



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

Issued by the Department of Transportation  
on the 24<sup>th</sup> day of January, 2020

**Delta Air Lines, Inc. Violations of 49 U.S.C.  
§§ 40127(a) and 41310**

**Docket OST-2020-0001**

**Served: January 24, 2020**

**CONSENT ORDER**

This order concerns violations by Delta Air Lines, Inc. (Delta) of Federal statutes prohibiting U.S. and foreign air carriers from subjecting any air traveler to discrimination on the basis of race, color, national origin, religion, sex or ancestry. The order directs Delta to cease and desist from future similar violations, assesses the carrier \$50,000 in civil penalties, mandates civil rights training to certain Delta flight and cabin crews and customer service representatives, and requires the carrier to enhance its e-training civil rights program.

**Applicable Law**

Under Federal law, 49 U.S.C. § 44902, a carrier may properly refuse to transport a passenger that presents a safety or security risk. Under FAA rules, 14 CFR 91.3, the pilot in command of the aircraft is the final authority as to the operation of that aircraft, including any decision to refuse to transport a passenger. Although an airline has the legal authority to refuse to transport an individual that it decides is unsafe, Federal law prohibits any airline decision to refuse to transport that is based on the person's race, color, national origin, religion, ethnicity, or sex. Section 40127 of title 47 of the U.S. Code states that "an air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry." Section 41310 prohibits "an air carrier or foreign air carrier" from subjecting anyone to "unreasonable discrimination" on flights between the U.S. and foreign points.

Courts have found that refusal of transportation by airlines must be rational and reasonable and not capricious or arbitrary, in view of the facts and circumstances of the case as known to the airline at the time. See Williams v. Transworld Airlines, 509 F.2d 942(2d Cir. 1975). Whether a removal was capricious and arbitrary is a question of fact. Eid v. Alaska Airlines Inc., 621 F.3d 858 (the Ninth Circuit found that a jury could conclude that the Captain's refusal to re-board passengers after they had been successfully screened had nothing to do with safety, but was designed to placate a flight attendant). If a carrier removes a passenger because of security concerns, the carrier must allow that

passenger to re-board the same aircraft and take his or her flight once the security concern has been neutralized, so long as the aircraft has not yet departed. See Atlantic Southeast Airlines, Inc., DOT-OST 2012-5-2 (May 2, 2012); United Air Lines, Inc., DOT-OST-2011-11-2 (Nov. 1, 2011); and American Airlines Inc., DOT-OST-2003-15046 (Feb. 27, 2004).

### **Facts and Conclusions**

#### **Removal and Denied Boarding of Mr. and Mrs. X**

Our investigation of a discrimination complaint filed with the Department revealed that Mr. and Mrs. X, who are Muslim, boarded Delta Flight 229 on July 26, 2016 at Charles de Gaulle Airport (CDG) in Paris, France and were seated together on the aircraft to return home to Cincinnati, Ohio. Mrs. X was wearing a head scarf at the time. A passenger informed a Delta flight attendant that Mr. and Mrs. X's behavior during boarding had made the passenger "very uncomfortable and nervous." Specifically, the passenger stated to the flight attendant that she observed that Mr. X "inserted something plastic into his watch and was 'doing something with it' and that the couple was "fidgety, nervous, and sweating." The flight attendant noted that the passenger did not explain everything that made her nervous. The flight attendant stated that as she walked through the cabin on a routine task, she observed Mr. X texting on his cell phone using the word "Allah" several times. As the flight attendant approached Mr. X, the flight attendant reports that Mr. X made eye contact with her but did not smile and reached over to pat his wife's hand. The flight attendant then informed the Captain of the passenger's account and her observations. In the meantime, another flight attendant walked through the cabin and observed Mr. X texting on his phone and as she passed, he changed his screen.

