



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

Issued by the Department of Transportation
on the **20th day of October, 2005**

United Air Lines, Inc.

**Violations of 14 CFR Part 382 and
49 U.S.C. §§ 41705 and 41712**

Docket OST-2005-20077

Served: October 20, 2005

CONSENT ORDER

This consent order concerns a complaint filed by an individual with a disability (Ms. S¹) alleging that United Air Lines, Inc. (United) violated 14 CFR Part 382 (Part 382) when it refused to board her due to her disability. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that Part also violate the ACAA. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Based on an investigation conducted by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office), it has been determined that United violated the ACAA and its implementing rules when it denied boarding to a qualified disabled passenger due to her cerebral palsy. This order directs United to cease and desist from future violations of Part 382, the ACAA, and 49 U.S.C. § 41712 and assesses United a civil penalty.

¹ Identification of the individual is unnecessary for purposes of this consent order and is withheld for privacy reasons.

The alleged violation took place on August 16, 2003, subsequent to United's December 9, 2002, filing of a petition for reorganization under Chapter 11 of the Bankruptcy Code, In re UAL Corp., Bankr. No. 48110 (Bankr. N.D. Ill).

BACKGROUND

The investigation by the Enforcement Office into United's compliance with Part 382 began with an informal complaint filed with the Enforcement Office by Ms. S, an individual with mobility-related disabilities. On August 9, 2003, Ms. S traveled unaccompanied from Washington Dulles International Airport to Port Columbus International Airport in Columbus, Ohio on United without incident. The circumstances described in the complaint arose on Ms. S's return flight. On August 16, 2003, Ms. S was denied boarding on United Flight 7185, which was operated between Columbus, Ohio and Washington Dulles International Airport.

Ms. S has cerebral palsy, uses a wheelchair for mobility and has a speech impediment. Although Ms. S uses a wheelchair for mobility, she has partial use of all of her extremities and can walk short distances with assistance. In addition, Ms. S travels by air at least once a year and typically transfers from an aisle chair to her seat on the airplane without assistance.

On August 16, 2003, Ms. S arrived at the airport approximately two hours prior to the scheduled departure time for her return flight to Washington Dulles International Airport. Ms. S was accompanied to the airport by Mr. D, who carried her luggage and walked with her through the airport as she operated her own manual wheelchair. When the two reached the gate, the United representative confirmed that Ms. S was traveling by herself and then asked Ms. S whether she could walk by herself. Ms. S replied, "No." The gate agent then informed Ms. S that she would not be permitted to fly on her return trip on United. According to Mr. D, the gate agent did not ask Ms. S any additional questions and did not ask if there was anyone who could accompany her on her return trip. In addition, the United gate agent did not provide Ms. S with access to a complaint resolution official (CRO) when Mr. D asked to speak with a supervisor. Ultimately, the United representative denied boarding to Ms. S, and she was left to her own resources. Ms. S booked her return flight with another carrier and traveled home, unaccompanied, without further incident.

Based on the serious nature of this complaint, the Enforcement Office conducted an investigation of United and determined that United's decision to deny boarding to Ms. S violated the ACAA because United incorrectly determined that Ms. S could not travel without an attendant and improperly denied her boarding.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and Part 382 forbid discrimination in the provision of air transportation against qualified individuals with disabilities. *See* 14 CFR 382.7(a)(1). Part 382 contains numerous directives, of which four sections are relevant to this case and the complaint giving rise to it. These regulations address situations in which carriers may require disabled passengers to

travel with an attendant and may deny transportation to a person with a disability on the basis of safety and must explain a passenger's denied boarding and respond to complaints.

Under 14 CFR 382.31(a), carrier personnel shall not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability unless specifically permitted by a provision in Part 382. Section 382.31(d) explains that carrier personnel may refuse to provide transportation to any passenger on the basis of safety but shall not discriminate against any qualified individual with a disability on the basis of disability in exercising that authority. In the event that an air carrier denies transportation to an individual, it must provide the individual with written justification for the denial of transportation within 10 days of the denial. 14 CFR 382.31(e).

