



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

Issued by the Department of Transportation
On the Seventh day of September, 2012

**Formal Third Party Complaint and
Request to Commence Enforcement
Proceedings of Don Edward Williams**

Served September 7, 2012

OST 2011-0149

**ORDER DISMISSING THIRD PARTY COMPLAINT
AND REQUEST TO COMMENCE ENFORCEMENT PROCEEDINGS**

On August 15, 2011, Don Edward Williams filed a document titled a Third Party Complaint and Request to Commence Enforcement Proceeding against Southwest Airlines Co. (Southwest) pursuant to 14 CFR 382.159. His complaint alleges that Southwest discriminated against him on the basis of his disability in violation of the Air Carrier Access Act and its implementing regulation, 14 CFR Part 382 (Part 382). (Docket OST 2011-0149-001).

Don Edward Williams' Complaint

In his Third Party Complaint and Request to Commence Enforcement Proceeding, Mr. Williams states that he is a qualified individual with a disability who requires the assistance of a service dog and the use of a wheelchair for mobility. Mr. Williams' complaint is based on his experience at Southwest's ticket counter at Phoenix Sky Harbor International Airport (PHX) on February 15, 2011.

Mr. Williams alleges that on that date, he approached a Southwest agent at the ticket counter and the agent rudely and abruptly requested that Mr. Williams show his documents for his service animal. Mr. Williams asserts that he asked the agent to speak to a manager and the agent informed him that she was the "director of the day" and there was no one else with whom he could speak. Mr. Williams states that he asked the agent if she was prejudiced and that she then became irate, snatched his airline ticket, and told him that he did not need to fly that day. Mr. Williams states that he attempted to approach other Southwest agents throughout the airport, but the initial agent followed him around and instructed other Southwest employees not to assist him. Mr. Williams alleges that he then had to purchase a new ticket from US Airways. He also alleges that

he was never informed about his right to talk to a Complaint Resolution Official (CRO)¹ or told that he had a right to submit a complaint in writing and that Southwest never refunded the price of his ticket. He also states that Southwest did not provide him with the required written explanation of its denial of his service animal.

Mr. Williams claims that Southwest took adverse action against him in violation of 14 CFR 382.11 after he asserted his right to travel with his service animal without documentation. He also claims that Southwest violated 14 CFR 382.117 by improperly requiring him to provide documentation for his service animal and 14 CFR 382.151 by failing to make a CRO available to him. Finally, Mr. Williams claims that Southwest violated 14 CFR 382.141 by failing to adequately train its personnel on the requirements of the Air Carrier Access Act and its implementing regulation.

Southwest's Response

On September 27, 2011, Southwest submitted its Answer and Motion to Dismiss Mr. Williams' Complaint. (Docket OST 2011-0149-004). Southwest disputes Mr. Williams' version of the facts and avers that it denied Mr. Williams boarding on February 15, 2011, as a direct result of Mr. Williams' behavior and not based on a disability-related reason.

According to Southwest, when Mr. Williams approached the Southwest ticket counter, the Southwest Customer Service agent who assisted him observed that Mr. Williams' dog was unclean, had a red bandana and a rope around its neck, did not wear a leash or collar, barked at employees, and did not sit obediently at the side of Mr. Williams' wheelchair. Southwest states that based on the dog's appearance and behavior, its agent believed that Mr. Williams' dog was a pet and informed him that it would not be able to travel with him because it exceeded the size limitations in Southwest's pet carriage policy. According to Southwest, Mr. Williams immediately became angry insisting that the dog was a service animal, thus prompting its agent to immediately request assistance from a CRO.

According to Southwest, its most senior Customer Service Supervisor in Phoenix, who was an experienced CRO, came to help diffuse the situation and repeatedly asked Mr. Williams to calm down and lower his voice. Southwest states that Mr. Williams would not allow the Customer Service Supervisor to talk or to answer his questions, and Mr. Williams continued to berate her personally. Southwest states that despite repeated attempts, Mr. Williams did not calm down, and as a result the Supervisor and CRO made the decision to deny Mr. Williams boarding based on his abusive, combative and unsafe behavior. Southwest contends that it did not have an opportunity to question Mr. Williams about his service animal because Mr. Williams immediately became belligerent. Southwest denies that the CRO snatched things from Mr. Williams or followed him and

