

SERIALIZED FEB 11 2002

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D. C.

Northwest Airlines, Inc.)	
)	
Violations of 14 CFR Part 382, and)	OST-01-10598
49 U.S.C. §§ 41310, 41702, 41705, and 41712)	
Enforcement Proceeding)	Assigned to The Honorable Ronnie A. Yoder
)	

ORDER

On September 7, 2001, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings [hereinafter "Enforcement Office"] served on respondent, Northwest Airlines, Inc. [hereinafter "Northwest"], a notice of enforcement proceeding and proposed assessment of civil penalties, together with a related complaint in the above-captioned docket.¹ By notice dated September 21, 2001, the Enforcement Office corrected a few minor errors in both of these filings.²

In the aforementioned filings, the Enforcement Office alleges numerous violations by Northwest of 14 CFR Part 382, with respect to the failure to provide adequate wheelchair and other required assistance to travelers with disabilities in violation of § 382.39 and failure to comply with the dispositive response and Complaint Resolution Official (CRO) requirements of § 382.65. The Enforcement Office takes the position that (1) Part 382 implements the Air Carrier Access Act

¹ In addition to referencing the above-captioned docket, the caption in both the Notice of Enforcement Proceeding and Enforcement Complaint also inappropriately referenced the third-party enforcement complaint in Docket OST-00-6951, filed by Linda G. Cook and Emma P. Duggan, notwithstanding the fact that the allegations in that complaint were only partly incorporated in the pleadings filed by the Assistant General Counsel as noted in the September 14, 2001, Notice of Assignment of Proceeding and Order of Chief Administrative Law Judge.

² The Notice of Errata corrected the caption on the Notice of Enforcement Proceeding and the Enforcement Complaint, and corrected the date in footnote 5 on page 4 of the Notice of Enforcement Proceeding and in footnote 3 on page 4 of the Enforcement Complaint from "February 6, 2000" to "February 6, 2001." The September 14, 2001, Notice of Assignment of Proceeding and Order of Chief Administrative Law Judge accurately noted that the Assistant General Counsel intended to state that the alleged violations discussed in its September pleadings are based on complaints from air travelers with disabilities received by the Aviation Consumer Protection Division on or before February 6, 2001.

(ACAA), 49 U.S.C. 41705, and violations of that Part also violate the ACAA; (2) to the extent that the ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation; (3) to the extent the violations occurred in foreign air transportation, the incidents also represent violations of 49 U.S.C. § 41310, which in part prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation; and (4) the ACAA and Part 382 violations alleged in the complaint are unfair and deceptive practices in violation of 49 U.S.C. § 41712.

The Enforcement Office's complaint against Northwest was based on its review of a third-party enforcement complaint filed with the Department under 14 CFR 302.201³ by Linda G. Cook and Emma P. Duggan alleging a series of violations that occurred during trips they made on Northwest in October 1999. In view of this third-party complaint, the Enforcement Office conducted an informal investigation of Northwest's compliance with Part 382, limited to those portions of the rule relating to wheelchair service, the primary subject of the formal complaint, and boarding and enplaning assistance. Its review of complaints received by the carrier and of complaints submitted to the Department directly by consumers led it to believe that Northwest had committed a significant number of apparent violations of 14 CFR Part 382.

BACKGROUND

On February 4, 2000, Linda G. Cook and Emma P. Duggan ("Complainants") filed a third-party enforcement complaint with the Department of Transportation alleging that Northwest failed to provide wheelchairs to them on their arrival at Detroit Metro Airport (DTW) on Northwest flight number 1537 on October 13, 1999. The Complainants state that they specifically requested two wheelchairs with attendants over a month in advance of their travel dates through the Northwest reservation system and again at the ticket counter at DTW on their flight date of October 13, 1999. They allege that a Northwest employee told them that they could have one wheelchair sitting in a far-off corner, when they had asked for wheelchair assistance for two persons. The Complainants further allege that the Northwest supervisor failed to make a Complaint Resolution Official available to either of them despite their complaints of inadequate wheelchair service. Finally, on their return flights on October 19, 1999, Complainants allege that once again Northwest did not provide wheelchairs or electric carts after requests were made. The complaint alleges that these actions by the carrier violate the Department's rules requiring carriers to provide assistance to disabled passengers requesting wheelchairs (14 CFR 382.39) and constitute a threat to the well-being of disabled passengers.⁴

³ Section 302.200 et seq. has since been recodified as section 302.400 et seq. See Docket OST-97-2090, 65 FR 6457, February 9, 2000.

