



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

Issued by the Department of Transportation
on the 17th day of November, 2017

Dynamic International Airways, LLC

**Violations of 14 CFR Part 259 and
49 U.S.C. §§ 41712 and 42301**

Docket OST-2017-0001

Served November 17, 2017

CONSENT ORDER

This consent order concerns violations by Dynamic Airways (Dynamic) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Specifically, Dynamic failed to adhere to the assurance in its contingency plan for lengthy tarmac delays to provide adequate food and water no later than two hours after the aircraft touches down if the aircraft remains on the tarmac. This order directs Dynamic to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and assesses the carrier \$15,000 in civil penalties that will be an allowed claim in its bankruptcy case, Case No. 2:17-bk-10814 ("Bankruptcy Case"), pending in the Middle District of North Carolina, Greensboro Division.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), covered carriers, which include any U.S. certificated carrier conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats, are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub airport. Pursuant to section 259.4(b)(3), covered carriers are required to provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of departure) or touches down (in the case of arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security

considerations preclude such service. Further, section 259.4(b)(7) of the rule requires each covered carrier to have sufficient resources to implement its contingency plan. A covered carrier's failure to comply with the assurances required by section 259.4 and as contained in the carrier's contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.¹

Facts and Conclusions

Dynamic is an air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates public charter service at John F. Kennedy International Airport (JFK), a large hub airport, and uses at least one aircraft having a design capacity of more than 30 passenger seats. Dynamic has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including diversion airports.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on December 21, 2016, an XTRA Airways (XTRA) aircraft flying from Simón Bolívar International Airport (CCS) to JFK experienced a lengthy tarmac delay during a technical stop at MIA. Dynamic originally marketed the flight as a direct sales public charter and planned to operate it as Dynamic flight 2D 412 on December 19, 2016. However, when Dynamic was unable to operate the flight due to mechanical difficulty, it turned to XTRA to operate the flight on its behalf pursuant to an aircraft, crew, maintenance, and insurance (ACMI) agreement. The charter participants' "Public Charter Operator-Participants Agreement" was with Dynamic.

Due to U.S. Customs and Border Protection restrictions at MIA, passengers were unable to deplane for the duration of the delay, which lasted over three hours, while the aircraft remained parked at the gate. Both Dynamic and XTRA confirmed that the passengers on the XTRA aircraft were not provided food or water before the tarmac delay exceeded two hours. XTRA stated that it requested food and water from Dynamic personnel at MIA but that these requests were unsuccessful.

Although XTRA aircraft and crew operated the flight, Dynamic, as the charterer and marketing carrier, remained obligated to adhere to the terms of its tarmac delay contingency plan and ensure that passengers received adequate food and water during the tarmac delay. Dynamic's failure to do so violated 14 CFR 259.4(b)(3), 14 CFR 259.4(b)(7), and 49 U.S.C. §§ 41712 and 42301(e)(3).

Response

In response, Dynamic states that it takes compliance with all Department rules very seriously and views the circumstances surrounding this situation as unique. Dynamic points out that under the ACMI agreement XTRA was required to fully comply with all Department rules. Accordingly, Dynamic states it understood XTRA would provide adequate food and water should it be subject

¹ In addition, the FAA Modernization and Reform Act, 49 U.S.C. § 42301 requires that carriers adhere to their tarmac delay contingency plans. 49 U.S.C. § 42301(e)(3).

² 49 U.S.C. § 40102(a)(2) defines an air carrier as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

to a tarmac delay that would exceed two hours. Dynamic states it only learned after the XTRA aircraft landed at MIA, that the delay would exceed two hours because XTRA's lead flight attendant needed to be replaced by someone traveling from Fort Myer. Dynamic states that when it became aware XTRA was not going to provide the tarmac delay service, it made a diligent effort, working with a local ground handler, to obtain food and water for the passengers before the two-hour mark. However and while the ground handler agreed to provide the service, it did not arrive before the aircraft departed for JFK.

Decision

The Enforcement Office views seriously Dynamic's violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Dynamic failed to adhere to the assurance in its contingency plan for lengthy tarmac delays to provide adequate food and water to passengers no later than two hours after an aircraft touches down (in the case of an arrival).

In order to avoid litigation, Dynamic has agreed to settle this matter with the Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and assessing \$15,000 in compromise of potential civil penalties otherwise due and payable. 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 unlawful practices by Dynamic and other carriers.

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 International Airways, LLC violated 49 U.S.C. § 42301(e)(3), 14 CFR 259.4(b)(3), and 14 CFR 259.4(b)(7) by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that it will provide passengers adequate food and water no later than two hours after an aircraft touches down (in the case of an arrival);
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Dynamic International Airways, LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Dynamic International Airways, LLC and its successors and assigns to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301;

We assess Dynamic International Airways, LLC \$15,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering

paragraphs 2 and 3 above. The total penalty amount of \$15,000 shall be paid as an allowed claim in the Dynamic International Airways, LLC Bankruptcy Case.

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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