



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

Issued by the Department of Transportation
on the 18th day of May 2018

Third Party Complaint of

Mike Borsetti

v.

American Airlines, Inc.

Docket DOT-OST-2017-0003

Served May 18, 2018

ORDER OF DISMISSAL

On January 4, 2017, Mr. Mike Borsetti filed a third-party complaint against American Airlines, Inc. (American). He contends that a provision of American's contract of carriage, known as "Rule 80(C)," is impermissibly vague with respect to the options that American will offer to consumers in the event of a delay because of a change in schedule. We dismiss the complaint pursuant to 14 CFR 302.504.

The Complaint

Mr. Borsetti states that on November 13, 2016, he purchased a ticket for unspecified international travel in February 2017 through American's website, www.aa.com. He states that at the time of purchase, Rule 80(C) provided that in the event of a delay because of a change of schedule, American would exercise options to reaccommodate the passenger "at the carrier's discretion." He contends that this discretionary language violates 14 CFR 221.40(a)(4), prohibiting vague or indefinite statements in a carrier's tariff. Finally, he contends that he is personally affected by the tariff provision because it does not provide clarity regarding his rights in the event of a schedule change. He further alleges that this vague provision impedes his ability to make an informed decision when choosing among various international carriers. Mr. Borsetti urges the Department to reject American's tariff, and to order American to amend the tariff to satisfy Section 221.40(a)(4).

Answer of American

American filed its response on January 19, 2017. American contends that Rule 80(C) is sufficiently definite because it clearly sets forth the available options from which the carrier will choose. American notes that if the passenger is not satisfied with American's option, the passenger may request and receive a refund. American further contends that allowing the carrier to retain some measure of flexibility is in the public interest because without this flexibility, carriers may choose to eliminate options altogether. American asserts that Rule 80(C) does not violate 14 CFR 221.40(a)(4).

Relevant Law, Analysis and Decision

Generally, unless exempted under 14 CFR Part 293, U.S. and foreign air carriers must file and publish tariffs "showing the prices for the foreign air transportation provided between places served by the carrier." 49 U.S.C. § 41504(a). The Secretary may reject a tariff that is inconsistent with applicable statutes and regulations. 49 U.S.C. § 41504(c). The Secretary may cancel or reject a tariff on her own initiative, or on the initiative of a complaint filed with the Secretary. 49 U.S.C. § 41509(a)(1).

The Department's Rules of Practice in Proceedings, 14 CFR Part 302 Subpart E, governs complaints challenging tariffs in foreign air transportation. The complaint must state the reasons why the provision at issue is unlawful, and must support those reasons with a "full factual analysis." 14 CFR 302.503(a). If the Department is of the opinion that the complaint does not warrant an investigation or action, it may dismiss the complaint without a hearing. 14 CFR 302.504.

The substantive rules governing tariffs in foreign air transportation (where required) are set forth in 14 CFR Part 221. Mr. Borsetti cites section 221.40(a)(4), which states:

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

Mr. Borsetti argues that American's Rule 80(C)(3) is impermissibly vague. However, in his complaint, Mr. Borsetti did not set forth the entirety of Rule 80(C)(3).¹ We note, however, that at time of the complaint, the Rule stated:

¹ Paragraph 3 of the Complaint states:

"The applicable tariff's Rule 80(C)(2) [sic] reads 'WHEN A PASSENGER WILL BE DELAYED BECAUSE OF A CHANGE IN SCHEDULE, CARRIER WILL ARRANGE AT CARRIER'S DISCRETION TO EITHER: [...]' (emphasis added)."

80. REVISED ROUTINGS, FAILURE TO CARRY AND MISSED CONNECTIONS

(C) SCHEDULES, DELAYS AND CANCELLATION OF FLIGHTS

3. Change in schedule. When a passenger will be delayed because of a change in schedule, carrier will arrange at carrier's discretion to either:

(a) Transport the passenger on an AA operated flight to the destination, next stopover point or transfer point shown on its portion of the ticket, without stopover at no additional cost to the passenger, provided that a passenger will be transported in a higher class of service only if the flight for which a seat in a higher class of service is available will provide an earlier arrival than being transported on a flight in the original class of service on which space is available; or

(b) Endorse the unused ticket for the purpose of rerouting over another carrier with whom AA has an agreement to do so.

(c) Notwithstanding the above, the carrier will issue a refund in accordance with Rule 90(refunds) if the passenger so requests.

American Contract of Carriage, available at <https://www.aa.com/i18n/Tariffs/AA1.html#0080> (formatting modified).

The tariff clearly states that if a passenger will be delayed because of a change in schedule, American will accommodate the passenger, either: (1) on one of American's own flights, or (2) on a flight operated by a different carrier with which American has an agreement. American will also issue a refund if its chosen option is not acceptable to the passenger.

To the extent that the tariff applies to the air transportation at issue, the rule sets forth a clear set of reaccommodation options from which the carrier will choose if a schedule change results from a delay. The tariff does not vest the carrier with unfettered discretion to act or refrain from acting however it sees fit. The fact that American retains the discretion to initially choose one of the two reaccommodation options does not, in our view, make the tariff impermissibly vague or indefinite. The rule does not leave passengers such as Mr. Borsetti without a clear indication of what the carrier will do in the case of a delay caused by a schedule change. We conclude that Mr. Borsetti's complaint does not warrant an investigation or further action.²

² American contends that the Department expressly approved of the wording of Rule 80(C) in a prior consent order. Answer at 2, citing DOT Order 2016-12-12 (*Edelman/Martin/Samstein vs. American Airlines*), DOT-OST-2013-0216 (December 14, 2016). In light of our disposition, we find it unnecessary to address this contention.

ACCORDINGLY, pursuant to the authority delegated under 49 CFR Part 1, we dismiss the complaint of Mike Borsetti against American Airlines, Inc., in Docket DOT-OST-2017-0003. This order shall become effective as a final order of the Department thirty days after service of this order.

BY:

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