



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

**Issued by the Department of Transportation
on the 15th day of March, 2016**

Dynamic Airways LLC

**Violations of Article 17 of the
Montreal Convention, 49 U.S.C. § 41712
and 14 CFR Parts 380 and 382**

Docket OST 2016-0002

Served March 15, 2016

CONSENT ORDER

This consent order concerns violations by Dynamic Airways LLC (Dynamic) of the Department of Transportation's (Department) regulations on public charter operations (14 CFR Part 380), passengers with disabilities (14 CFR Part 382), and Article 17 of the Montreal Convention.¹ These violations also constitute violations of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition in air transportation. This order directs Dynamic to cease and desist from future violations of the aforementioned treaty, regulations, and statute, and assesses the carrier a compromise civil penalty of \$200,000.

Applicable Law

I. Public Charter Regulations

A certificated air carrier that sells or offers for sale, and operates, as a principal, public charter flights must comply with all of the applicable requirements of 14 CFR Part 380 (Part 380) with respect to these direct sales operations. 14 CFR 212.7. Part 380 is designed to prevent economic harm to charter passengers. These regulations require public charter operators to safeguard charter participants' funds prior to their trips. Specifically, under section 380.34, charter

¹ *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999.

participants' funds must be deposited into an escrow account at a designated depository bank that will maintain a separate accounting for each charter group.

The Department's public charter regulations also protect consumers by prohibiting public charter operators from cancelling a flight fewer than 10 days before the scheduled date of departure for any reason other than circumstances that make it physically impossible to operate the flight, and requiring that public charter operators notify passengers of the cancellation as soon as possible when a cancellation occurs fewer than 10 days before the scheduled date of departure. *See*, 14 CFR 380.12. The public charter operator is also required to inform the Department of all cancellations by amending its filed charter prospectus to reflect the cancellations. *See*, 14 CFR 380.25. Moreover, when cancellations occur, public charter operators must advise consumers of their right to a refund. *See*, 14 CFR 380.32. With respect to the direct air carrier that operates public charter flights, the regulations also prohibit the carrier from cancelling a flight fewer than 10 days before the scheduled date of departure except for circumstances that make it physically impossible to perform the charter trip, and require that the carrier promptly notify the Department of any cancellations. *See*, 14 CFR 380.43 and 380.46. Violations of 14 CFR Part 380 also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

II. Passengers with Disabilities

A certificated air carrier that operates large aircraft and engages in the direct sale of public charter flights is subject to the requirements of the Air Carrier Access Act (ACAA) and its implementing rule, 14 CFR Part 382, which is designed to ensure the accessibility of air travel to passengers with disabilities. To ensure that passengers with disabilities have access to airline personnel who can address real-time issues that may otherwise render air transportation inaccessible to them, section 382.151 requires a carrier to make a Complaint Resolution Official (CRO) available at each airport it serves at all times the carrier is operating at that airport.² Furthermore, to ensure that designated CROs obtain and maintain the requisite knowledge and skills to perform their duties, section 382.141(a)(7) requires that all CROs receive training concerning the requirements of Part 382 and the duties of a CRO, and section 382.143(a) requires that personnel designated as CROs must receive the initial CRO training before assuming their duties, and annual refresher trainings thereafter.

In addition, section 382.157 requires covered entities to provide annually to the Department the numbers and categories of disability complaints received in the previous year. The Department consolidates these data from covered entities in a publicly available annual report to Congress.

III. Baggage Liability Limits

The Montreal Convention, to which the United States is a signatory, imposes restrictions on an air carrier's ability to limit its liability with respect to mishandled checked baggage. Baggage claims arising from flights between two signatory countries are subject to the provisions of the

² Section 382.151(b) permits a carrier to make a CRO available in person at the airport or via telephone, at no cost to the passenger.

