



**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 August, 2000

Air Canada

Violations of 49 U.S.C. § 41310

Served August 22, 2000

CONSENT ORDER

This order concerns a violation by Air Canada of 49 U.S.C. § 41310 stemming from its refusal to transport a disabled passenger on a flight between Canada and the United States. Section 41310(a), in providing that a foreign air carrier "may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination," prohibits unreasonable discriminatory actions against persons¹.

Air Canada, according to information received by the Department, removed a disabled passenger who held a valid ticket issued by United Airlines, Air Canada's code-share partner, from a flight from Montreal to Washington, D.C. on February 15, 2000, for reasons related to her disability. The complaint we received alleged, and the carrier admits, that the passenger was removed from Air Canada flight 398 (United flight 3068) in contravention of its own policies, because a flight attendant,

¹ Section 41310(a), the applicable provision on the date of the incident in question, was the direct successor to the former section 404(b) of the Federal Aviation Statutes, 49 U.S.C. 1374(b). The older provision was generally invoked with respect to rate or fare issues. See, e.g., *Advanced Micro Devices v. CAB*, 742 F.2d 1520 (D.C. Cir, 1984). However, the Civil Aeronautics Board held that the predecessor provision also applied to foreign air carriers engaged in racially discriminatory practices in providing air transportation. *South African Airways, Houston Service Exemption*, 98 CAB 471. In addition, in a recent consent order against Alitalia (Order 98-12-19), we applied the current 49 U.S.C. § 41310 in an instance of disability-related discrimination by a foreign air carrier on a flight to the U.S. Recent statutory amendments, subsequent to the incident in this case, specifically prohibit discrimination against disabled persons by foreign air carriers. (106 P.L. 181, section 707, April 5, 2000).

unaware of the nature of the passenger's disabilities, mistakenly believed she required an attendant during travel.

As the Department has held, the provisions of 49 U.S.C. § 41310 prohibiting unreasonable discrimination against persons by airlines in foreign air transportation reach those instances, such as that presented here, where discrimination on the basis of disability is egregious or unconscionable. (Order 98-12-19). On this basis, we regard Air Canada's improper removal of the disabled passenger from its flight to be a clear violation of her right to travel free of unreasonable discrimination.

Air Canada argues that the Department lacks jurisdiction over the matter and states that, even if the Department had appropriate jurisdiction, it should decline jurisdiction over this case on the ground of comity. Air Canada states that since the Canadian Transportation Agency ("Agency") has already taken jurisdiction over this matter, Department action would subject Air Canada to duplicative regulatory processes. In mitigation, Air Canada has conceded that it violated its own policies and Canadian law during this incident but points out that it has taken corrective action by reviewing the incident with the flight attendant and pilot involved and by incorporating the incident as an example in its flight attendant training curricula, and has apologized to the passenger in writing. Further, the Agency has adjudicated this matter, holding that Air Canada's actions constituted "an undue obstacle to her mobility," and has directed Air Canada to reimburse the passenger's family for all expenses incurred as a result of this incident. (Decision No. 475-AT-A-2000). Finally, Air Canada states this was an isolated incident and has taken steps to ensure such incidents do not recur.

After carefully considering all the facts in this matter, including the mitigation submitted by Air Canada, the Office of Aviation Enforcement and Proceedings believes that enforcement action is warranted. In order to avoid litigation, Air Canada has agreed to the issuance of this consent order. Under this order, Air Canada agrees to cease and desist from future violations of 49 U.S.C. § 41310. This order will provide an incentive for Air Canada and all foreign air carriers to ensure proper treatment of disabled passengers and protect them against discriminatory conduct while traveling to or from the U.S.

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 Air Canada violated 49 U.S.C. § 41310 by unreasonably failing to transport a qualified disabled passenger due to the passenger's disability; and
3. We order Air Canada to cease and desist from further violations of 49 U.S.C. § 41310, as described above.

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

(SEAL)

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