



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

Issued by the Department of Transportation
on the 23rd day of September, 1998

Lufthansa German Airlines

Served September 23, 1998

Violation of 49 U.S.C. § 41310

CONSENT ORDER

This order concerns a violation by Lufthansa German Airlines (Lufthansa) of 49 U.S.C. § 41310 for refusal to board a qualified disabled passenger due to the passenger's disability. Pursuant to 49 U.S.C. § 41310(a), a foreign air carrier "may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination." Based on an investigation conducted by the Office of Aviation Enforcement and Proceedings (Enforcement Office), it has determined that Lufthansa violated the above statute when it denied boarding to a passenger due to his paralysis.

On June 17, 1997, an individual with a disability (Mr. B¹) was denied boarding on United Flight 3516, which was operated between New York and Frankfurt, Germany, by Lufthansa under a code-share agreement. Mr. B suffers from right hemiplegia, which is paralysis of the right side of the body, and uses a wheelchair. Mr. B purchased his ticket from United, and had traveled from Seattle to New York on United Airlines without incident, seven days prior to the referenced Lufthansa flight. He was preparing to board the second leg of the flight, operated by Lufthansa, to Frankfurt, Germany. There was a certain amount of confusion on the part of the security personnel regarding the nature of the screening to be afforded Mr. B, but after a full body search, Mr. B proceeded down the jetway. As he was preparing to transfer himself from his own wheelchair to the boarding chair, he apparently propped himself against the wall for support. When Lufthansa crew and ground staff became aware of Mr. B's disability, they refused to accept him for the flight, at which point he became upset. Lufthansa removed Mr. B from the jetway and transported him from Kennedy Airport to a doctor's office in Manhattan for a determination of whether he was capable of flying unassisted. The doctor conducted an evaluation of Mr. B and concluded that he was unable to travel on Lufthansa without the assistance of a capable attendant.² In

¹ Identification of the individual is unnecessary for purposes of this consent order and is withheld for privacy reasons.

² Lufthansa provided documentation from its doctor, who based his determination on his opinion that

response to the Enforcement Office's investigation letter to United about the matter, Lufthansa suggested through United that Mr. B was properly denied boarding because of his disability and disruptiveness.

Order 94-1-19 was issued by the Department of Transportation and it granted approval of the Joint Application of United and Lufthansa to conduct code-sharing services on U.S.-Germany transatlantic routes. One provision of the order specifies that "code-sharing operations authorized by this order are expressly conditioned upon the requirement that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (i.e. the ticket)." (Order 94-1-19, para. 6). Therefore, United's tariff rules, by virtue of its code-share relationship, apply to the international segment of service operated on its behalf by its code-share partner, Lufthansa.

Rule 35UA(F)(1)(e) of United's tariff requires a passenger with a disability to be accompanied by an attendant only when that passenger "has a mobility impairment so severe as to be unable to *assist* in his/her own evacuation." (emphasis added). Otherwise, the passenger must be carried unattended. From the information provided to us by Mr. B and United, it appears that Mr. B had no problems boarding or flying from Seattle to New York when he flew unattended. He had no difficulty proceeding through security and down the jetway in preparation for boarding Flight 3516 using his wheelchair. Moreover, the Enforcement Office is aware that Mr. B has flown numerous times prior to this flight without incident. From this information and the Enforcement Office's understanding of Mr. B's condition, Mr. B could at least have assisted in his own evacuation.³ Since an attendant was unnecessary, Lufthansa's refusal to transport Mr. B based on his physical condition was improper. While Mr. B became upset, this was only after he had been cleared by security and denied boarding *because of his disability*.

Therefore, under the circumstances described above, Lufthansa's failure to transport this passenger based solely on his disability was unlawful discrimination in violation of 49 U.S.C. § 41310. Lufthansa's failure to follow United's tariff rules on transporting persons with disabilities was improper. Moreover, Lufthansa's treatment of Mr. B at the jetway, and his ultimate denial of boarding, was unacceptable. Lufthansa's treatment of Mr. B after he was denied boarding, by transporting him to Manhattan to undergo a medical evaluation, in the opinion of the Enforcement Office further compounded this violation. These factors, taken together, amount to unreasonable discrimination in violation of 49 U.S.C. § 41310.

In mitigation and explanation, Lufthansa states that Mr. B's hostility exacerbated the situation and prompted the course of action taken by Lufthansa employees. Lufthansa

Mr. B could not walk or stand unassisted. Mr. B does not agree with the doctor's conclusion or his basis for such conclusion.

