



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

Issued by the Department of Transportation
On the Twenty-Third day of August, 2013

Victor Cherenfant et al.

Complainants

v.

**US Airways, Inc., and
Direct Airline Services, Inc.**

Respondents

DOT OST 2013-0096

Served August 23, 2013

ORDER TERMINATING PROCEEDINGS

This order concerns alleged violations by US Airways, Inc., (US Airways) and Direct Airline Services, Inc., (DAS) of the Air Carrier Access Act, 49 U.S.C. § 41705 (ACAA) and the regulations found at 14 CFR Part 382. By this order, the Office of Aviation Enforcement and Proceedings (Enforcement Office) declines to institute a formal enforcement proceeding and thereby dismisses the instant case.

On May 7, 2013, the Service Employees International Union (SEIU) filed a formal complaint on behalf of Victor Cherenfant, Rainer Dahm, Jean Moliere, Gloria Nejjar, and James Simeon [collectively Complainants] with the Assistant General Counsel for Aviation Enforcement and Proceedings, pursuant to 14 CFR 302.404, alleging violations of the ACAA and Part 382. Complainants alleged that US Airways and DAS [hereinafter Respondents] (1) failed to provide training to proficiency concerning the requirements of Part 382, other applicable regulations, and US Airways' procedures, as required by 14 CFR 382.141(a)(1)(i)-(ii); (2) failed to provide training to proficiency concerning the use of boarding- and deplaning-assistance equipment and appropriate boarding- and deplaning-assistance procedures, as required by 14 CFR 382.141(a)(1)(iii); (3) failed to provide training with respect to awareness and appropriate responses to passengers with

disabilities, as required by 14 CFR 382.141(a)(2); (4) failed to provide training in recognizing requests for communication accommodations from individuals with hearing or vision impairments, as required by 14 CFR 382.141(a)(3); and (5) failed to provide equipment in sound working condition, as required by 14 CFR 382.51(b)(2).

On June 24, 2013, Respondents filed a joint answer in response to the formal complaint pursuant to 14 CFR 302.405. Respondents stated that only two of the five Complainants, namely Rainer Dahm and James Simeon, have ever provided services to US Airways' passengers. According to the Respondents, the remaining Complainants are DAS employees assigned to other carriers. Respondents also stated that Messrs. Dahm and Simeon received the required training in accordance with Part 382, which included boarding- and deplaning-assistance equipment and procedures, awareness of and appropriate responses to passengers with disabilities, and communication with individuals with visual and hearing impairments. The Respondents provided documentary evidence that Messrs. Dahm and Simeon completed tests at the conclusion of their training sessions that demonstrated their proficiency in the ACAA and Part 382. Furthermore, according to Respondents, US Airways has contracted with Aviation Mobility to provide and maintain the wheelchairs and other equipment used to provide assistance to passengers, and US Airways has no reason to believe that Aviation Mobility is not fulfilling its duties. Respondents requested that the Department dismiss the Complaint with prejudice.

The Enforcement Office has thoroughly considered the pleadings and supporting documents on file in this proceeding.¹ It takes allegations that an airline has failed to train its employees in accordance with Part 382 very seriously. The allegations regarding the insufficiency of training received by Complainants, however, are not supported by the evidence. The Complaint is misleading and meritless. The Enforcement Office has, therefore, determined that any further investigation into the Complainants' allegations is unjustified and unnecessary. Moreover, the Enforcement Office is placing SEIU on notice that if, in the future, SEIU files an unsubstantiated complaint that contains misleading statements or otherwise exhibits unprofessional conduct, the Enforcement Office will pursue action to bar the SEIU from practicing before the Department under 14 CFR 300.20.²

ACCORDINGLY, I decline to institute a formal enforcement proceeding in this case.

¹ The Enforcement Office notes that the Complainants filed a Notice of Voluntary Discontinuance that is procedurally deficient for its intended purpose. Therefore, the office will not consider that document as a responsive pleading properly filed in this matter.

² SEIU filed similar complaints on behalf of complainants in June 2007 and February 2008, docket numbers OST-2008-0082 and OST-2008-0081, which were dismissed by the Enforcement Office for procedural deficiencies. In addition, SEIU improperly submitted a complaint in August 2009 but never formally filed it, even after the Enforcement Office sent a letter to the Complainants explaining the deficiencies.

This order is issued under the authority assigned in 14 CFR 302.406(a)(2) and shall be effective as the final action of the Department within 30 days after service. Copies will be served on all parties.

BY:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document on the following persons in accordance with the Department's Rules of Practice.

Omar V. Guerrero
Senior Trial Attorney

Dated: August 23, 2013

Counsel for US Airways, Inc., and Direct Airline Services, Inc.
Mark W. Atwood, Esq., matwood@cozen.com
Elizabeth J. Wadsworth, Esq., ewadsworth@cozen.com
Cozen O'Connor
1627 I St NW
Washington, DC 20006

Representative of Victor Cherenfant et al.
Aldo Muirragui, amuirragui@seiu32bj.org
Service Employees International Union 32BJ
14 NE 1st Ave Ste 905
Miami, FL 33132

An electronic version of the document is available at www.regulations.gov.
Dockets and Media Management Division (SVC-124)
U.S. Department of Transportation
Washington, DC 20590