



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 July, 2002

Complaint of

Louise M. Caplan v. Northwest Airlines, Inc.

Under 49 U.S.C. § 41705

Served July 22, 2002

OST Docket 2002-11674

ORDER DISMISSING COMPLAINT - ERRATUM

The first sentence of the third full paragraph on page 3 of the above order should read, "As part of its investigation, the Enforcement Office asked the Complainant to respond to the Northwest employees' accounts of the incident."

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

Dated: July 22, 2002



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ORDER DISMISSING COMPLAINT

On February 25, 2002, Louise Caplan (Ms. Caplan or Complainant) filed a third-party complaint under Part 302 of the Department's Procedural Regulations (14 CFR 302.401 *et seq.*) against Northwest Airlines, Inc. (Northwest, or Respondent).¹ The complaint alleged that Northwest unlawfully discriminated against the Complainant on the basis of her disability, in violation of the Air Carrier Access Act of 1986 (ACAA), 49 U.S.C. §41705, and the Department's implementing regulations, 14 CFR Part 382.

In her complaint, Ms. Caplan alleged that the carrier failed to provide her with adequate wheelchair assistance during travel with her husband, Kenneth Caplan, on Northwest flights in November 2001 between Baltimore, Maryland, and San Diego, California, with a connection in Minneapolis, Minnesota. The Complainant states that when she arrived for check-in at Baltimore she requested wheelchair assistance for her transfer between gates at Minneapolis. However, she claims that wheelchair service was not available at the time of her arrival in Minneapolis and that she was forced to walk a portion of the distance to the departure gate for her second flight. The Complainant's general allegations of violations by Northwest fall under the terms of 382.7, the general non-discrimination provisions of Part 382. With respect to more specific allegations, the Complainant cites section 382.33 (failure to properly record a special service request); section 382.39 (failure to provide mobility assistance); section 382.61 (failure to properly train its employees in matters related to disability assistance); and section 382.65 (failure to resolve a complaint appropriately and to provide a written response to the Complainant).

¹ We assume that Ms. Caplan's statement that, "all Continental (*sic*) flights referred to in this complaint constituted 'scheduled air service' within the meaning of 14 C.F.R. 382.5(d)(3)(c)(2)," (Complaint, ¶6) is intended to refer to Northwest flights.

Northwest on March 11, 2002, filed an answer in which it denied that any violation of either the ACAA or Part 382 occurred during Ms. Caplan's travel on Northwest. The carrier additionally asserts that the complaint is precluded by the recent consent order issued against the carrier which settled a formal enforcement proceeding relating to the carrier's compliance with Part 382, covering the period from January 1, 1997, to March 13, 2002, during which the incident described in Ms. Caplan's complaint occurred (Order 2002-3-10, March 12, 2002).² With regard to the specifics of Ms. Caplan's complaint, Northwest claims that Ms. Caplan, in effect, asserts that a violation occurred because a wheelchair was not waiting for Ms. Caplan at the door of the aircraft when she deplaned in Minneapolis. According to Northwest, such a demand for immediate wheelchair service does not comport with the intention of the ACAA or the Department rule. The carrier, in addition, states that it cannot be held responsible for a passenger's decision to resort to self-help, which it asserts occurred when Ms. Caplan left the gate area soon after learning that a wheelchair was not waiting for her.

Before the Complainant filed her complaint against Northwest, two other travelers with disabilities had filed a formal complaint alleging that Northwest had failed to comply with Part 382 in connection with required wheelchair service. After reviewing that complaint and conducting a further investigation, the Department's Enforcement Office filed a formal complaint against Northwest that asserted that the airline had committed numerous violations of its obligations to provide adequate wheelchair and other required assistance to travelers with disabilities in violation of Part 382. The Enforcement Office obtained a consent order against Northwest. The carrier did not admit to any violations, but it accepted the consent order, which directs it to cease and desist from violating Part 382 and obligates it to make significant financial outlays to improve its service to disabled passengers, particularly those using wheelchairs. The Department's Chief Administrative Law Judge, Ronnie Yoder, approved the settlement of the complaint with the consent order. *Northwest Airlines, Inc., Violations of 14 CFR Part 382* (February 11, 2002 Order). The Complainant thereafter filed her complaint against Northwest, sought leave to intervene in the pending proceeding, and asked for leave to file objections to the settlement of that proceeding. The Department denied her requests. Order 2002-3-10 (March 12, 2002). The Department stated, however, "[T]he settlement will not take away any procedural rights given Ms. Caplan under the ACAA to an investigation of her complaint against Northwest." Order 2002-3-10 at 3.³

² Northwest also cites the Department's action in dismissing a previous complaint of Ms. Caplan in Order 2000-7-4. In that order, the Department found that further investigation of the formal complaint there at issue would be duplicative and "raise double jeopardy issues" in view of a recent settlement of a formal enforcement case against Continental involving similar issues (See Order 2000-3-24).

³ Ms. Caplan is seeking judicial review of the Department's denial of her requests for leave to intervene in that proceeding and to file unauthorized documents opposing the settlement approved by the Chief Administrative Law Judge. *Caplan v Department of Transportation, D.C. Cir. No. 02-1096*.

