



**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

Third Party Complaint of

Benjamin Edelman

v.

American Airlines

**Violations of 49 U.S.C. § 41712 and 14 CFR
Parts 221, 259 and 399**

Docket DOT-OST-2015-0254

Served: May 22, 2018

ORDER OF DISMISSAL

On December 8, 2015, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR § 302.404 against American Airlines (American). The Complainant alleges that American violated the Department's rules by attempting to improperly overcharge him for ticketing changes in violation of the applicable tariffs, failing to provide tariffs and fare calculation information, and failing to respond to his complaint in a timely manner. He contends that American violated 14 CFR §§ 221.100, 259.7 and 399.83. He also contends that American's actions constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712.

This order finds that American did not violate 14 CFR §§ 221.100 and 399.83, and its actions did not constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. American did violate 14 CFR 259.7(c) when it failed to respond to complaints submitted by the Complainant in a timely manner; however, there is no indication of a larger pattern or practice of non-responsiveness. Therefore, we will not take enforcement action such as assessing a civil penalty at this time, and this complaint is dismissed.

The Complaint

On December 8, 2015, the Complainant filed a formal complaint (Complaint) with the Department. The Complainant states that, on July 1, 2014, he purchased a ticket for round-trip business class travel on American from Amsterdam to Buenos Aires, with a stop-over in North America in each direction. The ticket allowed “changes without a fee.” The Complainant made a series of changes to his itinerary - including dates of travel, stopovers, and his ultimate destination - creating an open jaw itinerary as permitted under the fare rules issued at the time of original purchase. Although the Complainant’s position is that he should not have been charged any fees for his proposed itinerary changes, he does not dispute that itinerary changes may have resulted in a difference in the fare, which he would be required to pay. The Complainant claims that American attempted to charge him between \$3,000 and \$8,000 for these changes, surmising that the agent repriced the ticket using point to point fares at that time, instead of the fare basis of the original ticket. The Complainant also alleges that the agent attempted to charge him \$400 in U.S. taxes, which he refused to pay.

Ultimately, the Complainant was able to make his desired itinerary changes without additional fees, except in three instances where he paid additional charges (less than \$200 each). He believes that two of these three changes should not have incurred any fees. The Complainant alleges that American failed to provide him with the tariffs and fare calculations at his request and, thus, he was unable to prove that the calculations were inaccurate at the time.

The Complaint further states that he requested that American send him the tariffs and fare calculations several times, but that American failed to respond to his request. As a result, the Complainant alleges that American’s failure to respond to his complaint in a timely manner was a violation of 14 CFR Part 259.

The Complainant seeks several forms of relief including a request that the Department order American to do the following: produce the fare rules applicable to his ticket; provide all consumers fare calculations and ticket data elements with purchased tickets; comply with 14 CFR 221.100 by providing consumers with the complete tariff rules as an attachment to the purchased ticket; and attest to compliance with regulations regarding customer correspondence. Finally, the Complainant requests the Department to issue guidance or revised regulations to clarify that American’s practices are unfair and deceptive in violation of 49 U.S.C. § 41712.

Answer of American

In its Answer dated January 13, 2016, American confirmed that the Complainant purchased an e-ticket from American on July 17, 2014, for round-trip travel between Amsterdam and Buenos Aires, with stopovers in North America in both directions. American states that the Complainant attempted to make changes to his itinerary eight times after the time he purchased the ticket. American denies that it violated any regulatory or statutory laws and that the applicable tariff and fare rules were correctly applied, with one exception. American states that three of the eight ticketing changes resulted in additional fare collections. However, in one of the three instances (on the eighth ticket reissuance), American admitted that the additional fare collection was calculated incorrectly. This additional fare collection, in the amount of \$210.40, was refunded to the Complainant.

American denies that the applicable fare rules were not made available to the Complainant and clarifies that the applicable fare rules are available in the booking path on their website. American stated that the carrier's Passenger Refunds group provides this information to customers upon request. American admitted that it did not respond to the Complainant's inquiries to the Passenger Refunds group, but denies that it violated 14 CFR 259.7(c) because the inquiries were not complaints. American also states that the fare calculations were later provided to the Complainant.

Relevant Law, Analysis and Decision

The practices in dispute are American's alleged attempt to charge the Complainant a higher fare on a fully refundable ticket, American's alleged failure to provide Complainant the fare calculations applicable to his ticket, and American's failure to respond to his complaint in a timely manner.

Disclosure of Fare Calculations

Section 14 CFR 221.100 requires that carriers make tariff information available to the general public in a variety of ways, including making tariffs available at locations where tickets are sold or posting applicable sections at carrier offices and other locations. Similarly, section 221.2 requires that tariffs be filed with the U.S. Department of Transportation. However, 14 CFR 293.20, adopted in 1999, relieves carriers of the tariff posting, notification and subscription requirements under 14 CFR Part 221, except for those relating to the contract of carriage.