Section 382.35 outlines the situations in which air carriers may require that disabled passengers travel with attendants. Section 382.35(b)(3) states that a passenger with a mobility impairment may be required to travel with an attendant only when that person has a "mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft." Otherwise, the air carrier must allow the passenger to travel unattended.

Finally, section 382.65(a) requires that carriers must make available a complaint resolution official to any person who complains of alleged violations of Part 382.

Violations of the aforementioned provisions involve unfair and deceptive trade practices that violate 49 U.S.C. § 41712.

ANALYSIS

The complaint that formed the basis of this case involves an incident occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21, but before December 12, 2003, the effective date of the increase in civil penalties for ACAA violations enacted by Vision 100.² This complaint reflects an egregious violation by United in failing to meet the requirements of Part 382. A carrier may require that an individual with a mobility impairment so severe that the person is unable to assist in his or her own evacuation travel with an attendant *only if* the carrier determines that an attendant is essential for safety. See 14 CFR 382.35 (emphasis added). In this instance, United plainly failed to ask questions sufficient to enable it to render a determination regarding whether Ms. S could have assisted in her own evacuation. Merely asking whether Ms. S would be traveling alone and whether she could walk by herself was both inadequate and unrelated to the standard set forth in section 382.35, i.e. whether Ms. S could have assisted in her own evacuation. Further, even if United had inquired whether Ms. S could have assisted in her own evacuation and had disagreed with her self-assessment, at a minimum, United should

² Section 707(b) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000) amended 49 U.S.C. § 46301(a)(3) to apply a \$10,000 maximum civil penalty for each violation of the ACAA. Vision 100-Century of Aviation Reauthorization (Pub. L. 108-176; 117 Stat. 2440; December 12, 2003) increased the maximum civil penalty to \$25,000 for each violation of the ACAA occurring on or after December 12, 2003.

have explained that Ms. S could travel with an attendant. Instead, United denied Ms. S boarding and left her unassisted, with no option but to schedule her return flight with another carrier. Therefore, the Enforcement Office believes that United refused to transport Ms. S based on her disability, in violation of section 382.31(a) and (d).

Additionally, carriers must make available a CRO to any person who complains of alleged violations of Part 382 during all times the carrier is operating at the airport. Here, Ms. S should have been provided with a CRO when Mr. D asked to speak with a supervisor after Ms. S was denied boarding. However, United failed to make a CRO available to Ms. S in violation of section 382.65. Finally, the facts demonstrate that United failed to provide Ms. S with a written explanation of the denied boarding as required by section 382.31(e).

In response, United maintains that the above description of the incident giving rise to this consent order is not consistent with the company's investigation of the matter. Essentially, United's investigation reflects that a gate agent in Columbus attempted to ascertain in good faith whether Ms. S could travel safely unassisted should an in-flight emergency occur. According to this gate agent, he could not understand Ms. S's responses to questions he posed. United contends that, based on Ms. S's inarticulate responses, the gate agent made the decision to deny boarding to Ms. S. United does not dispute that following this determination, the gate agent failed to inquire whether there was anyone available who could accompany her on the flight. Furthermore, United failed to notify Ms. S in writing within ten days of the incident of the reason the denied boarding decision was made.

United understands that the incident as described by the Department violated Part 382 in some respects. However, it is United's position that under no circumstances could the incident constitute a violation of section 41712. As such, it is United's position that an enforcement action is unwarranted. Nonetheless, United has agreed to settle this matter because it believes that its interests will be better secured through a negotiated settlement. United additionally believes that the settlement it has agreed to is fully consistent with the company's long standing awareness of and sensitivity to the unique challenges faced by passengers with disabilities.

United also notes that a detailed review of its records confirms that no similar denied boarding incidents have occurred over the last several years. Furthermore, over the years, and as previously submitted to the Department, United believes that it has demonstrated a solid commitment to work with organizations representing the disabled community in addressing concerns and issues faced by passengers with disabilities. In fact, United states that it continues to actively participate in conferences sponsored by such organizations, like the Society for Accessible Travel and Hospitality. United also advises that it proudly coordinates travel for large groups of disabled veterans who come from all over the country to attend annual sporting events. Internally, according to United, it regularly meets with its vendors who provide wheelchair service to ensure that it is effectively providing service to its customers with disabilities. Moreover, Ms. S previously traveled on United and it is United's belief, based on statements from Ms. S and her father, that Ms. S never experienced any inadequate service prior to this incident. In fact, according to United, Ms. S's father, who complained about this incident on her behalf, indicated in his letter to United that the

company has the “reputation of caring for and assisting the disabled, even before the ADA.” In short, United firmly believes that it has a solid and respectable record regarding assistance to passengers with disabilities.