The Enforcement Office has investigated Ms. Caplan's complaint against Northwest by asking both the Complainant and the Respondent to provide more detailed information regarding the incident. The carrier, in response, provided statements from the two Northwest employees who dealt with Mr. and Ms. Caplan at the Minneapolis airport: the gate agent who met the Caplans as they deplaned at Minneapolis for their connecting flight to San Diego, and the Complaint Resolution Officer (CRO)⁴ who met the Caplans, discussed their grievances with them, and offered them compensation when they reached the gate area of the flight to San Diego. Both employees submitted statements under penalty of perjury. The gate agent stated that he endeavored to provide prompt assistance to the Caplans but, confirming allegations in the complaint, stated that a wheelchair was not available at the door of the aircraft when the first passengers, including the Caplans, left the aircraft. He assured the Caplans, according to his statement, that a wheelchair would be available at the door of the aircraft before all the passengers had deplaned. Corroborating other assertions of the Complainant, the agent stated that he then advised the Caplans that he could not leave the door of the aircraft unattended at that moment to find a CRO in response to Mr. Caplan's request, and that the Caplans then proceeded from the gate area without awaiting a wheelchair.

The CRO, who met with the Caplans at the gate area of their connecting flight to San Diego, recalled that Mr. Caplan said that he would contact an attorney regarding his complaint and that he refused the compensation offered by the CRO as inadequate. The CRO states that she interpreted Mr. Caplan's remark to mean that Mr. Caplan did not want to submit a written complaint at the time of the incident but would pursue legal alternatives.

As part of its investigation, the Enforcement Office asked the Complainant to respond to the Continental employees' accounts of the incident. Mr. Caplan, answering on behalf of the Complainant in a sworn statement, reiterated the factual account given in the complaint, including a narrative of what happened in the interval between his discussion with the gate agent and his meeting the CRO, and stated that nothing he said to the CRO was intended to waive any right Ms. Caplan had to a written response from the carrier under section 382.65.

After reviewing all the relevant information we have gathered in our investigation, we have decided not to begin a formal enforcement proceeding with regard to this matter. Accordingly, we will close our investigation and dismiss the complaint. On the basis of the investigatory record, including the complaint, the Respondent's answer, and the written submissions requested by us from both parties, we do not believe there is a sufficient showing that a violation of Part 382 occurred which would warrant a formal enforcement proceeding. The applicable statute, 49 U.S.C. 41705(c)(1), requires us to investigate each complaint involving an alleged violation of 49 U.S.C. 41705(a) but by its

⁴ Carriers are required under section 382.65 to have an employee who is designated as a Complaint Resolution Officer (CRO) on duty at each airport. These employees are to be available to disabled travelers on request to aid in resolving complaints or problems which they may have.

terms does not require that we institute a formal enforcement proceeding for every such complaint or resolve each complaint by means of an enforcement proceeding.

A formal enforcement proceeding normally involves a hearing before an administrative law judge (ALJ), the Enforcement Office's participation as a party, and Department review of the ALJ's decision. As a result, the prosecution of a formal enforcement proceeding usually requires a significant commitment of Department resources. The Enforcement Office, in determining which enforcement cases merit a formal proceeding and the allocation of Department resources, is obliged to consider the relative seriousness of individual complaints. Ms. Caplan's case was not egregious in comparison to many of those which were the subject of the recent consent agreement with Northwest, approved in Order 2002-3-10. The Complainant may have suffered an inconvenience, and may be dissatisfied with the service she received, but the incident did not result in a serious disruption of her travel plans, since she did arrive at the connecting gate area in time to catch her second flight. Viewing the case in a light most favorable to the Complainant and assuming the accuracy of the Complainant's assertions, the potential violations which may have occurred were comparatively minor.⁵

In addition, the Enforcement Office's investigation of similar issues resulted in a finding that Northwest had violated the ACAA and the Department's requirements, as well as an order to cease and desist from future violations, which also assessed a significant civil penalty and mandated remedial action designed to enhance the carrier's treatment of disabled passengers. That consent order should ensure substantially greater compliance by Northwest with its obligations under Part 382 and thus help the Complainant obtain her rights on any future Northwest flights. Since the Department cannot award damages in an enforcement proceeding, a finding that Northwest violated Part 382 could result at most in an assessment of civil penalties and a cease and desist order requiring compliance with the applicable regulatory requirements. Any such relief would largely duplicate the relief already obtained by the consent agreement. In any event, the Department reserves the right to determine whether Northwest is complying with that consent order before undertaking further, potentially duplicative, enforcement action against the carrier.

In view of these considerations, it would not, therefore, be in the public interest to devote the Department's resources to a renewed investigation of Northwest's compliance record at this time with respect to issues sufficiently explored in the recent formal proceeding.

⁵

The Caplan complaint also involves several legal issues. The Complainant believes that wheelchairs requested before a flight must be made available immediately (that is, by the time the passengers deplane), and that CRO's must be made available promptly, as requested. The wheelchair availability issue is complicated here, however, by the question of whether Ms. Caplan abandoned the deplaning area, thereby preventing the carrier from providing the requisite wheelchair assistance within a reasonable timeframe.

ACCORDINGLY, I dismiss the third-party complaint in this docket.

This order is issued under authority assigned in 14 CFR 302.406(b) and shall be effective as the final action of the Department within 30 days after service.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings