



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 March, 2003**

American Airlines, Inc.,

**Violations of 14 CFR Part 382
and 49 U.S.C. §§ 41310, 41702, and 41705**

Complaint of

**Louise Caplan v.
American Airlines**

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

**OST-2003-14194
OST-2000-7010
Served March 4, 2003**

CONSENT ORDER AND ORDER OF DISMISSAL

This order concerns certain alleged violations by American Airlines ("American") of the requirements of 14 CFR Part 382, with respect to providing wheelchair assistance to passengers with disabilities and dispositive responses to persons who complain to the carrier about its failure to comply with Part 382. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that Part also violate the ACAA. To the extent that the alleged ACAA and Part 382 violations occurred in interstate air transportation, the incidents would also violate 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. Additionally, to the extent the alleged violations occurred in foreign air transportation, the incidents would violate 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. This order directs American to cease and desist from future violations of Part 382 and the ACAA and assesses a \$1.2 million civil penalty in compromise of civil penalties that might otherwise be assessed against the carrier for such violations. This

order further dismisses the third-party enforcement complaint filed by Louise Caplan against American.

Part 382 requires air carriers to provide assistance to passengers with disabilities in enplaning and deplaning aircraft and imposes specific requirements in doing so. Under 14 CFR 382.39 (a) and (b), several requirements are listed regarding the quality of service carriers must provide 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. This order finds that on a number of occasions, as revealed both in complaints filed with the Department and directly with American, the carrier has failed to comply with these requirements.

Our investigation of these issues arose from a formal complaint filed by Louise Caplan on March 3, 2000. Ms. Caplan alleged a series of violations that she claimed occurred during trips made on American on June 12, 1996, November 7, 1996, November 15, 1996, and September 20, 1997.¹ She states that she and her husband specifically requested wheelchair service when booking her tickets. Yet, according to Ms. Caplan's complaint, American failed to provide the requested wheelchair assistance on these flights, on one occasion failed to provide a Complaint Resolution Official, and on another occasion offered an electric cart and refused to provide a wheelchair when Ms. Caplan stated a preference for a wheelchair. The complaint alleges that American's actions violate the Department's rules requiring carriers to provide assistance to disabled passengers requesting wheelchairs and constitute a threat to the well being of disabled passengers.

In response to this complaint, American filed an answer on April 19, 2000, in which it disputed that it violated the ACAA and stated that Ms. Caplan's claims are stale and too old to be prosecuted. American stated in its answer that it takes its responsibilities under the ACAA very seriously and strives to comply with the Act, and that it has detailed procedures in place to enable it to comply with the ACAA and Part 382, as well as numerous people who are trained to implement the ACAA and Part 382. American requested that the Department dismiss the claim because the events occurred up to four years before the date of the complaint and, due to the significant passage of time, American could not adequately defend itself against the allegations. American also requested that the Department dismiss the complaint because it contended it did not violate the ACAA. While American agrees that Ms. Caplan did request a wheelchair on the various dates, it denies that she did not receive the wheelchair service she requested for her flights and stated that Ms. Caplan did receive assistance. In regard to the alleged failure to provide a CRO upon request, American asserts that the Complainant's husband asked for a specific CRO and that the gate agent informed him that this

¹ The Department is precluded from pursuing action to collect civil penalties regarding the incidents in question because of a statute of limitations. 28 U.S.C. § 2462 (2002).

particular CRO was located at American's headquarters building, a few miles away, and that Part 382 does not require a particular CRO to travel to an airport to meet with a disabled passenger who is experiencing problems getting service, just that a CRO be provided. American further responded that it did in fact offer to provide a CRO to the Caplans. Rather than speak with the offered CRO, American alleges that Ms. Caplan's husband demanded that American provide him with two first class tickets to Europe. American also asserts that on a later occasion, while American was attempting to assist Ms. Caplan, Mr. Caplan attempted to show the CRO paperwork demonstrating that he had previously sued other carriers, in an apparent threat of litigation. American further asserts that in Ms. Caplan's case providing an electric cart instead of a wheelchair was not a violation of the ACAA.

In order to further investigate American's compliance with the relevant provisions of Part 382, the Enforcement Office requested that the carrier provide copies of all complaints it had received directly from disabled passengers since April 5, 2000, which alleged a failure to provide adequate wheelchair assistance. The Enforcement Office also reviewed other wheelchair-related complaints against American sent directly to the Department. All of these complaints involved alleged incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.²

Our review of both sets of complaints indicated a significant number of apparent violations of section 382.39 during the pertinent time period. Furthermore, in our view, a number of the complaints appeared to reflect deficiencies on the part of the carrier in meeting the requirements of section 382.39, including a few instances of prolonged delays in obtaining wheelchairs and a few occasions of leaving individuals alone in wheelchairs or on board aircraft for extended periods of time. Additionally, American's complaint files indicated that on some occasions it did not provide a written response to the complainant that complied with the requirements of section 382.65. This section requires carriers to give a "dispositive written response" within 30 days of receipt of each complaint postmarked within 45 days of the complained of incident. An appropriate response must specifically discuss the issue raised by the complaint. If a carrier asserts that no violation occurred, it must provide an explanation of its view. If a carrier agrees that a violation occurred, it must describe the corrective action taken in response. Finally, the carrier's dispositive written response must notify the complainant that he or she may refer the matter to the Department's consumer office.

