihad had a practice of coding only what it believed to be the most pertinent issue per written disability complaint, notwithstanding the fact that many of the complaints involved more than one disability-related issue and the requirement under section 382.157 is to categorize and report each issue raised in a given piece of correspondence as a separate complaint. Our investigation also determined that Etihad did not appropriately categorize passenger complaints as being disability-related prior to 2016. As such, the Department cannot determine whether or not the carrier received any disability-related complaints directly from passengers between 2014 to 2016 beyond those forwarded by the Department. In contrast, in 2017 and other years, Etihad over reported the number of disability-related complaints received.⁴

Training

Etihad's inadequate responses to disability-related complaints suggest that the carrier did not provide training meeting the requirement of 382.141 for personnel who respond to disability-related complaints. Section 382.141 requires that carriers provide training to proficiency to all personnel who deal with the traveling public, as appropriate to the duties of each employee.

In light of the conduct described above, Etihad violated 14 CFR Part 382 and 49 U.S.C. § 41705 with respect to its handling and reporting of disability-related complaints and training its personnel from 2014 to 2020.

Response

Etihad states that it takes compliance with the Department's requirements very seriously, that it has cooperated fully with the Department's investigation, that any violations were inadvertent and not intended to underreport passenger complaints, and that in some years Etihad over reported such complaints. Etihad maintains that it is fully committed to providing its guests with disabilities services that meet and exceed the requirements of the ACAA. Etihad states that it has a strong compliance record and extremely high levels of customer satisfaction concerning the accommodations and care it provides to its customers with disabilities.

Etihad states that from November 2018 to October 2019, prior to the Coronavirus Disease 2019 (COVID-19) public health emergency, it carried approximately 801,000 passengers to and from the United States. Etihad adds that, of those 801,000 passengers, over 65,000 passengers or over 8.1% of the carrier's total United States traffic, requested and received mobility assistance. Etihad states that it has managed to successfully accommodate flights in which dozens of passengers have sought wheelchair assistance. To provide additional context, Etihad states that it received a total of 111 disability-related complaints in calendar year 2019. The carrier believes that its complaint rate is a testament to the carrier's success in meeting its commitment to its passengers with

⁴ OACP has chosen not to assess a civil penalty for the years in which Etihad overreported the number of disability complaints the carrier received, as such violations in this case did not benefit the carrier and did not present any negative impact on consumers.

disabilities.⁵

Etihad further states that it took immediate and significant remedial measures following the discovery of its inadvertent reporting anomalies, which were caused in part by software issues. To address its reporting irregularities, Etihad states that it updated its passenger complaints reporting software and reassigned the annual reporting responsibility to a more senior member of its Guest Relations team. Etihad explains that since implementing these changes, the carrier's disability-related complaint recording and reporting process and procedures have been fully compliant with the Department's technical requirements.

Etihad also states that for each complaint it has received during the time in question, to the best of its knowledge, it has provided a thorough response regardless of the type, source, or merits of the complaint. Etihad states that it has a robust compliance program in place, and that the errors which occurred were in significant measure caused by changes to/loss of staffing due to the COVID-19 public health emergency. Furthermore, Etihad avers that it is unaware of any situation in which a complainant has asserted that the substance of his or her disability-related complaint was not addressed fully by Etihad. With respect to meeting the complaint response requirements, Etihad states that it has revised its response template to ensure that Etihad's passengers are apprised of: (i) the carrier's admission or denial that Part 382 violation occurred; (ii) the carrier's reason for admitting or denying liability; (iii) the facts that led the carrier to its conclusion; and (iv) the complainant's right to refer the matter to the Department for an investigation.

As to training, Etihad asserts that it has provided and continues to provide ACAA training to all of its U.S. airport personnel, all of its Abu Dhabi-based Guest Relations staff, and a significant number of its Abu Dhabi-based airport staff. Etihad believes that the training went beyond what is required by law or regulation.

Decision

OACP views seriously Etihad's violations of 14 CFR Part 382 and 49 U.S.C. § 41705. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted.

To avoid litigation, and without admitting or denying the violations, Etihad consents to the issuance of this order to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and to the assessment of \$200,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise is appropriate considering the nature and extent of the violations described herein and the unprecedented impact of the COVID-19 public health emergency on air travel. This order serves the public interest by establishing a strong deterrent to future similar unlawful practices by Etihad and other domestic and foreign air carriers.

⁵ Etihad states that it received a total of 14 disability-related complaints during calendar year 2020. The carrier states that the low number is partially a result of the impact that the COVID-19 public health emergency had and continues to have on international air transportation.

This order is issued under the authority contained in 49 CFR Part 1.

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 Etihad Airways P.J.S.C. has violated 14 CFR 382.155 by failing to provide dispositive responses to passengers filing disability complaints;
3. We find that Etihad Airways P.J.S.C. has violated 14 CFR 382.157 by failing to properly code and report the disability-related complaints it received as required by section 382.157;
4. We find that Etihad Airways P.J.S.C. has violated 14 CFR 382.141 by failing to properly train personnel on responding to written disability complaints;
5. We find that by engaging in the conduct and violations described in ordering paragraphs 2, 3, and 4 above, Etihad Airways P.J.S.C. violated 49 U.S.C. § 41705;
6. We order Etihad Airways P.J.S.C. and its successors and assigns to cease and desist from further violations of 14 CFR 382.141, 382.155, and 382.157, and 49 U.S.C. § 41705;
7. We assess Etihad Airways P.J.S.C. \$200,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$100,000 shall be due and payable within 30 days after the service date of this order. The remaining \$100,000 shall become due and payable if, within one year of the service date of this order, Etihad Airways P.J.S.C. violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Etihad Airways P.J.S.C. may be subject to additional enforcement action for failure to comply with this order;
8. We order Etihad Airways P.J.S.C. to pay the penalty assessed in ordering paragraph 7, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Etihad Airways P.J.S.C. to the assessment of interest, penalty and collection charges under the Debt Collection Act and to further enforcement action for failure to comply with this order.

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:

Blane A. Workie
Assistant General Counsel for the
Office of Aviation Consumer Protection

An electronic version of this document is available at www.regulations.gov.