



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

Issued by the Department of Transportation
on the 16th day of August, 1999

Served August 16, 1999

Complaints of

**Franz Soni
Paul Tobin and Angelo Bianco
And
Gerard M. Kelly
v.
Continental Airlines, Inc.**

**Alleging Violations of 49 U.S.C. § 41705 and
14 CFR Part 382**

**Dockets OST 97-3287
 OST 98-3623
 OST 98-4504**

Continental Airlines, Inc.

**Violations of 14 CFR Part 382, and
49 U.S.C. §§ 41310, 41702, and 41705
Enforcement Proceeding**

Docket OST 99-6111

**NOTICE OF ENFORCEMENT PROCEEDING AND
PROPOSED ASSESSEMENT OF CIVIL PENALTIES**

The attached complaint of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings alleges that Continental Airlines, Inc. (Continental), violated a number of the requirements of 14 CFR Part 382 the Department's rule that implements the Air Carrier Access Act (49 U.S.C. § 41705) and prohibits discriminatory treatment of the disabled in air transportation. To the extent that these violations occurred in interstate air transportation, the incidents are also

violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. To the extent the violations occurred in foreign air transportation, the incidents also represent violations of 49 U.S.C. § 41310, which in part prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation.

In 1997 and 1998 three formal complaints were filed with the Department under 14 CFR 302.201 alleging violations of the cited statute and regulation. The complaints state, as their principal allegation, that the carrier failed to meet two requirements of Part 382, the requirement to provide prompt, attentive wheelchair and boarding chair service, and the requirement to stow the assistive devices of disabled travelers in the cabin area in certain circumstances. Section 382.39(a) requires that carriers provide wheelchair assistance to disabled persons, with the associated obligation to perform this service competently and promptly. When such service is performed, moreover, section 382.39(a)(3) states that no passenger may be left unattended in a wheelchair for more than 30 minutes. The complaints, taken together, allege that on one or more occasions the carrier provided wheelchair or boarding chair assistance that was tardy or negligent, and that on two occasions the carrier failed to stow the complainants' wheelchairs in the cabin area, as required under 14 CFR 382.41, and insisted on placing them in the cargo compartment.

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), in view of these formal complaints, conducted an informal investigation of Continental's compliance with Part 382, limited to those portions of the rule relating to wheelchair service and stowage of assistive devices, both subjects of the formal complaints. Our survey of complaints received by the carrier itself and of complaints submitted to the Department directly by consumers revealed several additional instances of apparent violations of 14 CFR 382.39, but no additional violations of 14 CFR 382.41. In addition, we noted several instances in both the correspondence files provided by Continental in connection with this investigation and in connection with other cases antedating our inquiry, where the carrier had failed to provide full dispositive responses to written complaints it received from disabled air travelers as required by 14 CFR 382.65.

Based on the formal complaints referred to above and the investigation undertaken by the Enforcement Office, there are reasonable grounds, in my opinion, to believe that Continental has violated provisions of 14 CFR Part 382 and that an investigation of the alleged violations is in the public interest. Accordingly, pursuant to Rule 206 of the Department's Rules of Practice, 14 CFR 302.206, I institute a formal enforcement proceeding to investigate the allegations set forth in the attached complaint.

Under 49 U.S.C. § 46301 and 14 CFR Part 383, Continental may be assessed civil penalties of up to \$1,100 for each violation of the federal aviation statutes, or Department regulations or orders. The Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in the enforcement proceeding instituted by this notice. Under Rule 206a of the Department's Rules of Practice, 14 CFR 302.206a, Continental is notified that it may be liable for civil penalties of \$250,000, reflecting violations of 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310, and 14 CFR 382.39, 14 CFR 382.41, and 14 CFR 382.65. We are also notifying the carrier that it may be liable for an additional penalty of \$1,100 for each additional violation of these statutory and regulatory provisions substantiated in the course of this proceeding.

This notice and the attached complaint will be served on Continental. Under Rules 206a and 207 of the Department's Rules of Practice, 14 CFR 302.206a and 207, Continental is required to file, within 15 days, an answer to the complaint admitting or denying specifically and in detail each allegation of the complaint and a response to the proposed assessment of civil penalties, specifically presenting any matters the respondent intends to rely on in opposition to or in mitigation of such civil penalties.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

CERTIFICATE OF SERVICE

I certify that on August 16, 1999 , I served the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties and the related Complaint on the Respondent by first class mail addressed to Counsel for the Respondent and to the Respondent's address in Houston, Texas, and Counsel for the Complainants in the captioned formal complaints.