⁴ Several other allegations were contained in the third-party complaint that the Enforcement Office did not incorporate in the pleadings in this proceeding, because the Complainants did not provide evidence to support the charges or reasonable grounds did not exist to believe that a violation occurred.

Northwest filed an answer, on April 12, 2000, in response to the complaint, in which it disputes that it violated the ACAA in failing to have wheelchairs immediately available at the gate for the Complainants when deplaning, since they only had a short wait and it did not result in a missed connecting flight. Northwest further states that the failure to provide the Complainants two wheelchairs on October 13 resulted from a miscommunication and that the supervisor thought she was adequately responding to the Complainants' request. According to Northwest, it was not the intention of the supervisor to limit the Complainants to the use of one wheelchair, nor to deprive the Complainants of wheelchair attendants. Northwest also responded to the Complainants' allegation that no wheelchair service was provided on October 19, stating that the Complainants offered no factual details to support their claim and that without such the claim is unsubstantiated.

Northwest's response further stresses that it did not violate section 382.65(a)(1) by not providing a CRO because the Complainants did not request a CRO. Northwest states that Complainants never complained to any Northwest employee that they felt they were receiving discriminatory treatment and did not specifically request to speak to a CRO; therefore, Northwest asserts that it did not violate section 382.65(a)(1) since, the carrier argues, that rule requires a carrier to provide a CRO only upon receiving complaints of discriminatory treatment.

The Complainants responded to Northwest's answer on May 30, 2000. In their filing, the Complainants state that Northwest's response does not adequately address their complaint. The Complainants argue that, unlike the minor delay Northwest claims occurred in the carrier's providing wheelchairs, the Complainants never received wheelchair service or electric cart service on any of their flights, and they request that the Department ignore Northwest's assertion that violations of the ACAA did not occur. In response to Northwest's statement that the supervisor's failure to provide the Complainants two wheelchairs was the result of a miscommunication, the Complainants assert that they and Mrs. Cook's husband, who was also present, can attest that the need for wheelchair service was clearly communicated to the supervisor and that there was no reasonable excuse for the supervisor to fail to properly meet their request. Finally, the Complainants argue that a carrier must put a disabled passenger in contact with a CRO, if the passenger complains to any carrier employee that there is a problem with how the carrier is treating him or her. The Complainants further argue that the language of section 382.65(a)(1) does not expressly require a disabled passenger to use specific words such as "discrimination" when complaining about treatment. Since the Complainants did complain about the lack of service they were receiving in obtaining wheelchairs, the Complainants argue, Northwest should have known that their complaint concerned a disabled passenger and should have provided a CRO, and it violated section 382.65(a)(1) when it did not do so.⁵

Part 382 requires air carriers to provide passengers with disabilities assistance in enplaning and deplaning aircraft and imposes specific requirements in doing so. Under 14 CFR 382.39 (a) and (b),

⁵ The Enforcement Office in its pleadings in this proceeding agreed with the Complainants in this regard, arguing that where a passenger complains at an airport regarding a delay or failure in providing a requested wheelchair, a carrier is required to provide a CRO under 14 CFR 382.65(a)(1). To support its position, the Enforcement Office cited the preamble discussion associated with the adoption of 14 CFR 382.65(a)(1), 55 FR 8008, at 8045; March 6, 1990.

several requirements are listed regarding the quality of service carriers must give when assisting passengers in wheelchairs. Moreover, 14 CFR 382.65 requires a carrier to respond to a customer's complaint about a disability-related issue in a dispositive manner. It also requires carriers to make a CRO available in person at the airport or by telephone if the CRO is not present at the airport when a person complains of alleged violations of Part 382.

