



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

**Issued by the Department of Transportation
on the 12th day of February, 2018**

Third Party Complaint of

Miriam Edelman

v.

American Airlines, Inc.

Docket DOT-OST-2016-0107

Served February 12, 2018

ORDER OF DISMISSAL

Ms. Miriam Edelman filed a formal complaint against American Airlines, Inc. (American) alleging that on February 16, 2016, American refused to transport her on Flight 2119 from Boston Logan International Airport (BOS) to Washington Reagan National Airport (DCA) for which she had a confirmed and ticketed reservation and had presented herself for check-in within the period provided by American's Conditions of Carriage (CoC) then published on its website. Pursuant to 14 CFR 302.406(a)(2), we dismiss the complaint for the reasons set forth below.

The Complaint

On February 16, 2016, Ms. Edelman held a confirmed and ticketed reservation for American Airlines Shuttle Flight 2119 from BOS to DCA, scheduled to depart at 4:00 p.m. American's applicable CoC provision stated a minimum check-in time requirement of thirty (30) minutes prior to scheduled departure. A separate page on American's website stated that for American Airlines Shuttle flights between BOS and DCA, passengers not checking a bag could check in up to twenty (20) minutes prior to departure. Ms. Edelman, who did not check a bag, checked in with an American airport representative at approximately 3:19 p.m. and received a "priority verification card." which she mistook to be a boarding pass because it used the same distinctive cardstock paper with the same color-scheme, typeface and layout; same barcode at top-center; and had the same presentation of gate, departure time, and destination.

Ms. Edelman arrived at the departure gate at approximately 3:30 p.m., while boarding was in progress. A gate agent stated to her that she could not board as she did not have a seat assignment. She subsequently learned that the flight was oversold, and was then moved to the standby list for the 5:00 p.m. flight from BOS to DCA, for which she also did not receive a seat assignment. She was not offered involuntarily denied boarding compensation (DBC) or provided with a pamphlet of disclosures pertaining to denied boarding rights and compensation. Ms. Edelman ultimately traveled on the 6:00 p.m. flight from BOS to DCA.

Ms. Edelman alleges that she was involuntarily denied boarding for Flight 2119 despite holding a confirmed and ticketed reservation and presenting herself for check-in within the period provided by the CoC as then published on American's website. Ms. Edelman further asserts that, in denying her boarding, American misrepresented and/or misapplied its check-in requirements, and in so doing failed to provide her with a written notice or compensation in accordance with the applicable regulations. In addition, Ms. Edelman states that during subsequent visits to BOS, her representative noted that the gate from which her flight departed lacked the required signage pertaining to denied boarding.

Additionally, Ms. Edelman alleges that American failed to respond to a request for an explanation of the check-in time discrepancies and for a copy of the CoC in effect on the date of travel, and that beginning at an unspecified point in February 2016, American consistently imposed a more restrictive minimum check-in time requirement of 45 minutes prior to scheduled departure, contrary to the terms of its CoC. Ms. Edelman further alleges that upon amending its CoC in March 2016 to explicitly include the 45-minute requirement, American purported to retroactively apply the new requirement to passengers who had already purchased a ticket and may not have been aware of the modified policy, resulting in a significant negative impact on those passengers. Finally, Ms. Edelman alleges that American applied check-in time requirements for international flights inconsistent with the terms of its International General Rules Tariff (Tariff), pointing out that the Tariff omits a minimum check-in time requirement for international passengers who do not check a bag.

Answer of American

American filed its answer on July 29, 2016. American acknowledges that in correspondence after the date of Ms. Edelman's scheduled travel, a customer relations representative inaccurately described to Ms. Edelman's representative the reason why she was not able to board the flight for which she held a confirmed reservation. Specifically, the customer relations representative incorrectly stated that Ms. Edelman was not permitted to board her flight because she failed to check-in by the minimum check-in time of forty-five (45) minutes before the time of the scheduled departure. However, American contends that the situation complained of had nothing to do with any American policy regarding check-in times.