Rosalind A. Knapp
Deputy General Counsel

By:

Nicholas Lowry
Attorney
Office of Aviation Enforcement
and Proceedings
(202) 366-9351

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D. C.**

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ENFORCEMENT COMPLAINT

1. Continental Airlines (Continental), holds certificate authority under 49 U.S.C. § 41101 to engage in air transportation of passengers and cargo. Continental's principal office is located at 2929 Allen Parkway, Houston, Texas 77019.

2. As a certificated air carrier, Continental is required to comply with the Air Carrier Access Act, 49 U.S.C. § 41705, and 14 CFR Part 382, the Department's rule that implements 49 U.S.C. § 41705 and prohibits discriminatory treatment of the disabled in air transportation.
3. As a certificated air carrier, Continental is subject to the requirements of 49 U.S.C. § 41702 which requires that air carriers provide safe and adequate interstate air transportation.
4. As a certificated air carrier, Continental is subject to the requirements of 49 U.S.C. § 41310 which in part prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation.
5. Three formal complaints, styled *Franz Soni v. Continental Airlines* (Dkt. OST-97-3287); *Paul Tobin and Angelo Bianco v. Continental Airlines* (Dkt. OST-98-3623) and *Gerard Kelly v. Continental* (Dkt. OST 98-4504), have been filed under 14 CFR 302.200 alleging a number of violations of 49 U.S.C. § 41705 and 14 CFR Part 382.
6. Mr. Soni alleges (Dkt. OST-97-3287): (a) that a boarding chair was not promptly made available on his August 2, 1997, flight from Newark to Tampa, as required by section 382.39(a)(1); (b) that on the same flight, the carrier failed to stow his wheelchair in the cabin area on an aircraft that had a suitable stowage area in violation of section 382.41(e)(2); (c) that, on his August 5 return flight, he was not provided a seat with a moveable armrest and that attendants, in lifting him to the aisle chair, failed to exercise sufficient care and caused him to suffer a bruise; and (d) that on a third flight, a November 9 flight from Tampa to Newark, he was given a seat that did not have a functioning moveable armrest and that he received a bump when he was negligently transferred to a boarding chair at Newark. These incidents, according to the complaint, demonstrate a pattern of discrimination against disabled travelers and constitute violations of 49 U.S.C. § 41705 and 14 CFR Part 382.
7. Mr. Tobin (in his joint complaint with Mr. Bianco, Dkt. OST-98-3623) claims that he was carelessly transferred to an aisle chair, and suffered minor bruises as a result, and both he and Mr. Bianco allege that upon arrival at Newark, their destination on a September 1997 flight, they were stranded for approximately one-half hour aboard an aircraft while awaiting a boarding chair in violation of section 382.39(a)(1).
8. Mr. Kelly (Dkt. OST 98-4504) alleges that, on a flight from Newark to Las Vegas on September 11, 1998, Continental refused to stow his wheelchair in the passenger compartment on the aircraft in violation of section 382.41(e), and instead placed it in the cargo hold.

9. True and correct copies of the three complaints (without attachments) are attached as Appendices A, B, and C.
10. In addition, the Office of Aviation Enforcement and Proceedings has obtained partial records of informal complaints and lists of complaints received by Continental itself which reflect a number of violations of Part 382 during the period January 1997 to March 1998. These incidents include 13 instances of strandings of disabled passengers aboard aircraft or in terminal areas in violation of sections 382.39 (a)(1) and 382.39 (a)(3); approximately 100 instances of alleged negligent handling of passengers in wheelchairs or failure to provide wheelchair service promptly, also in violation of sections 382.39 (a)(1) and 382.39 (a)(3); and 9 instances of failure to provide a dispositive response to written complaints as required by section 382.65 (b)(3).
11. By engaging in certain of the conduct alleged in the three formal complaints referenced in this complaint, and described in paragraphs 4, 5 and 6 *supra*, and by engaging in the conduct described in paragraph 8 *supra*, Continental has violated the requirements of 14 CFR Part 382 on more than 125 occasions.¹
12. The majority of the violations discussed in paragraph 11, *supra*, occurred in interstate air transportation, but a number involved foreign air transportation.

