



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

Issued by the Department of Transportation
On the Eighth day of April, 2014

British Airways PLC

**Violations of 14 CFR Part 259
and 49 U.S.C. § 41712**

Docket OST 2014-0001

Served April 8, 2014

CONSENT ORDER

This consent order concerns violations by British Airways PLC (British Airways) of 14 CFR Part 259 and 49 U.S.C. § 41712, regarding two separate flights. Specifically, in one instance, the carrier failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. In a second instance, the carrier failed to inform passengers on a flight delayed at the gate with the door open for a lengthy period of time of the opportunity to deplane. This order directs British Airways to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$225,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S. using any aircraft with a design capacity of 30 or more passenger seats are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large, medium, small, and non-hub U.S. airport at which they operate scheduled or public

charter air service.¹ For international flights, which are at issue here, the rule requires covered carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency, etc.); or (2) where Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

In addition, pursuant to section 259.4(b)(6), a carrier must provide the assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists.²

An air carrier's failure to comply with assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on aircraft for more than four hours in the case of international flights without being provided the opportunity to deplane or being informed when an opportunity to deplane exists, a separate violation is considered to have occurred for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane. Pursuant to 49 U.S.C. § 46301, violations of 14 CFR Part 259 or 49 U.S.C. § 41712 subject a carrier to civil penalties of up to \$27,500 per violation.

Facts and Conclusions

British Airways is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)³ that operates scheduled service from both Newark International Airport (EWR) and Boston Logan Airport (BOS), among other large hub airports, using at least one aircraft having a design capacity of more than 30 passenger seats. In November 2012, British Airways experienced lengthy delays on two flights, described below.

Flight BA 184

¹ According to 14 CFR 259.2, Part 259 does not apply to foreign carrier charters that operate to and from the United States if no new passengers are picked up in the United States.

² See *JetBlue Airways Corporation, Violations of 14 CFR Part 259 and 49 U.S.C. § 41712*, Order 2012-8-25 (Aug. 20, 2012); *Virgin America Inc., Violations of 14 CFR 259.4 and 49 U.S.C. § 41712*, Order 2102-12-20 (Dec. 31, 2012); *United Air Lines, Inc., Violations of 14 CFR 259.4 and 244.3, and 49 U.S.C. §§ 41708 and 41712*, Order 2013-2-9 (Feb. 11, 2013); and *Air China Limited, Violations of 14 CFR Part 259 and 49 U.S.C. § 41712*, Order 2013-5-3 (May 2, 2013).

³ 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as “a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.”

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on November 7, 2012, flight BA 184, traveling from EWR to London Heathrow Airport (LHR), carrying 187 passengers, was delayed on the tarmac at EWR for five hours and thirty-four minutes. Flight BA 184, scheduled to depart at 6:50 p.m., closed its aircraft doors at 6:51 p.m., but according to British Airways, departure was delayed until 12:25 a.m. due to adverse weather conditions which necessitated de-icing. British Airways states that pursuant to standard operating procedures during de-icing operations, the aircraft was detached from the jetway and the doors remained closed for safety reasons and that reattaching the aircraft to the jetway would likely have disrupted the deicing attempts and resulted in cancellation of the flight.

Section 259.4(b)(2) requires carriers to provide passengers on international flights the opportunity to deplane before the flight has been on the tarmac for more than four hours. We view the carrier's decision not to provide passengers with an opportunity to deplane as an operational decision that does not fit within the exception to the tarmac delay rule stated in section 259.4(b)(2)(i). The Enforcement Office found that British Airways did not adhere to the terms of its contingency plan and therefore violated 14 CFR 295.4 and 49 U.S.C. § 41712 when it failed to provide passengers on flight BA 184 an opportunity to deplane before the tarmac delay exceeded four hours.

Flight BA 214

In addition, on November 15, 2012, British Airways flight BA 214, carrying 329 passengers, scheduled to depart at 9:00 p.m. from BOS to LHR, pushed off the gate at 9:34 p.m. due to a late arriving aircraft. At approximately 10:00 p.m., the aircraft returned to the gate because of a mechanical issue and the doors were opened. The aircraft remained at the gate with its doors open until passengers deplaned at 2:00 a.m. Based on an investigation by Enforcement Office, it appears that British Airways did not announce that passengers had the opportunity to deplane while the aircraft was at the gate with its doors open. The carrier states, however, that passengers were free to deplane during this time and that it did not receive any requests from passengers to deplane.