In mitigation of these apparent violations, American states that it has long been a leader in awareness of and service to passengers with disabilities, including passengers with mobility, hearing and visual, and hidden disabilities. American states that it provided

² 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 for each violation of the ACAA.

courtesy wheelchair service to over 1 million customers in 2001. Despite the volume, less than one-tenth of one percent of passengers who requested wheelchair assistance filed complaints with American. American further states that over the past 16 years it has spent almost \$13 million on accommodation initiatives in addition to what is required by statute and that it should receive credit for the work it has done and continues to do. Moreover, American states that since the Enforcement Office's investigation began in 2001, it has spent over a million dollars to improve accessibility and service to people with disabilities. Specifically, American states that it has increased the number of representatives in its customer relations department to investigate and respond to disability-related complaints and created a new training video entitled AccessAAbilities, which it has released for use by the Enforcement Office and the Transportation Security Administration. In addition, American has rewritten its Local Complaint Resolution Official training curriculum and expanded it from a half-day to a full-day course and established a Disability Task Force to improve its ACAA compliance. American also states that it upgraded its wheelchair service provider at its hub in Saint Louis, and improved the wheelchair services offered there, including providing more wheelchairs.

We view seriously the obligation of carriers to comply with the ACAA and 14 CFR Part 382. Given the serious nature of the ACAA and Part 382 violations alleged against American, the number and nature of the apparent violations involving American, and the potential harm to disabled travelers, it is clear that enforcement action is warranted.

In order to avoid litigation, and without admitting or denying the alleged violations, American 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 Part 382 and the ACAA. By this order, the Department finds that American has, on numerous occasions, failed to provide adequate wheelchair assistance to passengers with disabilities in violation of the ACAA and 14 CFR 382.39. The Department also finds that in some instances the carrier has failed to comply with the dispositive response requirements of 14 CFR 382.65. This order, in addition, directs the carrier to cease and desist from similar violations in the future and assesses a civil penalty of \$1.2 million in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. Of the \$1.2 million assessed penalty, American must pay \$25,000 within 30 days of the service date of this order; American must pay an additional \$75,000 within 12 months of the initial payment of \$25,000; \$800,000 shall be credited to American for the work it has already done since this investigation began to increase its quality of service to disabled air travelers;³ and \$300,000 shall be credited to American for the work it has already done and continues to do to improve wheelchair service at its hub in St. Louis, Missouri.⁴ We

³ For the most part, the \$800,000 offset relates to the cost of an improved and lengthened training program American is providing to its Local Complaint Resolution Officials.

⁴ American shall provide detailed documentation of this expenditure to the Enforcement Office within 25 days of the service date of this order.

believe that this consent 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.

We have also determined, on review of the materials submitted in the captioned docket and on the basis of our action here, that further investigation of Ms. Caplan's complaint is neither warranted nor in the public interest. Accordingly, we will dismiss the complaint under 14 CFR 302.406. Although it is our opinion that reasonable grounds exist to believe that American's conduct with regard to Ms. Caplan may have violated certain requirements of Part 382 and the ACAA, we also believe that the public interest concerns inherent in resolving any such violations are adequately addressed by the settlement reached in this case.⁵ This settlement renders further investigation of Ms. Caplan's complaint, through the institution of a formal proceeding, not to be in the public interest.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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 American 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 American 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 American Airlines, Inc., in the instances described in ordering 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 ordering paragraphs 2 and 3, *supra*, occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;

⁵ Additionally, this consent order will settle all complaints against American alleging violations of 14 CFR 382.39, regarding the provision of wheelchair service, and 14 CFR 382.65, regarding dispositive reply and complaint resolution requirements, occurring prior to the service date of this order.

6. We find that to the extent the violations described in ordering paragraphs 2 and 3, *supra*, occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310;
7. We order American 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, and 41705 by engaging in the conduct described in ordering paragraphs 2 and 3, *supra*;
8. American Airlines, Inc., is assessed a civil penalty in the amount of \$1.2 million in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, *supra*, of which:
 - (a) \$25,000 shall be due and payable 30 days after the service date of this order;
 - (b) \$75,000 shall be due and payable within 12 months after the initial payment of \$25,000 referenced in ordering paragraph 8(a);
 - (c) \$800,000 shall be credited to American Airlines for expenditures made to improve its quality of service to disabled air travelers since the initiation of the investigation giving rise to this order, which the Enforcement Office has already reviewed; and
 - (d) \$300,000 shall be credited to American Airlines for expenditures it has already made and continues to make to improve its wheelchair service in St. Louis, Missouri, provided that American provides adequate documentation detailing the expenditures and related improvements to the Enforcement Office within 25 days of the service date of this order;⁶
9. 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 American Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
10. The formal complaint in Docket OST-2000-7010 is dismissed.

⁶ If American is unable to gather adequate documentation within 25 days, the \$300,000 credit shall not automatically be withdrawn. Rather, the Enforcement Office shall grant American reasonable extra time in which to complete the process of submitting adequate information.

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:

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(SEAL)

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