¹ The formal complaints of Mr. Soni, Messrs. Bianco and Tobin, and Mr. Kelly include several allegations which we have decided not to pursue in this case. Certain of their factual claims, accepted on their face, do not supply even a *prima facie* basis for alleging a violation of any provision of 14 CFR Part 382 or the other provisions at issue here. For this reason, we have not included in this complaint allegations related to violations of 14 CFR 382.45, which requires that carriers maintain a system that allows them to provide information to disabled travelers on the availability of seats with moveable armrests. No factual assertion in any of the three complaints indicates a violation of this provision. Allegations that Continental's training program was not adequate, in violation of 14 CFR 382.61, were similarly unsubstantiated by the complaints themselves or our investigation, and have therefore been omitted from this complaint. In addition, we have not alleged violations of Part 382 or 49 U.S.C. § 41705 on the sole basis of physical injuries which the complainants claim to have suffered during transfers to and from wheelchairs and boarding chairs, or on the sole basis of cases alleging such physical injuries which came to light in the course of our informal investigation. Where the carrier's training program appears to be adequate and the occurrences of injuries are infrequent, as appears to be the case here, the fault in such instances, if any, appears to lie with the individual employees involved. As with other passenger injuries aboard aircraft, tort law would cover such situations, as would court claims for damages under the Air Carrier Access Act. Finally, the issues raised by Mr. Soni's complaint regarding a flight from Italy to the U.S. in October 1997 were resolved in Order 98-12-19, a consent cease and desist order issued against Alitalia.

13. Each violation of the requirements of 14 CFR Part 382 referred to in paragraph 8 *supra* also constitutes a violation of the Air Carrier Access Act (49 U.S.C. § 41705).
14. To the extent that the violations described in paragraph 11 and 12 *supra* occurred in interstate air transportation, each such violation is also a violation of 49 U.S.C. § 41702 which requires that air carriers provide safe and adequate interstate air transportation.
15. To the extent that the violations described in paragraph 11 and 12 *supra* occurred in foreign air transportation, each such violation is also a violation of 49 U.S.C. § 41310 which prohibits unreasonable discrimination in foreign air transportation against any person.
16. Under 49 U.S.C. § 46301 and 14 CFR Part 383, the Department may assess civil penalties of up to \$1,100 for each violation of the Department's regulations (including 14 CFR Part 382), rules or orders, or certain specified statutory provisions, including 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310. For continuing violations, each day each violation continues constitutes a separate offense.
17. Under 49 U.S.C. § 46101(a)(4), the Department may order an air carrier to cease and desist from violating Department orders or rules, including 14 CFR Part 382, or certain statutory provisions, including 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310.

WHEREFORE, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings requests the Department of Transportation to:

- A. Find that Continental Airlines, Inc., has violated 14 CFR Part 382 by:
 - (i) stranding wheelchair-dependent passengers aboard aircraft, or in terminal areas, and failing to provide prompt and proper wheelchair and boarding chair services in violation of section 382.39 (a)(1) and 382.39 (a)(3);
 - (ii) failing to store assistive devices in the cabin area, as required by 382.41 (e); and
 - (iii) failing to provide dispositive responses to written complaints as required by 382.65 (b)(3).

- B. Find that by engaging in the conduct described in paragraphs A(i), A(ii) and A(iii), *supra*, Continental Airlines, Inc., has violated 49 U.S.C. § 41705;
- C. Find that to the extent the violations described in paragraphs A and B, *supra*, occurred in interstate air transportation, that the conduct violated 49 U.S.C. § 41702; to the extent that the violations occurred in foreign air transportation, that the conduct violated 49 U.S.C. 41310.
- D. Order Continental Airlines and its successors and assigns to cease and desist from violating 14 CFR Part 382 and 49 U.S.C. § 41705, 49 U.S.C. § 41702, and 49 U.S.C. § 41310 by engaging in the conduct described in paragraphs A, B, and C, *supra*;
- E. Assess civil penalties against Continental of \$250,000 for the violations described in paragraphs A and B above; and \$1,100 for each additional similar violation revealed in the course of this investigation;
- F. Grant such other relief as may be appropriate.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

Nicholas Lowry
Trial Attorney
Office of Aviation Enforcement and
Proceedings (C-70)
(202) 366-9351

August 16, 1999

Attachments: (Appendices A, B, and C)