



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

Issued by the Department of Transportation
on the 23rd day of February, 2018

Third Party Complaint of

Kaushik Shridharani

v.

Alitalia Società Aerea Italiana, SpA

Docket DOT-OST-2015-0189

Served February 23, 2018

ORDER OF DISMISSAL

On September 14, 2015, Mr. Kaushik Shridharani filed a third-party complaint against Alitalia Società Aerea Italiana, SpA (Alitalia). He contends that Alitalia provided inadequate notice that his traveling party would forfeit the second segment of their flight itinerary if they did not complete the first segment. Pursuant to 14 CFR 302.406(a)(2), we dismiss the complaint for the reasons set forth below.

The Complaint

Mr. Shridharani states that he and his family, a party of six, purchased from a U.S. travel agency a multi-segment round-trip itinerary on Alitalia from New York to Catania, Italy, with a four-day stopover in Rome on the return (JFK-FCO-CTA-FCO-JFK). He states that on the return, his party checked in approximately 10 minutes late at the ticket counter in Catania. According to Mr. Shridharani, an Alitalia representative informed him that in order to be rebooked on the next flight to Rome, the party would have to pay a change fee of € 305 per passenger, for a total of € 1830. Mr. Shridharani states that the party preferred to travel to Rome by less expensive means, particularly considering that they planned a four-day stopover there. Mr. Shridharani states that the Alitalia agent informed the party that if they did not complete the CTA-FCO segment on Alitalia, then the party would forfeit their FCO-JFK flights, and that they would have to purchase new flights to the U.S. Realizing that this forfeiture would cost substantially more than € 1830, the party agreed to pay the change fee and proceeded from CTA to FCO on the next available Alitalia flight.

Mr. Shridharani alleges that Alitalia failed to provide adequate notice of its cancellation policy, in violation of 14 CFR 221.107, 14 CFR 293.21, and 49 U.S.C. § 41712. Mr. Shridharani also alleges that Alitalia misapplied its own tariff. Complaint at 14.

Answer of Alitalia

Alitalia filed its answer on October 14, 2015. Alitalia states that it fully complied with all applicable regulations regarding disclosure, and that it properly applied its own tariff. Alitalia contends that as a result, there is no basis for finding that it engaged in an unfair or deceptive practice. According to Alitalia, Mr. Shridharani's real argument is that carriers should disclose more terms than are currently required. Alitalia concludes that the most appropriate course for Mr. Shridharani would be to petition the Department for a rulemaking to require more expansive disclosure.

Reply and Surreply

The parties sought and obtained permission to file a brief reply and surreply in this matter. In his reply, filed on October 27, 2015, Mr. Shridharani responded to certain arguments of Alitalia and added an affidavit from his wife regarding the events at the Catania airport. He also noted that Alitalia's website now notifies consumers during the booking process that "if passengers do not arrive to board a flight, the ticket will be canceled for the subsequent flights."¹ Mr. Shridharani suggests that Alitalia should have provided similarly explicit notice to his party, which purchased their tickets through a travel agent. In its surreply, Alitalia contends that Mr. Shridharani's additional information does not compel a different result, and that proper notice was provided in this case.

Relevant Law, Analysis and Decision

1. Regulatory Notice Provisions

Mr. Shridharani contends that Alitalia violated Departmental rules by failing to explicitly notify his party that failure to complete one flight segment (CAT-FCO) would result in the forfeiture of the later segment (FCO-JFK). Specifically, Mr. Shridharani argues that this forfeiture constitutes a "monetary penalty" for which "conspicuous written notice" is required. Mr. Shridharani cites 14 CFR 221.107(d).

This rule is contained within 14 CFR Part 221, which addresses the tariffs of carriers. Subpart K of Part 221 (sections 221.100 - 221.108) requires carriers to make their tariffs available for public inspection. Specifically, Section 221.100 provides that carriers must make tariffs available for public inspection *either* by complying with sections 221.101 - 221.106, *or* with sections 221.105 - 221.107. In other words, a carrier is not required to comply with section 221.107 (the section cited by Mr. Shridharani) so long as it complies with sections 221.101 - 221.106.