The Enforcement Office states that, in order to further investigate Northwest's compliance with the relevant provisions of Part 382, it requested that the carrier provide copies of all complaints it received from disabled passengers since late 1999 which alleged a failure to provide adequate wheelchair and/or boarding and enplaning assistance. According to the Enforcement Office, it also reviewed other similar complaints against Northwest received at the Department. The Enforcement Office's review led it to allege a significant number of violations involving failure to provide adequate wheelchair assistance and/or service personnel assistance such as guiding assistance to qualified disabled passengers in violation of section 382.39. The Enforcement Office contends that of the violations it uncovered, many were particularly significant violations of the applicable law and regulations, such as instances of prolonged delays in obtaining wheelchairs or of stranding individuals alone in wheelchairs or on board aircraft for extended periods. The Enforcement Office also asserts that many of the complaints it referenced involved incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.⁶ Additionally, with respect to some of the complaint files examined, the Enforcement Office alleges that the carrier did not provide a dispositive written response to the complainant or provide a CRO as required. To support its allegations, the Enforcement Office attached to its complaint in this proceeding, sworn declarations of passengers and others regarding a number of incidents in question.

In mitigation, Northwest states that it has endeavored to exceed the requirements of the ACAA and be an industry leader in this area. In October 1999, it created an Internal Task Force on Customers with Disabilities ("ITF"). The ITF consists of personnel from Northwest's Flight Operations, Ground Operations, Inflight and Reservations Departments. Northwest states that, in December 1999, it established a Customer Advisory Board on Passengers with Disabilities, the oldest such organization in the industry. The ten members of the Customer Advisory Board consist of individuals from different disability advocacy organizations. According to Northwest, the Customer Advisory Board meets quarterly to review Northwest's policies, procedures, and training programs and to develop recommendations on how Northwest can better serve passengers with disabilities. The Customer Advisory Board's suggestions have led to electronic message boards to provide visual notification of gate area announcements, closed captioned programming in the gate areas and on-board, and improved interaction between Northwest employees and passengers with disabilities. From the start of the year 2000 to date, Northwest states that it has spent over \$650,000 to improve its performance with respect to passengers with disabilities over and above the requirements of Part 382. According to the carrier, these efforts, and others, have caused Northwest to receive numerous commendations and awards from national organizations that advocate the rights of passengers with disabilities.

⁶ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000). Section 707(b) of AIR-21 amended 49 U.S.C. 46301(a)(3) to apply a \$10,000 maximum civil penalty to each violation of the ACAA.

Northwest does acknowledge that service problems, both real and perceived, do occasionally occur with respect to all passengers, including passengers with disabilities. As a matter of policy, Northwest does not contest the complaints of passengers with disabilities and does not want to do so. Northwest states that it provides each complaining passenger with a disability the notice required by Part 382 and generally offers the passenger compensation. Moreover, Northwest states that with respect to almost all of the complaints reviewed by the Enforcement Office, the passenger accepted the compensation offered by Northwest in conjunction with the carrier's apology for the incident.

DECISION

The Enforcement Office states that it has carefully reviewed the pleadings filed in connection with the complaint of Mrs. Cook and Ms. Duggan, the additional complaint files received directly by the Department and provided by Northwest, as well as the carrier's response to these complaints, and the mitigating information it has supplied. The Enforcement Office further states that it views seriously the obligation of carriers to comply with the ACAA and 14 CFR Part 382, the Department's implementing regulation. It, therefore, continues to be the Enforcement Office's view that action is warranted here in light of the number and nature of the violations discovered and the harm to disabled travelers they have caused.

In order to avoid litigation, and without admitting or denying the alleged violations, Northwest has agreed to settle these matters with the Enforcement Office and enter into this consent order to cease and desist from future similar violations of the Department's rules prohibiting discrimination against air travelers with disabilities. By this order, the Department finds that Northwest has, on a number of occasions, failed to provide adequate wheelchair and other required assistance in violation of the ACAA and 14 CFR 382.39, and finds that the carrier has failed to comply with the dispositive response and CRO requirements of 14 CFR 382.65. The order, in addition, directs the carrier to cease and desist from similar violations in the future and assesses a civil penalty of \$700,000, with certain offset and forgiveness provisions, in compromise of the penalties otherwise assessable under 49 U.S.C. 46301. The Enforcement Office believes that this agreement and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and 14 CFR Part 382.

In recognition of the financial difficulties being faced by all air carriers at this time, and in an effort to encourage the development of best practices within the industry, the Enforcement Office and Northwest jointly have developed a number of measures that Northwest may use to offset a portion of the \$700,000 penalty amount.

