



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

Issued by the Department of Transportation
on the 9th day of January, 2018

Allegiant Air, LLC

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 254**

Docket DOT-OST-2018-0001

Served January 9, 2018

CONSENT ORDER

This order concerns violations of the Department's domestic baggage liability rule, 14 CFR Part 254, and the Montreal Convention by Allegiant Air, LLC ("Allegiant") relating to signage posted at two airports. Violations of Part 254 and the Montreal Convention are unfair and deceptive practices in violation of 49 U.S.C. § 41712. The order directs Allegiant to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR Part 254, and assesses Allegiant \$35,000 in civil penalties.

Applicable Law

The Department's Domestic Baggage Liability Limit Rule

The Department's Domestic Baggage Liability Rule, 14 CFR Part 254, mandates that carriers are liable for damages resulting from mishandled baggage on domestic flights. Pursuant to 14 CFR 254.4, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage to an amount less than \$3,500 per passenger for travel on or after August 25, 2015.¹ In addition, section 254.6 requires the Department to review every two years the minimum limit of liability and to revise the limit to reflect changes in the CPI-U.² Carriers must provide passengers with

¹ The minimum liability for travel before August 25, 2015, was \$3,400. (78 Fed. Reg. 14913)

² Effective January 18, 2000, the Department raised the minimum limit from \$1,250 to \$2,500 (64 Fed. Reg. 70573). On September 22, 2004, the minimum limit was raised to \$2,800 (69 Fed. Reg. 56692); thereafter on January 29, 2007, the minimum limit was raised to \$3,000; on November 21, 2008, the minimum limit was raised to \$3,300 (73 Fed. Reg. 70591); on March 8, 2013, the limit was increased to \$3,400, effective June 6, 2013 (78 Fed. Reg. 14913);

proper notice of the baggage liability limit on or with their tickets, as required by section 254.5. It is a violation of Part 254 and 49 U.S.C. § 41712 for an air carrier to display information at airports which purports to limit the carrier's liability to an amount less than the minimum amount listed in 254.4.³

International Baggage Liability Limit under the Montreal Convention

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 on covered international flights. Article 17 of the 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. Article 19 of the Convention provides that a carrier is liable for damage occasioned by delay in the carriage of baggage. Under the Convention, carriers may limit their liability for checked baggage that is lost, delayed, or damaged; however, the limit is subject to the conditions of Article 22, which prohibits any such limit lower than 1,131 Special Drawing Rights (SDRs).⁴

Nothing in the Convention permits air carriers to limit liability for delayed or lost baggage below the minimum amount set forth in Article 22. Furthermore, even if a carrier is not actually imposing the Convention's minimum liability limits, misrepresentation concerning a carrier's liability for damaged, lost, or delayed baggage (e.g., policies posted on a carrier's website, stated in its written correspondence, or posted on signage at airports) or otherwise failing to accurately communicate its liability under applicable law and regulations also constitutes a separate and distinct unfair and deceptive practice and unfair method of competition in violation of section 41712.⁵

Facts and Conclusions

During compliance inspections conducted in August and September 2016 by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at various airports across the country, Allegiant displayed signage at two airport ticket counters and/or boarding gates which incorrectly stated the carrier's domestic baggage liability limit as an amount less than \$3,500 or its international baggage liability limit as an amount less than 1,131 SDR. The incorrect signage had been displayed for an extended period.

We conclude that by displaying signage at two airports which incorrectly stated the carrier's domestic baggage liability as an amount below \$3,500, Allegiant violated 14 CFR 254.5 and 49 U.S.C. § 41712. Moreover, by displaying signage at two airports which incorrectly stated the

and most recently, on May 27, 2015, the limit was increased to \$3,500, effective August 25, 2015 (80 Fed. Reg. 30144).

³ See, e.g., Southwest Airlines Co, *Violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259*, Order 2016-08-33 (Aug. 26, 2016).

⁴ *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 Fed. Reg. 59017 (Nov. 16, 2009) available at <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

⁵ *Id.* See also, *United Airlines, Inc. Violations of 49 U.S.C. § 41712*, Order 2011-08-7 (August 4, 2011).

carrier's international baggage liability limit as an amount below 1,131 SDR, Allegiant violated 49 U.S.C. § 41712.

Response

In response, Allegiant states that it takes compliance with the Department's requirements very seriously, that any noncompliance was unintentional, and that upon being informed of the Enforcement Office's concerns, it promptly took action regarding the identified signage and undertook compliance audits of all other U.S. airports it serves. Allegiant also reconfigured its stations regulatory compliance checklist to ensure that signage requirements would not be overlooked in the future. Allegiant states that it further verified that it had issued a bulletin to all of its airport locations in 2015, alerting them to the most recent baggage liability changes and providing instructions for signage updates.

Allegiant believes the identified airport signs were isolated instances and notes that the baggage liability information on its website and in its ticket notices was current and correct at all times. Allegiant states additionally that the outdated signage had no bearing on the amount of compensation paid to any passenger as a result of mishandled baggage, regardless of origin or destination.

In light of the above, while Allegiant regrets any noncompliance, it does not believe harm to any consumer resulted from its outdated signage.

Decision

The Enforcement Office views seriously Allegiant's violations of 49 U.S.C. § 41712 and 14 CFR Part 254. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted and is in the public interest. In order to avoid litigation, and without admitting or denying the violations described above, Allegiant consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 254, and to the assessment of \$35,000 in compromise of potential civil 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 establishes a strong deterrent against future similar unlawful practices by Allegiant, 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 Allegiant Air, LLC violated 14 CFR 254.5 by displaying signage at two airports which incorrectly stated the carrier's domestic baggage liability as an amount less than \$3,500;

3. We find that, by engaging in the conduct described in ordering paragraph 2, above, Allegiant Air, LLC engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

4. We find that Allegiant Air, LLC violated 49 U.S.C. § 41712 by displaying signage at two airports which incorrectly stated the carrier's international baggage liability as an amount less than 1,131 Special Drawing Rights;

5. We order Allegiant Air, LLC and its successors and assigns to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 254.5 as described in ordering paragraphs 2, 3, and 4, above;

6. Allegiant Air, LLC is assessed \$35,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above.

- a. Of this total penalty amount, \$17,500 shall be due and payable 30 days after the service date of this order; and
- b. \$17,500 shall become due and payable if, within one year of the date of issuance of this order, Allegiant Air, LLC violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Allegiant Air, LLC may be subject to additional enforcement action for violation of this order.

7. We order Allegiant Air, 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 penalty as ordered shall subject Allegiant Air, LLC to the 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 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at www.regulations.gov.