¹ All airlines must designate at least one Complaint Resolution Official (CRO) who is trained to be an expert on all of the requirements of the Air Carrier Access Act and its implementing regulation, 14 CFR Part 382 and has the authority to dispositively resolve complaints on behalf of the carrier. 14 CFR 382.151. U.S. carriers must make a CRO available at each airport it serves during all times it is operating at that airport. 14 CFR 382.151(b).

instructed other agents to not assist him. Southwest states that the company mailed a refund to Mr. Williams on February 25, 2011. Southwest states that it did not violate Part 382, as Mr. Williams was denied transportation based on his disorderly, abusive and unsafe conduct. Southwest also states that it is in compliance with the training requirements in Part 382.

Further Pleadings

Mr. Williams filed an Opposition to Southwest's Answer and Motion to Dismiss (Opposition) on October 21, 2011. In that filing, Mr. Williams argues that Southwest's Motion to Dismiss was filed in violation of the Department of Transportation's procedural rules, and that it failed to properly challenge the legal sufficiency of Mr. Williams' complaint in accordance with the Federal Rules of Civil Procedure. Mr. Williams also argues that there are still material facts in dispute. In addition to the procedural arguments, Mr. Williams challenged the credibility of the Southwest employees that provided sworn statements in support of Southwest's Answer and Motion to Dismiss. Mr. Williams alleges that contrary to the Southwest employees' description, the dog traveling with Mr. Williams on the date of the incident weighed less than five pounds and traveled inside a bag attached to his wheelchair. Mr. Williams states that the employees' sworn statements make it clear that the employees never sought to obtain credible assurances regarding the service animal, but informed him from the outset that he was not allowed to travel with the dog because he did not have any documentation stating she was a service animal. Mr. Williams claims that during the entirety of the incident at issue, he never yelled at or berated any Southwest employee and that Southwest's allegations of Mr. Williams' improper behavior are unsupported by the evidence and appear to be pretextual. Finally, Mr. Williams argues that Southwest's response failed to dispute that its employees did not receive proper training to proficiency with regard to Part 382 and that its employees' lack of training is evident based on the content of the statements they provided.

Southwest filed a Reply to the Complainant's Opposition on November 22, 2011, requesting the dismissal of Mr. Williams' Complaint, arguing that Mr. Williams presented no credible evidence of individual or systemic violations of any law by Southwest. Southwest denied that the dog Mr. Williams described in the Opposition was the same dog observed with him on February 15, 2011. According to supplemental declarations provided by the Southwest agents in response to Mr. Williams' allegations in the Opposition, Mr. Williams' dog was at least three times larger than the dog in the photograph that Mr. Williams submitted as an exhibit with his Opposition. The Agents also assert that the dog was standing on the ground and not in a bag. Additionally, the agents stated that they informed Mr. Williams that the animal would not qualify for the carry-on pet program given its size and reiterated that Mr. Williams was belligerent and abusive. Southwest also states that Mr. Williams has failed to establish that Southwest lacks adequate training programs. Finally, in response to Mr. Williams' allegation that Southwest never refunded him his airfare, Southwest states that their records indicate that the refund was mailed to Mr. Williams on February 25, 2011. However, as Mr. Williams claimed he never received it, Southwest re-issued the refund to him.

Mr. Williams filed a Motion for Leave to Respond to the Unauthorized Reply of Southwest and a Request for Expedition of Proceedings. Mr. Williams argues that Southwest's reply was an unauthorized responsive document based upon 14 CFR 302.6(b) and failed to show "good cause" as required by 14 CFR 302.6(c)(2). Mr. Williams states that Southwest's re-issuance of his refund demonstrates that Southwest's witnesses are not credible. Additionally, Mr. Williams states that Southwest provides no evidence to support the sufficiency of its training programs for all of their employees and of the individual employees involved in this incident. Mr. Williams challenges Southwest's assertion that it has 45 trained CROs at Phoenix airport and an average of 12 that are onsite and available to assist customers at all times. He states that this statement contradicted Southwest's own employee's statement in response to Mr. Williams request to speak to her boss that no one else was currently available because it was very early in the morning. Mr. Williams also notes that Southwest permitted him to fly to Phoenix Airport only two days prior to the incident at issue with the same service animal. He also asserts that even if his dog was larger as Southwest claims, it would still not exceed Southwest's pet size requirements.

