



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

Issued by the Department of Transportation
on the 1st day of March, 2018

Third Party Complaint of

Christopher Nethery

v.

Saudi Arabian Airlines Corporation

**Violations of 49 U.S.C. §§ 40127(a), 41310(a),
41712(a), 40101(a)(1), and the First and Fifth
Amendments to the U.S. Constitution**

Docket DOT-OST-2015-0143

Served March 1, 2018

**ORDER DISMISSING THIRD-PARTY COMPLAINT AND REQUEST TO COMMENCE
ENFORCEMENT PROCEEDINGS**

On July 13, 2015, Christopher Nethery (Mr. Nethery) filed a third-party complaint under 14 CFR 302.404 against Saudi Arabian Airlines Corporation (Saudia) for violations of 49 U.S.C. §§ 40101(a)(1), 40127(a), 41310(a), 41712(a), and the First and Fifth Amendments to the U.S. Constitution. Mr. Nethery, who is a member of the Christian faith, alleges that Saudia has a policy that passengers are not allowed to wear cross-necklaces or shirts that bear a cross on them on-board Saudia aircraft if wearing these articles is determined to be “disruptive.” Mr. Nethery also alleges that Saudia offers certain amenities to Islamic passengers that it does not offer to passengers of other religions. This order dismisses Mr. Nethery’s complaint on the merits for the reasons stated below.

Complaint

In his third-party complaint, Mr. Nethery sets forth the following allegations:

1. Saudia is an instrumentality of the government of Saudi Arabia and must adhere to all laws and regulations issued by the government of Saudia Arabia.

2. The policies of the government of Saudi Arabia concerning the possession of non-Islamic religious articles are also the policy of Saudia.
3. On July 3, 2015, Mr. Nethery contacted Saudia via telephone to inquire about traveling from Washington Dulles International Airport (Dulles) to Mumbai, India with a layover in Riyadh, Saudi Arabia. Upon speaking to a Saudia representative, Mr. Nethery asked whether he could wear a cross-shirt and a cross-necklace on-board a Saudia aircraft to celebrate his religious beliefs and was informed that wearing a cross-shirt and cross-necklace on-board a Saudia aircraft “could be a problem” and that it would be “better” if he refrained from doing so. Saudia allows passengers to wear burqas and hijabs onboard Saudia aircraft.
4. Saudia plays an Islamic religious prayer in Arabic over the aircraft’s public address system prior to take-off that passengers are unable to turn off if they do not wish to listen. Saudia offers a separate designated area on its flights from the United States that is intended for Islamic prayer. Saudia’s in-flight entertainment system offers numerous channels with content of a purely Islamic nature without offering audio or video programs devoted to the teachings of Jesus Christ.
5. Mr. Nethery may be required to hide or remove his Christian religious items while on-board a Saudia aircraft if the items offend passengers or members of the crew. Mr. Nethery may be required to remove his Christian religious items if he transited through Riyadh or Jeddah airports while waiting for his connecting flight and may be subject to criminal charges.

Count I – Violation of 49 U.S.C. §§ 40127(a), 41310(a) and 41712(a)

Complainant asserts that Saudia is unlawfully discriminating against passengers of the Christian faith in violation of 49 U.S.C. §§ 40127(a)¹, 41310(a)², and 41712(a)³ due to its policy prohibiting passengers from wearing cross-shirts and cross-necklaces on-board Saudia aircraft when doing so would be “disruptive.” Complainant asserts that this policy is not applied to members of the Islamic faith and that wearing a cross-necklace or cross-shirt “cannot under any circumstances jeopardize passenger safety.”

¹ 49 U.S.C. § 40127 prohibits an air carrier or foreign air carrier from subjecting a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.

² 49 U.S.C. § 40301(a) prohibits “[a]n air carrier or foreign air carrier [from subjecting] a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.”

³ 49 U.S.C. § 41712 prohibits an air carrier or foreign air carrier from engaging in unfair or deceptive practice or unfair methods of competition in air transportation or the sale of air transportation.

Count II – Violation of 49 U.S.C. § 40101(a)(1)

Mr. Nethery asserts that Saudia is violating 49 U.S.C. § 40101(a)(1)⁴ due to its failure to assure passengers displaying non-Islamic religious articles while traveling from the United States through Saudi Arabian airports or while on-board a Saudia flight that they will not be subject to “detention, harassment, coercion, or intimidation.”

Count III – Violation of 49 U.S.C. § 41712(a)

Mr. Nethery asserts that Saudia is in violation of 49 U.S.C. § 41712(a) due to its failure to inform consumers and third-party ticket agents⁵ of the “restrictions imposed upon persons wearing non-Islamic religious articles” while traveling on-board Saudia flights or transiting through Saudi Arabian airports because the policy “deprives [consumers] of the right to decide whether they wish to fly on Saudia” or transit through airports in Saudi Arabia.