Montreal Convention. The liability limit for lost, delayed, or damaged checked baggage under Article 22 of the Montreal Convention is currently 1,131 Special Drawing Rights for each passenger. Article 17 of the Montreal Convention provides that carriers are liable for loss of or damage to checked baggage in the custody of the carrier, except to the extent that the loss or damage “resulted from an inherent defect, quality, or vice” of the baggage. 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 or electronics, that they have accepted for transport as checked baggage. Such exclusions contravene Article 17 because they have the effect of limiting—with respect to items falling within their ambit—a carrier’s liability to an amount lower than that set by Article 22. Under Departmental enforcement case precedent, violations of Article 17 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.³

Facts and Conclusion

Dynamic is a certificated air carrier based in Greensboro, North Carolina. It conducts single entity charter flights and direct sales public charter flights between the United States and points outside of the United States. Dynamic maintains a depository account and letter of credit to protect passenger funds for its direct sales public charter flights as required by 14 CFR Part 380. Nevertheless, during a compliance visit at Dynamic’s headquarters, the Department discovered problems with Dynamic’s depository account for a period of time in 2014 and 2015. Specifically, Dynamic failed to ensure that passengers’ funds received by travel agents, Dynamic’s largest point-of-sale, were deposited into the escrow account in a timely manner. The evidence indicates that these delays were up to two weeks at times.

The Department also discovered other regulatory problems during the compliance visit. A review of consumer complaints against Dynamic in 2014 and 2015 revealed that Dynamic cancelled a number of flights fewer than 10 days from the scheduled date of departure. Dynamic was unable to demonstrate to the Department that these cancellations were based on circumstances that made it physically impossible to operate the flights. Moreover, Dynamic failed to notify the Department of some of the cancellations and failed to amend its charter prospectus to reflect those cancellations. Nor was the carrier able to provide evidence that it notified consumers of their rights to obtain refunds in such situations. Also, in 2014, Dynamic’s operator-participant contract outlined over two dozen categories of items for which it disclaimed liability should those items be lost or damaged when carried in checked baggage. By disclaiming liability for certain classes of items, thereby effectively limiting its liability to an amount lower than that set forth in Article 22 of the Montreal Convention for the loss of items in checked baggage, Dynamic violated Article 17 of the Montreal Convention.

As an operator of direct sale public charter flights under 14 CFR Part 212, Dynamic is required to comply with certain provisions of Part 382 with respect to accommodating passengers with disabilities in air travel. Dynamic violated Part 382 by failing to adequately train its CRO and make a trained CRO available to its customers at each airport it serves. Thus, for a significant

³ See *Korean Air Lines Co., Ltd.*, Order 2013-7-5 (July 5, 2013); and *British Airways Plc*, Order 2012-10-1 (October 1, 2012).

period of time, passengers with disabilities lacked adequate resources to address any real-time issues related to air travel accessibility. Moreover, prior to 2015, Dynamic had never filed with the Department an annual report of its disability-related complaints.

The violations described above also constitute violations of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition.

Mitigation

By way of mitigation and explanation, Dynamic states that the Department's regulations do not specify how soon after receipt of participant funds a travel agent must remit those funds to the public charter operator's escrow account. Even so, Dynamic confirms it has worked continuously to increase the speed by which travel agents remit passenger funds to Dynamic's escrow account. Dynamic asserts that all of the incidents perceived by passengers as cancellations were either flight delays, which are permissible up to 48 hours under 14 CFR 380.33(a)(1), or cancellations for certain operational reasons that could make operation of the flight physically impossible. Dynamic states that in all such instances, it notified passengers or their travel agents as soon as possible but it did not maintain records of such notifications. Dynamic further states that although it is not required by the Department's record retention rules to maintain cancellation notification records, after learning of the Department's concerns in this area, it worked with its external reservation management system provider to develop a means of tracking such notifications to passengers and a means to send a message automatically to outside counsel whenever a flight's status is updated in order to inform the Department should a cancellation occur.

Dynamic states it believed it was in compliance with the Department's rules regarding CROs by designating a single member of its executive staff as a "Company CRO." Dynamic maintains that the Company CRO was available by telephone 24 hours a day, seven days a week to address real-time issues at all of Dynamic's stations. Dynamic states that recognizing the strain this could place on the Company CRO, it updated its training materials and trained additional CROs, which are available in person at its stations. Dynamic also states it has established a standard procedure whereby the Company CRO will submit the annual disability complaint report to the Department.

