



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

Issued by the Department of Transportation
on the 21st day of June, 2004

**Delta Air Lines, Inc.
Compliance with 49 U.S.C. §§ 40127, 41310,
41702 and 41712**

Served: June 21, 2004

Docket OST 2004-16943

CONSENT ORDER

This order closes an investigation into Delta Air Lines, Inc.'s (Delta)¹ compliance with Federal statutes prohibiting air carriers from subjecting any air traveler to discrimination on the basis of race, color, national origin, religion, sex or ancestry. The consent order directs Delta to cease and desist from future violations and to provide civil rights training to its pilots, flight attendants, and passenger service agents (PSAs), and settles all pending matters arising out of or relating to incidents where Delta was alleged to have removed from a flight or failed to board a passenger on the basis of the passenger's race, color, national origin, sex, ancestry, or religion.

Shortly after the terrorist attacks of September 11, 2001, the Office of Aviation Enforcement and Proceedings (Enforcement Office) began to receive complaints against Delta (and other carriers) from individuals removed from flights or denied boarding on flights allegedly because those persons were, or were perceived to be, of Arab, Middle Eastern or Southeast Asian descent and/or Muslim. Because of concerns about these complaints, the Enforcement Office requested information from Delta regarding incidents occurring on or after September 11, 2001, involving the removal or denied boarding of a passenger for safety/security reasons.

Federal law is clear. An airline cannot refuse passage to an individual because of that person's race, color, national origin, religion, sex, or ancestry. 49 U.S.C. § 40127(a). Similarly, 49 U.S.C. § 41310 prohibits air carriers and foreign air carriers from engaging in unreasonable discrimination against individuals on flights between the U.S. and foreign points, 49 U.S.C. § 41702 requires that U.S. carriers provide safe and adequate transportation, and 49 U.S.C. § 41712 prohibits unfair and deceptive practices and, therefore, prohibits invidiously discriminatory practices on the part of U.S. carriers.

¹ In each instance in this consent order in which the name Delta Air Lines or Delta appears, it shall refer to and be binding upon Delta Air Lines, Inc. and all subsidiary or wholly-owned air carriers of Delta Air Lines, Inc.

In responding to the Enforcement Office's allegations, Delta Air Lines disagrees that it discriminated against any passengers and further states that it did not discriminate against passengers on the basis of their race, color, national origin, religion, sex or ancestry and that all of the incidents covered by this order involved actions taken for reasons of safety and security.

In response to the Department's allegations, Delta states that it did not and does not discriminate against passengers on the basis of the passenger's race, color, national origin, sex, ancestry, or religion. Delta further states that in each of the alleged incidents Delta's actions were based solely on safety and security considerations and not on the passenger's race, color, national origin, sex, ancestry or religion. In this connection, Delta states that federal law authorizes air carriers to "refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety" (49 U.S.C. § 44902(b)) and that Delta lawfully exercised its responsibilities under that statute. Delta states that as a result of the tragic terrorist attacks on September 11, 2001, the airline industry has been and continues to be faced with unprecedented security concerns. Delta submits that its personnel acted in the best interests of safety and security. In addition, Delta states that in the aftermath of the terrorist attacks, and long before the Department's investigation, Delta took an industry-leading role to ensure that flight crews, ground security coordinators and airport customer service personnel understood and were fully trained on their obligations to comply not only with federal civil rights requirements but with Delta's own Code of Ethics and Business Conduct. Thus, immediately after the attacks, Delta's President issued a company-wide bulletin to all personnel underscoring the critical importance of adhering to Delta's long-standing business policy and to civil rights laws that prohibit unlawful discrimination.² The Department presented the Delta bulletin as a model for the airline industry.

In addition, Delta states that it already proactively initiated enhanced civil rights and diversity training including a novel CD-Rom based training for pilots that covers civil rights issues as part of Delta's broader training program, as well as a joint classroom training session for pilots and flight attendants which include scenario training on civil rights issues. Delta states that although

² The bulletin stated:

"Last Tuesday's tragedy has affected us in ways that would have seemed inconceivable as little as two weeks ago. Unfortunately, we've seen some Americans become suspicious of people of other cultures—especially those of Mideast descent. And across the airline industry, we've heard stories of passengers being deplaned because of their skin color or the sound of their accents.

We cannot afford to allow this tragic behavior. It is exactly what our enemies are striving for: The end of our open, diverse, and tolerant way of life.

Delta's Code of Ethics and Business Conduct states that, 'Delta has an uncompromising policy never to discriminate against customers on the basis of race, gender, age, national origin, disability, sexual orientation or similar classifications. The law mandates this policy—discrimination is not only illegal, it is wrong and will not be tolerated.'

