



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

Issued by the Department of Transportation  
On the Twenty-Eighth day of October, 2011

**Caribbean Airlines Limited**

**Docket OST 2011-0003**

**Violations of Articles 17 and 19 of the Montreal  
Convention and 49 U.S.C. § 41712**

**Served October 28, 2011**

**CONSENT ORDER**

This consent order involves violations by Caribbean Airlines Limited (CAL) of Articles 17 and 19 of the Montreal Convention<sup>1</sup> (Convention) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, in connection with monetary claims resulting from damage, loss, or delay to baggage checked on CAL's flights to or from the United States. It directs CAL to cease and desist from future violations of Articles 17 and 19 and section 41712, and assesses the carrier a compromise civil penalty of \$60,000.

**Applicable Law**

Nearly 100 countries, including the United States, are parties to the Montreal Convention, a treaty that applies to "all international carriage of persons, baggage or cargo performed by aircraft for reward."<sup>2</sup> Although the government of Trinidad and Tobago is not a party to the Montreal Convention,<sup>3</sup> the Convention also applies to round-trip air transportation from the United States to a country that is not a party to the Convention.<sup>4</sup> Article 22 of the Montreal Convention currently sets the liability limit for damages associated with lost, damaged, or delayed passenger baggage at 1,131 Special Drawing Rights (SDRs) (about

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<sup>1</sup> *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999, at Montreal.

<sup>2</sup> *Id.*, Article 1.1.

<sup>3</sup> The government of Trinidad and Tobago is a party to the Warsaw Convention. *See* *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, adopted on October 12, 1929, at Warsaw.

<sup>4</sup> *Convention for the Unification of Certain Rules for International Carriage by Air*, *supra*, Article 1.2.

\$1,782) for each passenger.<sup>5</sup> Article 17 of the Montreal Convention provides that carriers are liable for damaged or lost baggage, up to the limit set by Article 22, if “the destruction, loss or damage” occurred while the checked baggage was within the custody of the carrier, except to the extent that the damage “resulted from the inherent defect, quality or vice of the baggage.” Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Further, Article 26 states that any provision tending to relieve a carrier of liability or to fix a lower limit than that which is laid down in the Montreal Convention is null and void. Nothing in the Montreal Convention permits blanket exclusions or otherwise allows carriers to disclaim liability for any class or category of item, such as jewelry, electronics, or high value items. Such exclusions or limitations have the effect of limiting liability to less than the limit set by Article 22 and therefore would contravene Articles 17 and 19 of the Montreal Convention. Violations of the Montreal Convention constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Furthermore, misrepresentation concerning a carrier’s liability for damaged, lost, or delayed baggage (e.g., policies posted on a carrier’s website, stated in its written correspondence, or communicated orally through its agents) or otherwise failing to communicate its liability under applicable laws and regulations accurately constitutes a separate and distinct unfair and deceptive business practice and unfair method of competition in violation of section 41712.

### **Background**

Last spring, the Office of Aviation Enforcement and Proceedings (Enforcement Office) reviewed CAL’s customer policies posted on its website concerning liability for lost, damaged, or delayed baggage. The office found information that, if applied, would contravene CAL’s obligations under the Convention regarding loss, damage, or delay of baggage checked on flights serving the United States to which the Convention applies. The ensuing investigation revealed many violations of the Convention during the thirteen-month period from March 1, 2010, through April 30, 2011. For example, in written responses to claims for lost or damaged items in checked baggage on flights covered by the Convention, CAL routinely advised passengers that the carrier assumed no liability for “irreplaceable” or high value items such as electronics (e.g., cell phones, iPods, computers), jewelry, cameras, cash, etc. These exclusions also appeared on the carrier’s website without sufficient clarification that they did not apply to claims subject to the Convention. In some instances, CAL responded to claims made for excluded items with erroneous statements such as “the airline industry does not offer compensation for such losses.” Our office also noted a number of instances in which claims were made by individuals alleging that high value items had been removed from carry-on bags they were required to check upon boarding due to cabin space limitations. Although CAL compensated a number of passengers for claims of loss or damage to high value items, a substantial number were denied.