Count IV – Violation of First and Fifth Amendment Rights

Mr. Nethery asserts that an order issued by the Secretary of Transportation allowing Saudia to afford preferential treatment to members of the Islamic faith while using U.S. public facilities would constitute a violation of the Establishment Clause of the First Amendment to the U.S. Constitution as well as the Due Process provision of the Fifth Amendment.

Answer of Saudi Arabian Airlines

Saudia filed an answer to the Complaint on August 27, 2015, requesting that the Department dismiss the Complaint without further investigation or order. Saudia asserts that its policy is to allow all passengers with valid tickets to fly on Saudia regardless of their religious beliefs. Saudia states that it plays an Islamic religious prayer in Arabic over the public address system before takeoff, that there is a prayer area on some of its international flights with a prayer dial that points towards Mecca, and that its entertainment system offers Islamic religious programming. Saudia asserts that, despite the amenities that it offers to passengers of the Islamic faith, it does not have a policy prohibiting passengers from wearing religious clothing or articles on-board Saudia aircraft as long as “the display of such items by passengers is not disruptive and does not negatively affect the safety and security of other passengers on the aircraft.” Saudia asserts that it has the “discretion to take reasonable and necessary measures to ensure the health, security, and safety of its passengers and crew in accordance with FAA regulations and relevant statutes.” Saudia asserts that it does not discourage prospective passengers from wearing cross-necklaces or cross-shirts on-board Saudia aircraft and imposes no “restrictions” upon persons wearing non-Islamic religious articles. Saudia also states that the prayer area available on some international flights is available to all passengers.

⁴ Under 49 U.S.C. § 40101(a)(1), assigning and maintaining safety is the highest priority of the Secretary of Transportation.

⁵ Complainant asserts that these third-party ticket agents also have an obligation to inform consumers of Saudia’s “restrictions.”

Saudia further asserts that it has no control over the actions of the Kingdom of Saudi Arabia and has no authority or control over the events that may take place once a passenger disembarks a Saudia aircraft and enters the Kingdom of Saudi Arabia or any of its airports. Saudia avers that it does not own, lease or control the transit areas of the airports where passengers wait for connecting flights and is not responsible for any issues that may arise once a passenger disembarks a Saudia aircraft and enters the Kingdom of Saudi Arabia.

Additionally, Saudia asserts that the Mr. Nethery did not actually purchase a ticket on Saudia and that Mr. Nethery does not allege any actual injury. Rather, Saudia argues that Mr. Nethery's complaint is based on speculation about hypothetical events.

Decision

We have carefully considered Mr. Nethery's formal third-party complaint, and we are dismissing the complaint on the merits for the reasons set forth below.

Mr. Nethery's assertions, in his formal third-party complaint, of unlawful discrimination based upon his stated desire to wear a cross-necklace and cross-shirt on a Saudi flight rely solely on assumptions and unsupported conclusions. There is no evidence that has been presented to the Department that would show that at any point Saudia refused to sell Mr. Nethery a ticket on one of its flights or that Saudia refused to allow Mr. Nethery to fly on-board a Saudia aircraft due to his religious affiliation or that the airline would preclude him from wearing or carrying his religious articles on Saudia flights. Furthermore, although Mr. Nethery inquired into travel on-board a Saudia aircraft, he did not actually purchase a ticket for travel on a Saudia aircraft nor was he prevented by Saudia from doing so. As a result, Mr. Nethery was never denied transportation by Saudia on the basis of his religion.

Also, Mr. Nethery asserts that Saudia's practice of offering Islamic accommodations on-board Saudia flights constitutes unlawful discrimination, but fails to adequately explain how any of the Islamic accommodations offered on-board a private airline (Saudia) violate the First or Fifth Amendments to the U.S. Constitution or 49 U.S.C. §§ 40127(a), 41310(a), and 41712(a).

As such, Mr. Nethery has failed to show that Saudia discriminated against him by denying him air transportation on the basis of his religion. Mr. Nethery has further failed to show that Saudia implements discriminatory policies in violation of 49 U.S.C. §§ 40101(a)(1), 40127(a), 41310(a), or 41712(a). In light of the speculative allegations set forth by Mr. Nethery, demonstrated by the facts asserted in Saudia's certified answers, we find that this complaint is not sufficient to warrant further investigation.

Finally, we disagree with Mr. Nethery's assertion that Saudia's use of airport facilities in the United States violates the Establishment Clause of the First Amendment or the Due Process Clause of the Fifth Amendment to the Constitution. The United States is not endorsing any religion by allowing Saudia aircraft to access and use airport facilities in the United States.

ACCORDINGLY, I dismiss the Complaint filed in Docket DOT-OST-2015-0143 with prejudice.

This order is issued under authority assigned in 14 CFR 302.406(a)(2) and shall be effective 30 days after service. A copy will be served on the complainant.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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