



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

Issued by the Department of Transportation
on the 15th day of June, 2021

Complaint of

Simon Cyr

v.

Air Canada

Docket DOT-OST-2020-0053

Served June 15, 2021

Complaint of

David Chain

v.

Air Canada

Docket DOT-OST-2020-0075

Served June 15, 2021

Complaint of

Lindsay Miles

v.

Air Canada

Docket DOT-OST-2020-0076

Served June 15, 2021

Complaint of

Lana Harrison

v.

Air Canada

Docket DOT-OST-2020-0238

Served June 15, 2021

ORDER OF DISMISSAL

This order addresses four formal complaints filed against Air Canada. In each case, the complainant alleges that the carrier violated 49 U.S.C. § 41712, the statutory prohibition against unfair and deceptive practices, by failing to provide a refund for canceled flights. We have consolidated these complaints for disposition pursuant to 14 CFR 302.404(d)¹ and dismiss the complaints for the reasons set forth in this order pursuant to 14 CFR § 302.406(a)(2).²

Cyr Complaint and Answer

On May 24, 2020, Mr. Simon Cyr filed a formal complaint generally alleging that Air Canada is violating Section 41712 by refusing to offer refunds for canceled flights. On June 23, 2020, Air Canada filed an answer, asserting in part that no relief is due because Mr. Cyr suffered no harm, given that Mr. Cyr had not actually purchased any flight on Air Canada that had been canceled by the carrier.

Chain Complaint and Answer

On June 25, 2020, Mr. David Chain filed a formal complaint alleging that Air Canada failed to provide a refund for a canceled flight from Madrid to New York via Toronto, departing on March 18, 2020. On July 22, 2020, Air Canada filed an answer, asserting in part that no relief is due because Mr. Chain canceled the transportation, rather than Air Canada, and that the flight operated as scheduled.

Miles Complaint and Answer

On June 23, 2020, Ms. Lindsay Miles filed a complaint alleging that Air Canada failed to provide a refund for a canceled flight from Windsor, Ontario, to London (LHR) via Toronto, scheduled to depart on May 30, 2020. On July 22, 2020, Air Canada filed an answer, asserting in part that no relief is due because the flight involved transportation between two foreign points, with no flight segment departing from or arriving into the United States.

Harrison Complaint and Answer

On November 23, 2020, Ms. Lana Harrison filed a formal complaint alleging that Air Canada failed to provide a refund for a canceled flight from Winnipeg to Panama City, Panama, with a layover in Chicago, scheduled to depart on September 17, 2020. On December 8, 2020, Air Canada filed an answer alleging that the flight at issue involved another carrier, not Air Canada.

¹ 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.”

² 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.”

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. An airline's practice is considered "unfair" to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.³

In a rulemaking notice published in 2011, the Department explained that it would consider failure to provide requested refunds to passengers when **the carrier** cancels a flight or makes a significant schedule change or other materially adverse change in the quality of the flight service to be provided to the passenger to be an unfair business practice in violation of section 41712. 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.⁴

In addition, pursuant to 14 CFR § 259.5, U.S. and foreign carriers operating at least one aircraft having a seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan's terms.⁵ 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."

In response to the high volume of air travel service complaints and inquiries given the unprecedented impact of the COVID-19 pandemic on air travel, on April 3, 2020, the Department

³ 14 CFR 399.79(b)(1).

⁴ 76 FR 23110, 23129 (Apr. 11, 2011); *see also id.* (the Office "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").

⁵ 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."

issued the “Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel” (April 3, 2020 Notice).⁶ The April 3, 2020 Notice reminded airlines and the traveling public that U.S. and foreign airlines have an obligation to provide prompt refunds to a ticketed passenger when an airline cancels a passenger’s flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier. On May 12, 2020, the Department issued a second notice, “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), regarding refund issues that, among other things, reiterated the refund requirement but also stated that the Department would provide carriers and ticket agents an opportunity to become compliant before taking enforcement action.⁷

Decision

As a carrier that operates flights to and from the United States, Air Canada is engaged in air transportation for purposes of section 41712. Nevertheless, the Department is dismissing the above-captioned complaints for reasons that are specific to those complaints. We dismiss the Cyr complaint because it is apparent from the record that Mr. Cyr was not personally harmed by Air Canada’s conduct. We dismiss the Chain complaint because it is apparent from the record that Mr. Chain, rather than Air Canada, canceled the flight at issue. We dismiss the Miles complaint because it is apparent from the record that the flight at issue involved transportation between two foreign points with no connection to the United States. Finally, we dismiss the Harrison complaint because it is apparent from the record that the flight at issue did not involve Air Canada.⁸

ACCORDINGLY, we dismiss the Complaints filed in Dockets DOT-OST-2020-0053, DOT-OST-2020-0075, DOT-OST-2020-0076, and DOT-OST-2020-0238.

⁶ See April 3, 2020 Notice, available at www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.

⁷ See May 12, 2020 Notice, available at www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁸ On today’s date, the Department filed a Notice of Enforcement Proceedings and Complaint (“DOT Complaint”) against Air Canada, alleging that the carrier violated Section 41712 and 14 CFR § 259.5 by failing to provide timely refunds for flights to or from the United States that were canceled or significantly changed by Air Canada. The DOT Complaint is docketed at DOT-OST-2021-0073. The Department seeks civil penalties, a cease-and-desist order, and other appropriate remedies for the harm caused to consumers by Air Canada’s violations of U.S. law.

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 counsel for Air Canada and the complainants listed above.

BY:

Blane A. Workie

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

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