First, Northwest will establish an Air Carrier Access Act Compliance Quality Assurance Program. Under this Program, Northwest will seek, and to the extent necessary provide incentives for, volunteers from the pool of passengers with disabilities that utilize Northwest services on a regular basis to provide Northwest with written reports regarding observed compliance of the carrier with the Air Carrier Access Act and 14 CFR Part 382 on trips that they take. The reports will cover, among other things, compliance in the following areas: meet and assist services, check-in procedures, boarding and deplaning, on-board services (e.g., the provision of on-board wheelchairs

where required), wheelchair assistance in terminals, on-board stowage of wheelchairs and complaint handling by the carrier. The program also will cover Northwest's procedures for internal review of the reports received, follow-up action to correct any deficiencies discovered and retest procedures to ensure effectiveness of implemented corrective steps. Northwest estimates that it will spend \$50,000 toward implementation of this program within two years after the date this order becomes final.

Second, Northwest will increase its staffing expenditures for wheelchair service personnel at its hub airports in calendar year 2002 by \$250,000 over what otherwise would be the normal level, i.e., the level that would have been established using the methodology used to establish the calendar year 2001 level.

Third, Northwest will order assist bars that will be installed in all of the lavatories on its new A-330 aircraft at a cost of at least \$250,000. These assist bars will be in addition to the assist bars for the wheelchair accessible lavatory required for each aircraft by 14 CFR 382.21(a)(3). The assist bars will provide additional lavatory accessibility for passengers with disabilities.

The Deputy General Counsel believes, based on her review of the materials related to this matter, including third-party complaints, the informal complaints received by the Department, and the informal complaints received by Northwest, that further action by the Department is not warranted. Accordingly, this order dismisses the complaint filed by the Enforcement Office under 14 CFR 302.417(c). Although in the Deputy General Counsel's view Northwest's conduct as described in the formal complaints as well as in other documentation violated certain requirements of Part 382 and the ACAA, she believes that those violations are adequately addressed by the settlement reached in this case.⁷ This settlement renders further action by the Department on this matter not to be in the public interest.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest,⁸

⁷ This consent order will enable settlement of all violations of 14 CFR 382.39 regarding the failure to provide wheelchair assistance or other required boarding and enplaning assistance to passengers with disabilities and violations of 14 CFR 382.65 in connection with those failures that Northwest may have committed between January 1, 1997, and the date this order becomes final. In light of this settlement, the Enforcement Office and the Deputy General Counsel have agreed to dismiss the formal third-party complaint filed by Linda G. Cook and Emma P. Duggan, in Docket OST-00-6951.

⁸ This order contains changes agreed to by the parties in prehearing telephone conferences on January 16 and February 8, 2002. See *Airlift Group, Inc., and Richard Bernard*, Order 96-4-24, p.3, n.4; *Express One International, Inc.*, Order 94-3-34, p. 4, n. 8; *Regal Air, Ltd.*, Order 93-3-33, p. 3,