¹ See http://booking.alitalia.com/Booking/en_en/Flight/Select (notice appears after selecting specific flight).

Alitalia complied with the relevant provisions of sections 221.101 – 221.106. Of relevance here, Sections 221.101 – 221.102 provide that carriers must make their tariffs available to the public in complete and accessible form. Section 221.103 requires carriers to display in a conspicuous place in each station, office, or location at which tariffs are required to be posted, a notice printed in large type containing the title “Public Inspection of Tariffs,” and the text set forth in section 221.103. Alitalia has complied with those requirements. *See, e.g.*, Complaint, Exhibit B (photograph of notice provided at JFK containing the required text of Section 221.103).² Accordingly, we conclude that compliance with section 221.107 was not required.³

Mr. Shridharani also cites 14 CFR 293.21, which makes reference to section 221.107. Section 293.21 states that if a carrier holds an effective exemption from the duty to file tariffs with the Department, then it may incorporate terms by reference, so long as it complies with 14 CFR 221.107 “to the extent applicable.” For the reasons set forth above, section 221.107 is not applicable to this matter. Therefore, reliance on section 293.21 is also misplaced.

Turning to the tariff itself, we observe that Alitalia gave explicit notice of the consequences of late check-in. Specifically, Tariff Rule 70.3 provides: “[t]he carrier reserves the right to cancel a confirmed reservation if the passenger does not respect the time limit for check-in. This right applies to the first flight indicated on the ticket as well as for subsequent flights.” Pursuant to Rule 70.3, Alitalia could have canceled the party’s reservations for the CAT-FCO and FCO-JFK segments when the party failed to check in on time in Catania. Alitalia did not do so; instead, it rebooked the party on the next available CAT-FCO flight and allowed the party to retain its FCO-JFK reservation upon payment of a change fee.

For these reasons, we conclude that Alitalia did not violate the Department’s rules regarding notice of tariff terms.

2. Alleged violations of 49 U.S.C. § 41712

Next, Mr. Shridharani contends that the substance of Alitalia’s tariff rule is “unfair” under section 41712 because it is onerous and one-sided. Specifically, he argues that the potential penalty for his party’s late check-in (*i.e.*, the loss of the reservation) is disproportionate to any harm that Alitalia incurred from that late check-in. He also contends that carriers largely insulate themselves from any consequential damage arising from their failure to follow their own schedule.

Pursuant to the Airline Deregulation Act, the Department of Transportation has the exclusive jurisdiction to regulate unfair and deceptive practices by airlines. 49 U.S.C. § 41712; *Northwest, Inc. v. Ginsberg*, ___ U.S. ___, 134 S.Ct. 1422, 1428 (2014). Generally, a practice is unfair to

² In addition, the Department requires carriers to post customer service plans on their websites, including their cancellation policies. 14 CFR 259.6; 14 CFR 259.5(a)(9). Alitalia complied with those provisions as well.

³ In 1997, the Department issued a statement of compliance policy for ticketless travel. We stated that “the notices that are currently required by DOT rules to accompany tickets will have to be given or made readily available to ticketless passengers in writing no later than when they appear at the airport for the first flight on their itinerary.” <https://www.transportation.gov/sites/dot.dev/files/docs/19970422.pdf>. We stated that carriers could comply through several methods, including posting a sign at the ticket counter briefly describing the nature of the notice. *Id.* As noted above, Alitalia used this method.

consumers if it causes or is likely to cause substantial harm, the harm cannot reasonably be avoided, and the harm is not outweighed by any countervailing benefits to consumers or to competition.⁴

Here, the practice at issue is the practice of canceling a reservation if a party misses a check-in deadline or fails to complete a multi-segment itinerary according to the sequence indicated on the flight coupons. The Department has long recognized this practice, and has not deemed it unfair. See <https://www.transportation.gov/airconsumer/fly-rightsrights> (“If you miss the check-in deadline, you may have lost your reservation and your right to compensation if the flight is oversold.”)⁵ Even if we were to assume that the practice causes or is likely to cause substantial harm, we would conclude that the harm may be reasonably avoided by meeting the airline’s check-in deadline and using the coupons in the agreed sequence.⁶

In a related claim, Mr. Shridharani alleges that Alitalia committed a deceptive practice by failing to provide conspicuous notice of the consequences of failure to check in on time.