In its Surreply and Motion for Leave to File, Southwest states that it refunded Mr. Williams' ticket twice based upon his allegation that he never received it and verification of the fact that the first check had not been cashed. Southwest also states that it is not obligated to provide Mr. Williams with its proprietary training materials and that the Department has reviewed the materials and has not raised any concerns regarding Southwest's training program. Additionally, Southwest confirms that both of its employees involved in this incident received disability awareness training upon hiring and on an annual basis. Southwest also counters Mr. Williams' claim that there were insufficient CROs at Phoenix Airport on February 15, 2011, stating that Mr. Williams requested to speak to the employee's "boss," which referred to two individuals that were not at the airport at the time of the incident. Finally, Southwest maintains that Mr. Williams was denied boarding due to his belligerent, verbally abusive, and unsafe behavior, and not for any reason related to his dog and that Mr. Williams' arguments regarding his animal are irrelevant.

Disposition and Analysis

We have carefully considered Mr. Williams' formal third party complaint, as well as the other pleadings filed in that docket by both parties, and we have decided to dismiss the complaint with prejudice. We also find that good cause has been shown to accept all pleadings as filed by both parties in order to form a complete picture of the events that took place on February 15, 2011.

Pursuant to 14 CFR 382.117(d), as evidence that an animal is a service animal, a carrier must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal. As further guidance, we have indicated that a carrier may require documentation to prove that an animal accompanying a passenger with a disability is a service animal if

the carrier finds that the verbal assurances of the passenger are not credible and no other indications exist of the animal's status as a service animal, such as a harness, tag or vest.² Pursuant to 14 CFR 382.117(g), when a carrier decides not to accept an animal as a service animal, the carrier must explain the reason for its decision to the passenger and document that reason in writing, and also provide a copy of the explanation to the passenger at the airport, or within ten days of the incident. In addition, pursuant to 14 CFR 382.19(c), a carrier may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. § 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements.

We find persuasive Southwest's assertion, which was corroborated by numerous employee declarations submitted under penalty for perjury, that Mr. Williams' dog was large, unclean, wore a red bandana and rope around its neck, wore no leash or collar, barked at employees, and did not sit obediently at the side of Mr. Williams' wheelchair. Further, we note that although Mr. Williams challenges Southwest's allegation that his dog was large, Mr. Williams does not dispute Southwest's claim that Mr. Williams' dog did not appear or behave as a trained service animal.

We find that Southwest, consistent with section 382.117(d) and DOT guidance, acted within its discretion and had reasonable cause to obtain verbal credible assurance or request documentation from Mr. Williams concerning his dog's status as a service animal based upon its agents' observations of the dog's appearance and behavior. Further, it appears from the evidence in the record before us that prior to having an opportunity to verify whether or not Mr. Williams' dog was a service animal, Mr. Williams became angry and combative with the Southwest agent. Although Mr. Williams denies that he yelled at or otherwise berated the Southwest employee, our review of several statements by Southwest employees who contemporaneously witnessed the exchange leads us to conclude that the Southwest agents had good cause to believe that Mr. Williams was indeed a safety risk. As such, we find that Southwest's decision to deny Mr. Williams boarding was not based on discrimination, but was based solely on Mr. Williams' abusive behavior and that denying him boarding was within its authority under 49 U.S.C. § 44902. Therefore, we find that Southwest was not required to present Mr. Williams with a written explanation of its decision under 14 CFR 382.117(g) because its decision to deny boarding was not based on a disability-related reason. We also find that Southwest complied with Part 382's requirement to provide a CRO to Mr. Williams, and we find unmeritorious the complainant's allegation that Southwest failed to adequately train its personnel on the requirements of the ACAA and Part 382. The Department has reviewed the training records submitted by Southwest regarding the carrier's training compliance and we find that they comply with requirements of Part 382.

ACCORDINGLY, I dismiss the third-party complaint in docket OST 2011-0149 with prejudice.

² Answers to Frequently Asked Questions Concerning Air Travel of People with Disabilities Under the Amended Air Carrier Access Act Regulation, 13-14 (May 13, 2009), available at http://airconsumer.dot.gov/rules/FAQ_5_13_09.pdf.

This order is issued under authority assigned in 14 CFR 302.406 and shall be effective as the final action of the Department within 30 days after service.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

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