Safety is our first priority at Delta, and we will not compromise that. If a passenger behaves suspiciously or in a manner that suggests a possible security concern while in the airport or on board our aircraft, we should always take action to investigate the behavior. But our response must be based on the passenger's conduct, not on race or national origin."

it strenuously denies that any violation of Federal law occurred, it is willing to settle this matter with the Department without admitting to or agreeing with the allegations of the Enforcement Office. According to Delta, it is doing so in light of the Department's willingness to settle all pending complaints and investigations without the assessment of civil penalties, but rather with an agreement by Delta to conduct civil rights training for pilots, flight attendants and passenger service agents in the future. Delta states that by its deeds and actions it has already committed to the objectives of the civil rights laws and its agreement to this order serves to reinforce this commitment. _

The Enforcement Office recognizes that the September 11, 2001, terrorist attacks were unprecedented and clearly created a difficult situation for the airline industry, acting pursuant to FAA-approved security programs, in trying to protect passengers and crew from further attacks. Nonetheless, based on its review of the post-September 11 incidents in which Delta removed or failed to board passengers purportedly for safety/security reasons, the Enforcement Office believes that some passengers were denied boarding or were removed from flights because, or principally because, of the passenger's ethnic background. Even though the Enforcement Office does not dispute that the Delta employees involved believed they were acting to ensure the safety and security of passengers and crew, the Enforcement Office believes some passengers were denied boarding or removed from flights in a manner inconsistent with the carrier's non-discrimination obligations under Federal law.

The Enforcement Office has carefully considered all the information provided by Delta, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Delta have reached a settlement of this matter. Without admitting that any violation of the law occurred, Delta consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 40127, 41310, 41702, and 41712 and to provide civil rights training to its pilots, flight attendants, and its passenger service agents. The Enforcement Office believes that this settlement is appropriate and serves the public interest and creates an incentive for all carriers to comply fully with the civil rights laws enforced by the Department of Transportation.³

The 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 Delta Air Lines, Inc. acted in a manner inconsistent with the requirements of 49 U.S.C. §§ 40127, 41310, 41702 and 41712 when it removed from or refused to board on its flights certain individuals as discussed above;

³ In addition, this consent order will settle any and all complaints that could be asserted against Delta alleging violations of 49 U.S.C. §§ 41310, 41702, 41705 or 41712 arising out of or relating to incidents where Delta was alleged to have removed from a flight or failed to board a passenger on the basis of the passenger's assumed race, color, national origin, religion, sex or ancestry occurring on or after September 11, 2001, and through the service date of this order.

3. We order Delta Air Lines, Inc., and all other air carriers owned and controlled by it or under common ownership and control with it, and their successors and assigns to cease and desist from future actions inconsistent with 49 U.S.C. §§ 40127, 41310, 41702 and 41712, as described above;
4. We order Delta Air Lines, Inc., and its successors and assigns to provide civil rights training to its pilots, flight attendants, and passenger service agents during the 24 months following the service date of this order at a total cost of not less than \$900,000.⁴ Within 27 months of the service date of this order, Delta shall submit a sworn statement from an appropriate company official certifying that to the best of that persons knowledge, after completion of a reasonable inquiry, Delta provided civil rights training to its pilots, flight attendants, and passenger service agents during the 24 months after the service date of this order at a total cost of not less than \$900,000, and that all of its pilots, flight attendants, and passenger service agents received some civil rights training since September 11, 2001⁵;
5. Any failure by Delta Air Lines, Inc., to conduct the training in accordance with ordering paragraph 4 or to document it adequately to the Enforcement Office shall constitute a continuing violation of this consent order and subject Delta to enforcement action; and
6. This order is the result of a settlement of disputed alleged violations and it expressly makes no findings of violations with respect to any individual incident or incidents of alleged civil rights violations. The conclusions herein are not evidence of any wrongful act with respect to any individual nor shall this order constitute in any way an admission by Delta of any discriminatory conduct with respect to any individual. This order and the statements herein shall have no evidentiary or decisional effect in any proceeding not before the Department of Transportation.

⁴ Delta Air Lines has already taken affirmative steps to train its personnel on civil rights/discrimination issues to ensure that passengers are not removed or denied boarding on the basis of a person's race, color, national origin, religion, sex or ancestry. The Department has taken into account the cost of the civil rights training provided to pilots, flight attendants, and passenger service agents by the carrier after September 11, 2001, but prior to this consent order, in determining the appropriate minimum monetary amount for future civil rights training.

⁵ The Department has contracted with a company to develop an easy to understand technical assistance manual that details the responsibilities of air carriers under Federal nondiscrimination statutes and to develop a model training program, which will include, at a minimum, an overview of the applicable laws and regulations, a cultural awareness component and a job-specific training segment. To support the Department in its mission of ensuring nondiscrimination in air transportation, Delta has agreed to share with the Department's contractors its civil rights training materials for possible inclusion in the Department's technical assistance manual and model training program.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

(SEAL)

For Delta Air Lines, Inc.

For the Department of Transportation
Samuel Podberesky
Assistant General Counsel for
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EIN (Employer Tax ID#) of Delta Air Lines, Inc.