



Order 2018-5-27

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

Issued by the Department of Transportation on
the 22nd day of May, 2018

Air Canada

**Violations of 49 U.S.C. § 41712 and
14 CFR Parts 250 and 259**

Docket DOT-OST-2018-0001

Served May 22, 2018

CONSENT ORDER

This order concerns violations of the Department's oversales rule, 14 CFR Part 250, by Air Canada. Violations of Part 250 also constitute a failure to adhere to the carrier's Customer Service Plan in violation of 14 CFR 259.5 and are unfair and deceptive practices in violation of 49 U.S.C. § 41712. The order directs Air Canada to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259, and assesses Air Canada \$35,000 in civil penalties.

Applicable Law

The Department's Oversales Rule

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase, on the one hand, and the ability of carriers to market their services effectively and efficiently, on the other hand. Part 250 permits airlines to sell more tickets for a flight than there are seats available on the aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have remained empty due to "no shows," thereby achieving operational efficiencies including revenue enhancement for carriers, and resulting in benefits for passengers as a whole by enabling carriers to offer them lower fares.

In exchange for the ability to overbook flights (a practice that would otherwise be an unfair and deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. § 41712), 14 CFR Part 250 mandates compensation and other protections for passengers 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 (“eligible passengers”). Specifically, under most circumstances, Part 250 mandates that a carrier pay Denied Boarding Compensation (DBC) to eligible passengers “on the day and [at the] place the denied boarding occurs,” with “cash or an immediately negotiable check for the appropriate amount of compensation.” 14 CFR 250.8. The appropriate amount of DBC varies for each passenger depending on the planned arrival time of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger’s fare to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point. 14 CFR 250.5. In addition, section 250.5(e) requires the Department to review the maximum denied boarding compensation amounts every two years and to revise the limit to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U).¹

Further, under section 250.9(a), air carriers must “furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers’ boarding priority rules and criteria” (denied boarding statement). The regulation also requires that carriers “furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.” The denied boarding statement must contain the language identified in section 250.9(b).

¹ On May 27, 2015, the Department issued a final rule adjusting the DBC for domestic flights to 200 percent of the fare to the passenger’s destination or first stopover to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger’s destination or first stopover more than one hour but less than two hours after the planned arrival time of the passenger’s original flight; and 400 percent of the fare to the passenger’s destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger’s destination or first stopover less than two hours after the planned arrival time of the passenger’s original flight. The rule also adjusted the maximum DBC for international flights departing from a U.S. airport. The amount of denied boarding compensation shall be no less than 200 percent of the fare to the passenger’s destination or first stopover, to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger’s destination or first stopover more than one hour but less than four hours after the planned arrival time of the passenger’s original flight; and 400 percent of the fare to the passenger’s destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger’s destination or first stopover less than four hours after the planned arrival time of the passenger’s original flight. This increase reflected changes in the Consumer Price Index for All Urban Consumers (CPI-U), and was effective for travel on or after August 25, 2015.

The Department's Customer Service Plan Rule

In April 2011, the Department issued a set of rules designed to enhance protections for air travel consumers. Among these rules, 14 CFR 259.5 requires that carriers adopt and adhere to a Customer Service Plan that includes commitments that carriers will handle “bumped” passengers with fairness and comply with the requirements of 14 CFR Part 250. Failure to adhere to the requirements of Part 250 also constitutes a violation of Part 259.²

Facts and Conclusions

During compliance inspections by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at various airports across the country in 2016, Air Canada agents failed to produce copies of Air Canada's written denied boarding statement (“250.9 Notice”) at boarding gate locations and ticket counters being used by the carrier in response to specific requests by Enforcement Office staff. In other circumstances, Air Canada agents produced outdated copies of the 250.9 Notice, with compensation amounts below the minimum value stated in section 250.5, with some amounts being more than seven years outdated.

We conclude that by failing to produce complete and accurate copies of the required denied boarding statement upon request at both airport ticket selling positions and boarding gates, Air Canada violated 14 CFR 250.9(a). By failing to adhere to the requirements of Part 250, Air Canada violated 14 CFR 259.5(b)(8) and 49 U.S.C. § 41712.

Response

In response, Air Canada states that full compliance with the Department's oversales rule is of the utmost importance to Air Canada and that it takes very seriously its obligations to provide accurate involuntary denied boarding statements to its customers. In response to the Department's concerns, Air Canada states that it promptly took comprehensive remedial action to ensure that each and every ticket counter and boarding gate with flights from the US has a complete and correct copy of its written denied boarding statement. Air Canada adds that, for cautionary purposes, it also required each station to confirm that any outdated copies of the denied boarding statement had been destroyed. Additionally, Air Canada created and distributed additional comprehensive guidance on the Department's oversales rule, as well as additional guidance on the basics of DOT regulatory compliance. Air Canada states that this guidance is reinforced in monthly briefings to Air Canada airport teams. Air Canada further notes that it assigned its airport managers to spot check all stations for compliance with DOT rules and regulations. Finally, Air Canada points out that it has fully cooperated with the Department in this matter and reaffirms its commitment to providing its consumers with accurate denied boarding statements.

² See, e.g., United Airlines, Inc., *Violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259*, Order 2016-08-31 (Aug. 26, 2016).

Decision

The Enforcement Office views seriously Air Canada violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259. 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, Air Canada consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259, 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 Air Canada, 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 Air Canada violated 14 CFR 250.9 by failing to produce proper copies of the required denied boarding statement upon request at both boarding gates locations and ticket selling counters being used by the carrier;
3. We find that that by engaging in the conduct described in ordering paragraph 2, above, Air Canada failed to adhere to its Customer Commitment in violation of 14 CFR 259.5;
4. We find that, by engaging in the conduct described in ordering paragraphs 2 and 3, above, Air Canada engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
5. We order Air Canada and its successors and assigns to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 250.9 and 259.5 as described in ordering paragraphs 2, 3, and 4, above;
6. Air Canada 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
7. We order Air Canada to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 7, above, 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 Air Canada Airlines 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

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