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<sup>5</sup> *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 Fed. Reg. 59017, available at [http://airconsumer.ost.dot.gov/rules/Notice\\_11\\_09\\_09.pdf](http://airconsumer.ost.dot.gov/rules/Notice_11_09_09.pdf) (November 9, 2009).

The Enforcement Office also found other CAL baggage claim policies unacceptable. In a number of mishandled baggage claims involving missing items, CAL refused to accept responsibility unless the passenger had filed a Property Irregularity Report before leaving the airport terminal. This policy, apparently first disclosed to passengers in CAL's letters responding to the passengers' written claims, unreasonably limited the time the passengers had to establish that items were missing and notify the carrier. CAL also appeared to have a policy of denying claims for baggage damage such as broken wheels and handles. In response to such claims, CAL consistently informed passengers that it assumed no liability for such damage. CAL applied this policy without apparent regard to the condition of the bag when accepted. With respect to expenses incurred as a result of delayed baggage, CAL's policy was to limit compensation to \$25 - \$75 per day for up to four days, regardless of the circumstances surrounding the delay.

CAL's actions in connection with these baggage policies effectively limited its liability for costs incurred by passengers for baggage damage and delays to an amount far less than the minimum 1,131 SDRs required by the Convention. Through these actions, CAL violated Articles 17 and 19 of the Montreal Convention and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. §41712.

### **Mitigation**

In mitigation, CAL states that it is committed to complying with the Department's consumer protection requirements and the Montreal Convention, noting that its own home country, Trinidad and Tobago, has not signed the Convention. In response to the Enforcement Office's inquiry, CAL states that it took immediate steps to modify its website and policies to ensure that its liability for the baggage of passengers traveling to and from the U.S. is explained and applied properly. The carrier indicates that a majority of the processing errors occurred in a single office that shares responsibility for baggage claims with a second office. CAL management believes that the processing errors may have resulted from the first office carrying forward limitations permissible under the prior Warsaw Convention regime and affirms its intention to monitor both offices to ensure their compliance with the Department's requirements.

### **Decision**

The Enforcement Office has carefully considered the information provided by CAL but continues to believe that enforcement action is warranted. The Enforcement Office and CAL have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violation described above, CAL consents to the issuance of an order to cease and desist from future violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712 of the Department's regulations, and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Montreal Convention by CAL, as well as by other air carriers and foreign air carriers.

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 Caribbean Airlines Limited violated Article 17 of the Montreal Convention by denying liability for lost or damaged high value articles in checked baggage and for damage to checked baggage itself;
3. We find that Caribbean Airlines Limited violated Article 19 of the Montreal Convention by limiting its reimbursement for expenses resulting from delays in returning checked baggage to an amount significantly less than the maximum liability amount set forth in the Montreal Convention;
4. We find that by engaging in the conduct and violations described in ordering paragraphs 2 and 3 above, Caribbean Airlines Limited engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We find that by adopting a policy of denying liability for items not reported missing from checked baggage before the passenger left the airport, Caribbean Airlines Limited engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
6. We find that by implying on its website and stating in written correspondence to passengers that the liability limits for damaged, lost, or delayed baggage on flights to and from the U.S. were less than the limits applicable under Articles 17 and 19 of the Montreal Convention, Caribbean Airlines Limited engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
7. We order Caribbean Airlines Limited, and all other entities owned or controlled by or under common ownership with Caribbean Airlines Limited, and its successors and assignees, to cease and desist from violations of Article 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712 in connection with baggage claims to which the Montreal Convention applies;

8. We assess Caribbean Airlines Limited a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 6, above. Of this total amount, \$30,000 is due and payable within 30 days after the service date of this order. The remaining \$30,000 shall become due and payable if Caribbean Airlines Limited violates this order's cease and desist or payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately; and
9. We order Caribbean Airlines Limited to make the payment set forth in ordering paragraph 8 above by wire transfer through the Federal Reserve Communications System commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Caribbean Airlines Limited to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order. Caribbean Airlines Limited may also be subject to additional enforcement action for any violation of this order's cease and desist provisions within one year following the date of issuance 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 initiative.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

(SEAL)

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