A tarmac delay begins when passengers no longer have the option to get off an aircraft, which usually occurs when the doors of the aircraft are closed. Section 259.4(b)(6) was promulgated to address the issue of when a tarmac delay has not yet begun, or the clock has stopped, because the doors are open at a gate or another disembarkation area, but the passengers are unaware that they have the option to deplane. Carriers are not required to provide passengers the opportunity to deplane in less than four hours, but if that opportunity does exist the rule requires that the carrier inform passengers of the option to deplane. The Department has encouraged carriers to also remind passengers that they are deplaning at their own risk and that the flight could depart at any time without them if that is in fact the case. In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on BA 214.

In order to comply with section 259.4(b)(6), British Airways was required to notify passengers that they could deplane the aircraft if they wished to do so beginning thirty

minutes after flight BA 214 returned to the gate if the opportunity to deplane existed and every thirty minutes thereafter until the doors closed. British Airways' failure to provide proper notification to passengers of the opportunity to deplane flight BA 214 is a violation of both 14 CFR 259.4(b)(6) and 49 U.S.C. § 41712.

Mitigation

In mitigation, British Airways states that any violation of the Department's tarmac delay requirements with respect to BA184 on November 7, 2012 was directly attributable to the extraordinarily severe weather conditions affecting the New York area at that time. Those conditions resulted in the cancellation of more than 2000 flights, including many which had been scheduled to operate at Newark. British Airways states that wind and sleet conditions necessitated three separate de-icing and anti-icing attempts. As noted above, British Airways also states that pursuant to standard operating procedures during de-icing operations, the aircraft was detached from the jetway and the doors remained closed for safety reasons and that reattaching the aircraft to the jetway would likely have disrupted the deicing attempts and resulted in cancellation of the flight. During the de-icing and anti-icing procedures, the captain and cabin crew monitored the status of airport operations, repeatedly confirming that the aircraft could depart if properly de-iced.

According to British Airways, the crew engaged in ongoing communications with passengers during which many passengers indicated that their prime concern was proceeding to London and no passenger advised the captain or any other crewmember that he or she wanted to disembark. Moreover, the captain was extremely concerned that cancellation of the flight, in conjunction with the blizzard conditions that severely limited ground transportation as well as the scarcity of available hotel rooms in the New York region resulting from the destruction wrought by Hurricane Sandy the previous week and compounded by the blizzard, would have resulted in the vast majority of the passengers being stranded for the night at the otherwise deserted EWR terminal. According to British Airways, the captain was justifiably further concerned that such a result would have exposed the passengers to, at best, uncomfortable and potentially unsafe conditions. Given those circumstances, the captain concluded that the interests of the passengers would be best served by doing everything possible to safely depart New York and proceed to London. British Airways further states that despite the difficult conditions, the cabin crew provided food and beverage service, all lavatories remained operational, and flight BA184 was ultimately able to depart Newark and proceed to London.

According to British Airways, with respect to BA214 on November 15, 2012, the captain provided regular status updates based on the information provided to him. British Airways states that passengers were provided meal and beverage service and there was no indication that any passenger expressed any wish to deplane. British Airways further states that when engineering problems ultimately required cancellation of the flight, British Airways provided hotel and meal accommodations for passengers requiring overnight housing.

Finally, British Airways respectfully disagrees with the Enforcement Office's view that a separate violation occurs for each passenger onboard the aircraft. British Airways believes that the applicable statutes provide for violations to be assessed on a per flight basis. However, in the interest of settling this proceeding, and without conceding or waiving its legal position on that question, British Airways is agreeing to this settlement.

Decision

The Enforcement Office has carefully considered the information provided by British Airways, but continues to believe enforcement action is warranted. The Enforcement Office and British Airways have reached a settlement of this matter in order to avoid litigation. Without admitting to or agreeing with the conclusions of the Enforcement Office as described above, and without admitting any violations of law, British Airways consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. § 41712, and to the assessment of \$225,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar practices by British Airways and other carriers.

This order is issued under the authority in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that British Airways PLC has violated 14 CFR 259.4 by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. By its actions, the carrier forced a total of 187 passengers on flight BA 184 to remain on the tarmac at Newark International Airport on November 7, 2012, for more than four hours without the opportunity to deplane;
3. We find that British Airways PLC also violated 14 CFR 259.4(b) by failing to properly notify 329 passengers on flight BA 214 that they had the opportunity to deplane the aircraft while it was at the gate for a lengthy period with the door open as required by 14 CFR 259.4(b)(6);
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3 above, British Airways PLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

5. We order British Airways PLC and its successors, and assigns, to cease and desist from further violations of 14 CFR 259.4(b) and 49 U.S.C. § 41712;
6. We assess British Airways PLC \$225,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 above. Of this total amount, \$112,500 shall be due and payable within 30 days after the service date of this order. The remaining \$112,500 shall be paid if British Airways PLC violates this order's cease and desist provisions during the one-year period following the service date of this order; and
7. We order British Airways PLC to pay the penalty through Pay.gov 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 British Airways PLC 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.

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:

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