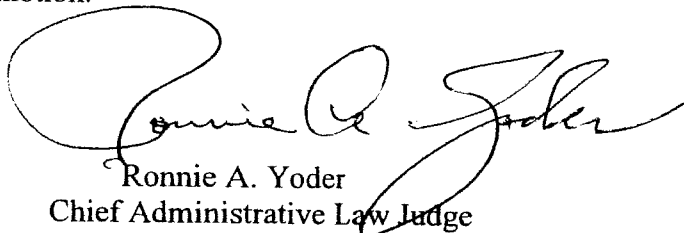
2. We find that Northwest Airlines, Inc., on a number of occasions violated the requirements of 14 CFR 382.39 by failing to provide prompt and proper enplaning and deplaning assistance, primarily to passengers who have mobility impairments;
3. We find that Northwest Airlines, Inc., on a number of occasions violated the dispositive response and complaint resolution official requirements of 14 CFR 382.65 in connection with the violations described in ordering paragraph 2;
4. We find that Northwest Airlines, Inc., in the instances described in paragraphs 2 and 3 *supra* violated the Air Carrier Access Act, 49 U.S.C. 41705;
5. We find that to the extent the violations described in paragraphs 2 and 3, *supra*, occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702 and that to the extent that the violations occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310;
6. We find that the violations described in paragraphs 2 and 3, *supra*, involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
7. We order Northwest Airlines and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 by engaging in the conduct described in paragraphs 2 through 6, *supra*;
8. Northwest Airlines, Inc., is assessed a civil penalty in the amount of \$700,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order, of which:
 - (a) \$75,000 shall be due and payable on July 1, 2002;
 - (b) \$75,000 shall be due and payable on May 1, 2003, unless Northwest achieves a 15 percent reduction in Part 382 complaints filed with the Department in calendar year 2002 over calendar year 2001;
 - (c) \$500,000 shall be due and payable on May 1, 2003, less any amounts credited in accordance with ordering paragraphs 9 and 10 of this order; and
 - (d) \$50,000 shall be due and payable on April 1, 2004, less any amounts credited in accordance with ordering paragraph 11 of this order;
9. Any amount spent by Northwest Airlines, up to \$250,000, on increased resources for wheelchair staffing at its hub airports shall be credited towards the amount of the assessed civil penalty due under paragraph 8(c) above, provided that:
 - (a) within 30 days of the date upon which this order becomes final, Northwest submits to the Enforcement Office documentation showing calendar year 2001 wheelchair staffing levels at its hub airports; and
 - (b) no later than January 31, 2003, Northwest submits to the Enforcement Office:

n. 4; *Hermens/Markair Express, Inc.*, Order 89-12-9, p. 4, n. 3; *Emerald Tours, Ltd.*, Order 85-9-56, p. 4.

- (i) a statement showing the normal wheelchair staffing levels at those airports during calendar year 2002;
 - (ii) the method used by the carrier to determine its normal wheelchair staffing needs at those airports; and
 - (iii) supporting documentation showing increased resources used for wheelchair staffing during calendar year 2002;
- 10. Any amount spent by Northwest Airlines, up to \$250,000, for the purchase of lavatory assist bars onboard Northwest's new A330 aircraft, beyond what is currently required by Part 382, shall be credited towards the amount of the assessed civil penalty due under paragraph 8(c) above, provided that:
 - (a) within one year after the date upon which this order becomes final, Northwest purchases and agrees to install lavatory assist bars for its new A330 aircraft, beyond what is currently required by Part 382; and
 - (b) within 30 days after the end of the one-year period described in paragraph 10(a), Northwest submits documentation to the Enforcement Office confirming that purchase and agreement to install;
- 11. Any amount spent by Northwest Airlines, up to \$50,000, on an "Air Carrier Access Act Compliance Quality Assurance Program" (Program) shall be credited towards the amount of the assessed civil penalty due under paragraph 8(d) above, provided that:
 - (a) under the Program:
 - (i) Northwest seeks, and to the extent necessary provides incentives for, volunteers from the pool of passengers with disabilities that utilize Northwest services on a regular basis to provide Northwest with written reports regarding the carrier's compliance with the Air Carrier Access Act and Part 382 that contain passenger feedback regarding, at minimum, compliance in the following areas:
 - (A) meet-and-assist services;
 - (B) check-in procedures;
 - (C) boarding and deplaning;
 - (D) on-board services, such as the provision of onboard wheelchairs, where required;
 - (E) wheelchair assistance in terminals;
 - (F) on-board stowage of wheelchairs; and
 - (G) complaint handling; and
 - (ii) Northwest reviews the reports received, takes follow-up action to correct any deficiencies discovered, and retests procedures to ensure effectiveness of implemented corrective steps;
 - (b) by May 1, 2002, the carrier submits documentation to the Enforcement Office describing the Program, including the names of the individuals or organizations being used to conduct the reviews, for the Enforcement Office's approval;
 - (c) the amount to be credited is spent on the Program by March 1, 2004; and
 - (d) by April 1, 2004, the carrier provides to the Enforcement Office accounting information showing expenditures for the development and implementation of the Program; and

12. All payments made pursuant to this order 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. Failure to pay the penalty as ordered will subject Northwest Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order is issued under authority assigned in 14 CFR 385.11(d) and shall become a final order of the Department 30 days after its service unless a timely petition for review is filed or the Department takes review on its on motion.



Ronnie A. Yoder
Chief Administrative Law Judge

Dated: February 8, 2002

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