Instead, American states that Ms. Edelman was not entitled to denied boarding compensation because she allegedly failed to appear at the gate for boarding after being paged by the gate agent. American states that the agent classified her as a "no-show," which caused her reservation to be automatically cancelled. Thus, American denies the allegation that its staff misapplied and/or

misinterpreted the applicable flight check-in requirements to Ms. Edelman and asserts that the minimum check-in time had nothing to do with why she was not issued a seat assignment on Flight 2119. Accordingly, because she no longer held confirmed reserved space on the flight after allegedly failing to appear for boarding, American denies that it was required to offer Ms. Edelman any denied boarding compensation or any written notice of her entitlement to denied boarding compensation as she was not so entitled.

American concedes that required signage notifying passengers of their right to compensation for denied boarding was not posted at the gate from which Ms. Edelman's flight departed, but asserts that the oversight was not systemic. American also concedes that it failed to respond to Ms. Edelman's request on May 16, 2016, for copies of the CoC in effect on her date of travel and on March 3, 2016. In its amended answer filed on September 21, 2016, American states that it failed to respond to that request due to an IT-related maintenance issue. Additionally, American states that on March 14, 2016, it modified its CoC to increase the minimum check-in time requirement for domestic flights to 45 minutes prior to scheduled departure, but denies that it applied the 45-minute requirement prior to that date.

American concedes that its Tariff unintentionally omitted a provision regarding minimum check-in times for passengers on international flights who do not check a bag¹, but adds that its actual practice for such passengers is to require check-in at least 45 minutes prior to scheduled departure. American adds that passengers on international flights who do check bags must check in sixty (60) minutes prior to scheduled departure, per its Tariff, and that American does not deviate from this policy in practice.

Supplemental Information Provided by American

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) requested additional information regarding the allegations of the complaint and American's answer. In its response on December 9, 2016, American provided a flight history report for Flight 2119, created on the date of the flight, to support its claim that Ms. Edelman did not appear at the gate when paged and therefore was not entitled to denied boarding compensation.

American also provided copies of the versions of its Tariff and CoC that were posted on its website between February 14, 2016, and March 3, 2016. That version of the CoC stated a minimum check-in time of 30 minutes prior to scheduled departure for domestic, non-American Airlines Shuttle flights, regardless of whether passengers were checking a bag. American stated that on March 14, 2016, it modified its CoC by increasing the minimum check-in time requirement for passengers on domestic, non-American Airlines Shuttle flights from 30 minutes to 45 minutes. American also revised its CoC to include its existing policy that for American Airlines Shuttle flights between BOS and DCA, passengers not checking a bag may check in up to 20 minutes prior to scheduled departure, while passengers checking a bag may check in up to 30 minutes prior to scheduled departure.

American further stated that of eight passengers who were denied boarding at BOS due to late check-in on March 14, 2016, none were negatively affected by the change in check-in time

¹ In response to a Departmental inquiry, American confirmed that it has corrected the issue.

requirements implemented on that day. Similarly, according to American, the check-in time requirement did not impact Ms. Edelman's inability to travel on Flight 2119. American stated that its policy is to timely notify consumers of its current minimum check-in times on its website and by phone upon inquiry, and stated that it often allows passengers to check in even if they do not meet the stated requirement, as a matter of customer service. American's response also stated that the carrier has corrected the IT-related maintenance issue which led to its failure to respond to Ms. Edelman's May 2016 request for copies of the relevant versions of its CoC.

Relevant Law

The regulations relevant to this complaint are 14 CFR Parts 221, 250, 253, and 259. Part 221, among other things, provides consumers the right to request a copy of a carrier's contract of carriage. 14 CFR 221.107(a)(2).