Here, the Complainant admits that he had access to the fare rules (which are a part of the carrier's tariff) and, in fact, consulted those rules in the process of purchasing his ticket. American confirmed that it provides the applicable fare rules for a given ticket available to a consumer, in the ticket booking path and, sometimes, in its online member portal (AAdvantage). American also makes certain tariffs available for public viewing on its website. Although the carrier does not make fare calculations applicable to a specific ticket public, it has a policy of making fare rules and fare calculations available to a consumer who requests them. In this instance, American acknowledged that it failed to provide the Complainant with the applicable fare calculations in a timely manner; however, the fare calculations are not required to be publicly available and the carrier had no regulatory obligation to make them available. Eventually, American provided the Complainant with the fare calculations, along with a refund of certain overcharges. Since American is in compliance with the publication requirements of 14 CFR Part 221, the applicable rules and calculations were provided to Complainant, and the alleged overpayment has been refunded, no additional action is necessary.

Similarly, we are unable to find a basis for the Complainant's request that the Department require American to provide all passengers with the applicable fare calculations, fare rules and tariffs. The Department's regulations do not require that carriers provide passengers with fare calculations and, as the Department's investigation showed, American has made public all the relevant tariff rules in accordance with 14 CFR Part 221. Moreover, we find no reason for the Department to issue additional guidance and/or regulatory revisions as to 14 CFR Part 221 based on the Complainant's allegations.

Fees for Ticket Changes

The Complainant also alleges that American engaged in a deceptive practice in violation of 49 U.S.C. § 41712 by incorrectly pricing his ticketing changes and failing to provide the relevant fare calculations in a timely manner. A practice is deceptive 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).¹ However, Complainant points to no action by American that supports his assertion that the carrier acted deceptively. Therefore, we do not find American's omissions or practices in this instance were deceptive.

Consumer Complaint

Finally, the Complainant appears to allege that American's failure to respond to his inquiry regarding the fare calculation is a violation of 14 CFR 259.7(c). Section 259.7(c) requires that each covered carrier shall acknowledge in writing receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and shall send a substantive written response to each complainant within 60 days of receiving the complaint. A complaint is a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's services.

The Complainant emailed the Passenger Refunds Group on April 16, 2015, April 30, 2015, and May 23, 2015, inquiring about the fare calculations pertaining to his ticket. In addition, the Complainant emailed customer service on August 13, 2015, which American acknowledged on the same day. American admitted that the Passenger Refunds group did not respond to the Complainant in a timely manner; however, American denied that the Complainant's communications to the Passenger Refund group constituted a "complaint" under 14 CFR 259.7(c). American also stated that the relevant fare calculations were provided to the Complainant and the applicable refund was subsequently issued.

American contends that the Complainant's communications on April 16, 2015, April 30, 2015, and May 23, 2015, did not constitute complaints. We do not agree; the Complainant's communications on April 16, 2015, April 30, 2015, and May 23, 2015, appear to be expressions of dissatisfaction concerning allegedly erroneous fare calculations. American's failure to respond to the Complainant is inconsistent with the stated policy of its Passenger Refunds group to provide detailed information regarding fare calculations upon request and is a violation of 14 CFR 259.7(c). However, despite this violation, we find no indication of a larger pattern or practice of non-responsiveness to consumer complaints, as the complainant alleges. We generally pursue enforcement action based on a pattern or practice of violations.² As such, we will not take

¹ The statute providing the Department authority to regulate unfair and deceptive practices, 49 U.S.C. § 41712, is modeled after Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. In analyzing whether a practice of a carrier or ticket agent action is deceptive, we use a standard similar to the Federal Trade Commission's standard for deception. See <http://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>.

² We note that American previously violated 14 CFR Part 259.5(b)(5) and 14 CFR Part 374, when its employees failed to adhere to the carrier's customer commitment regarding refunds in 2015. The order was issued in response to the Department's investigation into American's refund practices spanning a period of six months and determination

enforcement action by assessing a civil penalty at this time, nor do we find any reason for the Department to issue additional guidance and/or regulatory revisions in this regard.

Based on the above facts and applicable law, we do not believe that enforcement action is warranted and dismiss this complaint.

ACCORDINGLY, pursuant to the authority delegated under 49 CFR Part 1, we dismiss the complaint of Benjamin Edelman against American Airlines, Inc., in Docket DOT-OST-2015-0254. Pursuant to 14 CFR 302.406(b), this order shall become effective as a final order of the Department thirty days after service of this order.

BY:

BLANE A. WORKIE
Assistant General Counsel for
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that American failed to process a significant number of refund requests in a timely manner. *See* Order 2017-0001 (July 21, 2017).