³ Mr. B has also advised the Enforcement Office that he can stand for short periods holding onto seats and can maneuver unassisted from a wheelchair to a boarding chair and from a boarding chair to an airplane seat. In fact, according to Mr. B, he can walk short distances without assistance, for example, to the restroom on an aircraft.

describes the incident as follows. According to the carrier, when Mr. B attempted to transfer to a boarding chair from his wheelchair, Lufthansa staff noticed that he was in distress and tried to provide assistance. Mr. B, however, according to Lufthansa, violently refused any help. Without knowing the extent of Mr. B's medical condition and faced with a very hostile and unruly reaction from Mr. B and in the interest of safety, the cockpit crew, according to the carrier, decided to seek a medical evaluation of the passenger before accepting him for transportation. At this point, the carrier states, Mr. B became even more upset, and in swinging his arms, he almost hit the captain. Since in the view of the carrier's staff the situation was becoming uncontrollable, they put the airport police force on standby.

Lufthansa also notes that immediately after Mr. B's exit from the jetway, following the decision to seek a medical consultation, its staff made every possible effort to assist him, giving him an option to travel on the first available flight on American Airlines; however, according to Lufthansa, Mr. B claimed to have had the same problem with American Airlines in the past, and refused the offer. Mr. B did not, according to Lufthansa, refuse to see the carrier's appointed doctor and the carrier provided assistance to Mr. B in transporting him to the physician's office, with two members of the carrier's staff accompanying him. According to the physician, Lufthansa states, Mr. B could not walk unassisted and consequently he would not be able to evacuate himself from the aircraft should the need arise. In addition, Lufthansa states that it absorbed the cost of the passenger's accommodations and meals at the Kennedy Airport Hilton Hotel upon his return from the doctor's office. Lufthansa further states that it arranged booking on British Airways to complete his travel and arranged assistance for Mr. B to get from the hotel to the British Airways terminal at his request. Lufthansa expresses its view that if Mr. B would have allowed its personnel to assist him, the entire incident could have been avoided. However, according to the carrier, his aggressive attitude and unruly behavior turned a very manageable situation into the circumstances he alleges, which then led to reasonable safety concerns on Lufthansa's part. Lufthansa states that it agrees to this consent order in a further effort to conclude the matter in an amicable fashion. However, Lufthansa strongly denies that any intentional violation of 49 U. S. C. § 41310, or any intentional discrimination of any kind occurred in this case at any time.

After carefully considering all the facts in this matter, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation and without admitting or denying the alleged violations described above, Lufthansa has agreed to a settlement of this matter with the Enforcement Office.

Under this order, Lufthansa consents to cease and desist from future violations of 49 U.S.C. § 41310 and agrees to the assessment of \$1,000 in civil penalties. The Enforcement Office believes that the assessment of a civil penalty of \$1,000 in this instance is warranted in light of the nature and extent of Lufthansa's violation. Nothing in this order is intended to preclude Lufthansa, or any other foreign air carrier, from the legitimate exercise of its discretion to refuse to transport disabled passengers for valid safety reasons. Nor does this order deny or limit the right of a foreign air carrier in appropriate instances to require a medical certificate from a passenger's physician stating that the passenger is capable of

completing the flight safely.⁴ In the circumstances presented in the case, however, Lufthansa's refusal to transport was not warranted. This order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the Federal statute prohibiting unreasonable discrimination and to ensure proper carriage and treatment of passengers with disabilities.

Lufthansa enters this agreement with the understanding that nothing in this consent order constitutes an admission of liability, nor of any fact stated herein, for use in any court of law or other tribunal.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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 Lufthansa German Airlines violated 49 U.S.C. § 41310 by failing to transport a qualified disabled passenger due to the passenger's disability when no *bona fide* safety reason existed and by requiring the passenger to submit to a physical examination by a physician retained by the carrier;
3. We order Lufthansa German Airlines to cease and desist from further violations of 49 U.S.C. § 41310, as described in paragraph 2 above;
4. Lufthansa German Airlines is assessed \$1,000 in compromise of civil penalties that might otherwise be assessed for the violation found in paragraph 2 of this order. Payment shall be made within 15 days after the service date of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Lufthansa Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and 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:

ROSALIND A. KNAPP
Deputy General Counsel

⁴ Although 14 CFR Part 382, the Department's rule prohibiting discrimination against disabled passengers, does not apply to foreign carriers, its provisions offer some guidance on the issues raised in this case. Part 382 explicitly recognizes the authority of domestic carriers to refuse to transport a disabled passenger "on the basis of safety" in 14 CFR 382.31(d); a provision regarding assurances from the passenger's physician as to his or her medical condition is contained in 382.53(b)(iii).

(SEAL)