Part 250 regulates airline practices relating to overbooked flights. It mandates compensation and other protections for "eligible passengers," that is, those who hold "confirmed reserved space" on a flight, have complied with the carrier's contract of carriage, have met the carrier's requirements with respect to check-in time and appearance at the gate, and have been involuntarily denied boarding because their flight was oversold. In addition, carriers are obligated to continuously display a sign, clearly visible to the traveling public, at each desk, station, and position where they sell tickets notifying passengers of their right to compensation for denied boarding. 14 CFR Part 250.11(a).

Part 253 prohibits carriers from applying retroactively to a passenger who has already purchased a ticket any material amendment to the contract of carriage that would have significant negative implications for consumers. 14 CFR 253.9.

Part 259 requires carriers to handle "bumped" passengers in oversales situations fairly and consistently in accordance with Part 250 and with the carrier's own policies and procedures for determining boarding priority. 14 CFR 259.5(b)(8). Additionally, Part 259 requires carriers to provide a substantive written response to each complaint within sixty (60) days of receiving the complaint. 14 CFR 259.7(c).

Violations of 14 CFR Parts 221, 250, 253, and 259 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Analysis and Decision

The Enforcement Office has carefully reviewed Ms. Edelman's complaint and the pleadings filed in the docket by both parties, as well as the supplemental information provided by American. The Enforcement Office finds good cause to accept all submissions as filed by both parties and dismisses the case. The parties have provided conflicting information as to whether Ms. Edelman failed to appear for boarding, or whether she was present but was denied boarding on her originally scheduled flight because the flight was overbooked. However, the Enforcement Office finds there is insufficient evidence to determine that American denied Ms. Edelman boarding or that she was entitled to denied boarding compensation.

The Enforcement Office finds that American failed to properly display oversales signage. The Department has already taken enforcement action against American for similar oversales disclosure failures in the time-frame described in Ms. Edelman's complaint.² Regarding the modifications to its CoC, the Enforcement Office finds that the facts available do not indicate that American retroactively applied its new check-in time requirements to Ms. Edelman's reservation on Flight 2119, and that the evidence does not indicate widespread misrepresentation or misapplication of check-in time requirements by American to its passengers, for either its international or domestic flights. Finally, the Enforcement Office finds that American failed to provide a timely substantive response to Ms. Edelman's request for an explanation of the check-in time discrepancies and for a copy of the CoC in effect on the date of travel, in violation of 14 CFR 259.7(c). However, the failure does not indicate a pattern or practice of violations, and American states that it has corrected the IT-related maintenance issue that resulted in its failure. Thus, we find that civil penalties are not warranted for this violation.

Subsequent to the initial submissions on this matter, in a letter dated February 10, 2017, Ms. Edelman and American jointly notified the Enforcement Office that they have agreed to a settlement of the allegations of the complaint concerning Ms. Edelman's delayed travel. Ms. Edelman has agreed to withdraw all aspects of the complaint regarding that travel, any subsequent delay, and American's alleged failure to offer her denied boarding compensation. In exchange, American has agreed to provide her with cash compensation.

The letter states that the settlement agreement is expressly conditioned on the Department's agreement to dismiss the aspects of the complaint pertaining to Ms. Edelman's delayed travel. However, the Enforcement Office's review of the parties' filings and of the information provided by American is wholly independent of any private resolution by the parties. The Enforcement Office's analysis relies upon the available facts and applicable law, and this order does not constitute a determination as to the validity of the settlement reached by the parties.

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

ACCORDINGLY, we dismiss the complaint filed in Docket DOT-OST-2016-0107. Pursuant to 14 CFR 302.406(b), this order shall become effective as a final order of the Department thirty (30) days after service of this order.

By:

Blane A. Workie
Assistant General Counsel for
Aviation Enforcement and Proceedings

² See Order 2016-8-30 (Aug. 26, 2016) (finding that American violated 14 CFR Part 250 when its agents failed to provide written oversales notices during airport compliance inspections).

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