We view United’s failure to comply with the provisions of the ACAA and Part 382 in this instance very seriously. After carefully considering all the facts in this case, including those set forth above by United, the Enforcement Office believes that enforcement action is warranted and that there are reasonable grounds to believe that United violated provisions of 14 CFR Part 382, the ACAA, and 49 U.S.C. § 41712. In order to avoid litigation, and without admitting the alleged violation, United has agreed to settle this matter with the Enforcement Office and enter into this consent order to cease and desist from future similar violations of Part 382, the ACAA, and 49 U.S.C. § 41712. This order directs United to cease and desist from similar violations in the future and assesses a civil penalty of \$30,000. We believe that this consent order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and 14 CFR Part 382.

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 United Air Lines, Inc. violated 14 CFR 382.31(a) by refusing to provide transportation to a qualified individual with a disability on the basis of disability, violated 14 CFR 382.31(d) by discriminating against a qualified individual with a disability on the basis of disability, and violated 14 CFR 382.31(e) by failing to provide the passenger with a written explanation for a denial of transportation within 10 days of the denied boarding;
3. We find that United Air Lines, Inc. violated 14 CFR 382.65 when it failed to provide a CRO to a disabled passenger when a supervisor was requested to resolve a disability-related issue;
4. We find that United Air Lines, Inc. in the instance described in paragraphs 2 and 3 violated the Air Carrier Access Act, 49 U.S.C. § 41705, and 49 U.S.C. § 41712;
5. We order United Air Lines, Inc. to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41705 and 41712, as described above;
6. United Air Lines, Inc. is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 4 of this order, subject to the payment schedule set forth in paragraph 6(a) below, and subject to credit offsets of up to \$25,000 as provided in subparagraphs 6(b) and (c) below:

- a. \$5,000 shall be due and payable 30 days after the service date of this order;
 - b. \$25,000 shall be credited to United Air Lines, Inc., for expenditures that will be made in the 12 months after the service date of this order to improve its quality of service to disabled air travelers above what is required by 14 CFR Part 382 in accordance with ordering paragraph 7; and
 - c. To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditures of the \$25,000 offset as described in paragraph 7, that amount shall become due and payable 14 months after the service date of this order³;
7. To satisfy the obligation identified in paragraph 6(b), United Air Lines, Inc. shall provide training above what is required by 14 CFR Part 382 to all of its airport customer service representatives addressing issues in providing service to customers with disabilities, including reiterating United's policy of not requiring an attendant as long as the customer can assist in his or her own evacuation in the event of an emergency landing. Within 13 months of the service date of this order United Air Lines, Inc. shall provide;
- i. written certification to the Office of Aviation Enforcement and Proceedings that it has provided the additional training;
 - ii. a detailed explanation of the method used by United Air Lines to determine the total expenditures; and
 - iii. a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement; and
8. Payment 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. The wire transfer shall be executed in accordance with the attached instructions. Failure to pay the penalty as ordered will subject United Air Lines to the assessment of interest, penalty, and collection charges under the Debt Collection Act. The parties agree that any amounts due pursuant to this paragraph and paragraph 6 of this order shall be allowed as an administrative expense in United's bankruptcy case, In re UAL Corp.,

³ However, if United is unable to gather adequate documentation, the offset shall not be automatically withdrawn and become due and payable immediately. Rather, the Enforcement Office shall grant United reasonable extra time in which to complete the process of submitting adequate information and the requirement to pay such amount shall be tolled during such process.

No. 48110 (Bankr. N.D. Ill.), and that the Department of Transportation is entitled to immediate payment in accordance with the terms of this order.

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:

ROSALIND A. KNAPP
Deputy General Counsel

(Seal)

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