



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

Issued by the Department of Transportation
on the 18th day of March, 2003

**Petition for Rulemaking of
Joel Kaufman
Re Ticket Change Penalties**

**Served March 18, 2003
DOCKET OST 2003-14334**

ORDER OF DISMISSAL

By this order, we dismiss the petition for rulemaking filed by Mr. Joel Kaufman relating to airline ticket change penalties.

The Petition

By a petition filed January 7, 2003, Joel Kaufman (Mr. Kaufman or petitioner) urges the Department to adopt a rule prohibiting air carriers from charging what he contends are "disproportionate" penalties when passengers holding confirmed reservations seek to reschedule their travel. Mr. Kaufman complains that, if a consumer wishes to alter his or her travel schedule, airlines charge penalties in order to credit any part of the ticket price of the canceled reservation toward a revised itinerary. Citing a recent personal experience as an example, Mr. Kaufman states that he had to cancel a flight on Delta Airlines due to illness. At the time of his cancellation, the air carrier informed him that if he wanted to reschedule the flight, he would be subject to a \$100 change fee and that he must reschedule his trip by midnight of the date of his originally scheduled travel. Based on this experience, the petitioner believes that the Department should adopt a rule prohibiting such rescheduling fees.

In support of his petition, Mr. Kaufman complains that airlines may freely cancel flights for any reason with no obligation other than to place passengers on another flight.¹ He also maintains that fare rules constitute a contract of adhesion, based on unequal bargaining power, between the carrier and the passenger. In addition, Mr. Kaufman believes that the cancellation penalties of the fare rules make it more likely that a passenger will fly when ill, so that those rules present a danger to public health. Finally, he maintains that fare rules such as those of Delta undermine the long-term health of commercial aviation by creating a disincentive for the public to use air transportation.

Disposition and Analysis

We have decided to dismiss Mr. Kaufman's petition. Congress deregulated domestic airfares more than 20 years ago and this Department consequently has extremely limited powers with respect to domestic airfares and related conditions.² Absent compelling evidence of consumer deception or unfair methods of competition, we have allowed the marketplace to govern carrier decisions regarding fares and their associated conditions. Thus, the lower price for nonrefundable tickets is a trade-off for passengers agreeing to a restriction that allows a carrier to manage its inventory and cash flow. The public benefits in low fares found to exist under our present deregulated fare environment could be undone by the government intrusion requested by petitioner.

Moreover, because a passenger can choose whether to buy a refundable or nonrefundable ticket at the time of purchase and can choose between carriers offering different fare products, petitioner's contract of adhesion argument is not persuasive. There are usually several fares available on any given flight, and the prices vary depending on the extent of the conditions with which the passenger is willing to comply, including the ability to cancel a ticket and receive a full refund. However, the Department does require airlines to give consumers specific advance notice of any condition that would restrict refunds or impose any monetary penalties for cancellation. (14 CFR 253.7). This allows prospective passengers to make an informed choice among the numerous fares and related conditions that are available. If the freedom to change plans without paying a penalty is a contingency for which a passenger wants to plan, refundable fares are available.

Finally, the petitioner offers no specific evidence to support his contention that current cancellation policies, of which Delta's may be typical, are deleterious to the public health or the health of the commercial airline industry. To the contrary, such policies, in a deregulated environment, provide carriers with flexibility in pricing and inventory control that is generally beneficial to the industry and to the public.

In sum, Mr. Kaufman has failed to support his request that we adopt rules barring "disproportionate" penalties when a passenger reschedules or cancels an airline reservation.

¹ The petitioner is not correct. In certain circumstances, such as a cancellation involving a substantial change in flight time, a carrier would be required to provide a refund even if the passenger holds a nonrefundable ticket.

² Airline Deregulation Act of 1978, PL 95-504, 92 Stat 1705.

ACCORDINGLY, pursuant to the authority of 49 CFR 1.56a and 5.13, we dismiss the petition for rulemaking of Mr. Kaufman in Docket OST 2003-14334.

By:

Read Van De Water
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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