A practice is deceptive under 49 U.S.C. § 41712 if it misleads or is likely to mislead a consumer acting reasonably under the circumstances with respect to a material issue (*i.e.*, one that is likely to affect the consumer’s decision with regard to a product or service).⁷ Mr. Shridharani has failed to explain how he or his party were actually misled by Alitalia’s failure to more prominently post notice of its cancellation policy. Instead, he argues that many foreign air carriers routinely apply a policy of allowing passengers who miss the check-in deadline to take a later flight without charge. According to Mr. Shridharani, passengers reasonably expect foreign air carriers to take a lenient approach to late arrivals and not to strictly apply cancellation policies; therefore, Mr. Shridharani appears to believe that Alitalia should be held to this standard of leniency if it does not provide more explicit notice of the penalties associated with cancellation. Complaint at ¶¶ 21-22. We dismiss this claim as speculative and unsupported. Moreover, as noted above, we find that Alitalia complied with the Department’s rules regarding notice.

3. Misapplication of Tariff

⁴ The statute providing the Department authority to regulate unfair and deceptive practices, 49 U.S.C. § 41712, is modeled after Section 5 of the FTC Act, 15 U.S.C. § 45. In analyzing whether a practice of a carrier or ticket agent action is unfair, we use a standard similar to the Federal Trade Commission’s standard for unfairness. See <http://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

⁵ Again, Mr. Shridharani’s party did not forfeit the FCO-JFK segment in this case; they flew the segment as scheduled after paying the change fee relating to rebooking of their CAT-FCO segment.

⁶ Mr. Shridharani also suggests that change fees for foreign air transportation are unfairly burdensome and bear no reasonable relationship to the costs incurred by the airline when a passenger changes flights. Complaint at ¶¶ 24-25. The Department is addressing this issue in the context of a petition for rulemaking filed by FlyersRights.org. See <https://www.regulations.gov/document?D=DOT-OST-2015-0256-0001>.

⁷ The Federal Trade Commission’s standard for deception is instructive. See <http://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>.

Next, Mr. Shridharani contends that Alitalia misapplied Rule 60 of its tariff. That Rule provides, in relevant part:

If a passenger does not use a reservation on a flight without first notifying the carrier, the carrier may cancel the reservations for intermediate or return flights. On the other hand, if the passenger gives the carrier *timely notice*, the carrier will not cancel the reservations for intermediate or return flights.

Complaint, Exhibit F, Rule 60 - Reservations (emphasis added). Mr. Shridharani contends that his party gave “timely notice” to Alitalia because they arrived and gave notice before the departure of their originally scheduled flight. He further contends that any ambiguity in the phrase “timely notice,” and any ambiguity in Alitalia’s tariff generally, should be construed against Alitalia as the drafter. In response, Alitalia contends that notice upon arrival at the airport after the check-in deadline is not “timely” under any reasonable definition of the word. Alitalia also contends that Rule 60 should be read in the context of the contract as a whole, including Tariff Rule 65.10, which states that “the passenger will not have any right to carriage if the flight coupons are not used in the order called for by the ticket... unless the passenger gives the carrier prior notice of his/her intention and receives approval therefor.”

Mr. Shridharani presents his claim as a pure question of contractual interpretation. To the extent that Mr. Shridharani is re-asserting his claims for unfair and deceptive practices in the guise of a breach of contract claim, we find that Alitalia has not acted in an unfair or deceptive manner in enforcing its contract of carriage, and dismiss this claim for the reasons set forth above.

We note, however, that a passenger might in certain circumstances have a cause of action against an airline in a court of competent jurisdiction for breach of contract. *Ginsberg*, 134 S.Ct. at 1428, citing *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). We express no opinion regarding whether Mr. Shridharani has a cause of action under any state law.

ACCORDINGLY, pursuant to the authority delegated under 49 CFR Part 1, we dismiss the complaint of Mr. Shridharani against Alitalia in Docket OST-2015-0189. Pursuant to 14 CFR 302.406(b), this order shall become effective as a final order of the Department 30 days after service of this order.

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