After speaking with the flight attendants, the Captain conferred with Delta's Corporate Security, who informed the Captain that Mr. and Mrs. X were U.S. citizens, returning home, and that there were "no red flags." Nevertheless, the Captain requested that a Delta supervisor (Red Coat) deplane Mr. and Mrs. X for further vetting and that they be accommodated on another flight later that afternoon. The Red Coat requested that a ground security officer accompany him to interview Mr. and Mrs. X, which he did at the top of the staircase attached to the aircraft. The security officer described Mr. and Mrs. X as "not having an aggressive attitude, but more of a stressed one and incomprehension on their part" about why they had been removed. Neither the Red Coat nor the security officer's statements made any observation or reference to the watch observed by the passenger, or alleged suspicious behavior noted by the flight crew. The security officer reported to Delta's Corporate Security that everything was okay and the couple was clear to travel.

The Captain was informed that Mr. and Mrs. X were cleared to travel while they were still planeside, but the Captain refused to accept Mr. and Mrs. X back on board the aircraft because the flight attendants were not comfortable having Mr. and Mrs. X traveling on that flight. The security officer stated that the decision to remove Mr. and Mrs. X had been made before he had time to interview them. Mr. and Mrs. X were escorted back to the terminal, allowed to leave the terminal with no further security screening and rebooked on a Delta flight departing the next day. The Captain failed to follow Delta's required security protocol, prior to making the decision to remove Mr. and Mrs. X from Flight 229. It appears that but for Mr. and Mrs. X's perceived religion, Delta would not have removed or denied them re-boarding from Flight 229 on July 26, 2016.

#### **Removal of Mr. A on July 31, 2016**

As part of our investigation, we also reviewed passenger complaints received by Delta between June 30, 2016 and June 30, 2018, alleging that Delta unlawfully denied boarding, or removed passengers from their flights. Our review revealed that Mr. A, a Muslim passenger, boarded Flight 49 at Amsterdam Schiphol Airport for travel to New York's John F. Kennedy Airport, on July 31, 2016. Other passengers reported to Delta's flight crew that they observed Mr. A making "significant eye contact" and later speaking with a person of similar ethnicity in the gate area. The passengers observed that the person to whom Mr. A was speaking did not board the flight but appeared to give Mr. A a small package. Further, the flight attendants observed Mr. A on board the aircraft and he moved from a non-window seat to a window seat, looked outside the window constantly, and appeared to be perspiring. The flight attendants shared the other passengers' and their own observations with the Captain of Flight 49. At the Captain's request, the First Officer then walked through the cabin but observed nothing remarkable about Mr. A. After some inquiry, Delta Corporate Security informed the Captain that Mr. A's record had "no red flags."

The Captain decided to proceed with the flight with Mr. A on board and pulled away from the gate; however, the Captain changed his mind after the flight attendants expressed, without any intervening incident, that they remained uncomfortable. The Captain returned to the gate and requested that Mr. A be removed and booked on a later flight. This action was taken without following required Delta security protocol. Moreover, even though security inspected the area surrounding Mr. A's seat and his baggage was offloaded, Mr. A was not subjected to additional security screening prior to being rebooked. Therefore, we find that the Captain's removal of Mr. A on Flight 49, on July 31, 2016, from Amsterdam to New York after being cleared was discriminatory.

### **Response**

Delta disagrees with the Department's contention that it engaged in discriminatory conduct. While Delta does not dispute that each of these two incidents could have been handled differently, Delta asserts that this fact does not necessarily lead to the conclusion that Delta acted improperly. In the case of Mr. and Mrs. X, Delta notes that another customer, who identified herself as a retired Federal Aviation Administration safety inspector, reported what she considered to be suspicious conduct. That individual went so far as to provide a signed statement, including her contact information. As for Mr. A, Delta flight attendants did observe him switch seats while onboard and behave nervously. In short, in both cases, Delta maintains that it acted on observations of behavior, rather than identity.