In addition, Dynamic states it has never denied a passenger's substantiated claim for damages arising from lost or damaged checked baggage containing the high value items listed in its operator-participant contract. Dynamic asserts that it is not aware of any passenger complaints to the contrary, and the Department has cited none. Dynamic maintains that the exclusion of such high value items from its liability as provided in Dynamic's operator-participant contract was the result of its inadvertent failure to distinguish between domestic baggage liability, where exclusions of damages to such high value items are permissible, and international baggage liability under the Montreal Convention. Dynamic modified its operator-participant contract to clarify that distinction.

Additionally, Dynamic notes that it respectfully disagrees with the Department's interpretation of the Montreal Convention and states that it reserves its right to challenge the Department's interpretation should future litigation arise.

Decision

The Enforcement Office has carefully considered the information provided by Dynamic and continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Dynamic have reached a settlement of this matter. Without admitting or denying the violations alleged in this order, Dynamic consents to the issuance of an order to cease and desist from future violations of Article 17 of the Montreal Convention, 49 U.S.C. §41712, and 14 CFR Parts 380 and 382, and to the assessment of \$200,000 in compromise of potential 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 to future noncompliance with the Montreal Convention and the Department's requirements pertaining to public charters and passengers with disabilities.

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

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 Dynamic Airways LLC violated 14 CFR 380.34 by failing to timely deposit charter participant funds into an escrow account;
3. We find that Dynamic Airways LLC, as a public charter operator, violated 14 CFR 380.12 by cancelling flights fewer than 10 days before the scheduled date of departure when it was physically possible to operate the flights;
4. We find that Dynamic Airways LLC, as a public charter operator, violated 14 CFR 380.25 by failing to amend its public charter prospectus with the Department of Transportation to reflect the flight cancellations;
5. We find that Dynamic Airways LLC, as a public charter operator, violated 14 CFR 380.32 by failing to notify passengers on cancelled flights of their right to a refund;
6. We find that Dynamic Airways LLC, as a direct air carrier operating public charter flights, violated 14 CFR 380.43 by cancelling flights fewer than 10 days before the scheduled departure date when it was physically possible to operate the flights;

7. We find that Dynamic Airways LLC, as a direct air carrier operating public charter flights, violated 14 CFR 380.46 by failing to promptly notify the Department of Transportation regarding charter flights cancellations;
8. We find that Dynamic Airways LLC violated 14 CFR 382.141 and 382.143 by failing to adequately train its Complaint Resolution Official;
9. We find that Dynamic Airways LLC violated 14 CFR 382.151 by failing to make a Complaint Resolution Official available at each airport it serves during all times it is operating at that airport;
10. We find that Dynamic Airways LLC violated 14 CFR 382.157 by failing to submit to the Department of Transportation an annual report summarizing the disability-related complaints it received during the calendar year;
11. We find that Dynamic Airways LLC violated Article 17 of the Montreal Convention by disclaiming liability for certain classes of items, thereby effectively limiting its liability to an amount lower than that set forth in Article 22 of the Montreal Convention for the loss of items in checked baggage;
12. We find that by violating Article 17 of the Montreal Convention and 14 CFR Parts 380 and 382, as described in ordering paragraphs 2 through 11, above, Dynamic Airways LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
13. We order Dynamic Airways LLC and its successors and assigns, and all other entities owned or controlled by Dynamic Airways LLC, to cease and desist from future violations of Article 17 of the Montreal Convention, 49 U.S.C. § 41712, and 14 CFR Parts 380 and 382. Failure to comply with this cease and desist provision shall subject Dynamic Airways LLC and its successors, affiliates, and assignees to further enforcement action;
14. We assess Dynamic Airways LLC \$200,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 12, above. Of this total penalty amount, \$100,000 shall be due and payable in six installments. The first installment in the amount of \$10,000 shall be due and payable within 30 days from the date of issuance of this order. The four successive installments in the amount of \$20,000 each and the final installment in the amount of \$10,000 shall be due and payable in 60 day increments thereafter. The remaining \$100,000 shall become due and payable immediately if Dynamic Airways LLC violates the cease and desist provision in ordering paragraph 13, above, within one year of the issuance date of this order, or fails to comply with the payment provisions in this ordering paragraph.
15. We order Dynamic Airways LLC to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions

contained in the attachment to this order. Failure to pay the compromise penalty assessment as ordered shall subject Dynamic Airways LLC to an assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

BLANE A. WORKIE

Assistant General Counsel for
Aviation Enforcement and Proceedings

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