All that said, Delta asserts that it is always open to enhancing its training program in the area of cultural sensitivity and that it continually works to improve its training and internal protocols in all aspects. Moreover, after both incidents in July 2016, Delta states that it reviewed and clarified its procedures to investigate suspicious activity. Following the July 2016 incidents, Delta reviewed and enhanced its investigative process to make it more collaborative and objective than it was at the time of the incidents described herein.

Delta is a global airline that serves customers of all races, ethnicities, and religious affiliations. Delta asserts that its culture is built on welcoming and treating everyone with dignity and respect. Delta stands by its record as an airline where all are welcome, and unlawful discrimination of any kind is not tolerated. Delta asserts that it has learned from the two incidents at issue here, and has improved its processes because of them.

### **Decision**

The Enforcement Office views seriously Delta's violations of 49 U.S.C. §§ 40127(a) and 41310. Accordingly, after considering carefully all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Delta consents to the issuance of this order to cease and desist from future violation of 49 U.S.C. §§ 40127(a) and 41310, and to the assessment of \$50,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The 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 Delta 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 Delta Air Lines, Inc. engaged in discriminatory conduct and violated 49 U.S.C. §§ 40127(a) and 41310 when it removed and denied re-boarding to Mr. and Mrs. X on Delta flight 229 and removed Mr. A on Delta flight 49, as discussed above;
3. We order Delta Air Lines, Inc. and its successors and assigns, to cease and desist from future violations of 49 U.S.C. §§ 40127(a) and 41310.
4. We order Delta Air Lines, Inc. to provide civil rights training (including cultural sensitivity training) to all flight and cabin crew members and all customer service employees involved in these incidents – to the extent that those individuals are and remain active employees of Delta Air Lines, Inc. That training must make clear that, in the absence of a valid safety or security concern, passenger or crew discomfort is not an acceptable basis to deny transportation. Upon completion of that training, but no later than 9 months after the service date of the order, Delta Air Lines, Inc., must submit to the Department a sworn statement from an appropriate company official certifying that the flight and cabin crewmembers and all customer service employees involved in these incidents have received the civil rights training required under this order;
5. We order Delta Air Lines, Inc. to revise its security and secondary screening protocols to include clear procedures consistent with Federal law<sup>1</sup> to allow passengers to re-board the aircraft after appropriate security personnel determine that the initial security and safety concerns have been eliminated if the aircraft is still at the gate.
6. We order Delta Air Lines, Inc. to enhance its pilot e-training civil rights program no later than 9 months after the service date of this order. We also order Delta to submit to the Department a copy of its enhanced e-training program no later than 3 months after its modification, and to

---

<sup>1</sup>Nothing in ordering paragraph 5 is to be construed as compromising the intent and purpose of 14 CFR 91.3, that the pilot in command of the aircraft is the final authority as to the operation of that aircraft, including any decision to refuse to transport a passenger. However, any airline decision to refuse to transport, whether it be the decision of the pilot or other airline staff, cannot be based on the passenger's race, color, national origin, religion, ethnicity, or sex.

provide a sworn statement from an appropriate company official certifying the implementation of the enhanced civil rights program within 18 months of the service date of this order.

7. Any failure by Delta Air Lines, Inc. to conduct civil rights training to its flight and cabin crew and customer service employees in accordance with ordering paragraphs 4 and 6; revise its security screening protocols and procedures in accordance with paragraph 5; enhance its e-training civil rights program in accordance with ordering paragraph 6; or adequately document its actions shall constitute a continuing violation of this consent order and subject Delta Air Lines, Inc., to additional enforcement action.
8. We assess Delta Air Lines, Inc. \$50,000, in compromise of civil penalties that might otherwise be assessed for the violations described above; and
9. We order Delta Air Lines, Inc. to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 8, 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 Delta Air Lines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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 A. WORKIE**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

*An electronic version of this document is available at*  
[www.regulations.gov](http://www.regulations.gov)

---

For Delta Air Lines, Inc.

---

Blane A. Workie  
Assistant General Counsel for  
Aviation Enforcement and Proceedings

---

EIN (Employer Identification Number)  
of Delta Air Lines, Inc.