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Order 2000- 9-15



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

Issued by the Department of Transportation
on the 14th day of September 2000

Complaint of

Louise M. Caplan v. Continental
Airlines, Inc.

Under 49 U.S.C. § 41705

Served September 14, 2000

OST Docket 2000-7009

ORDER DENYING PETITION FOR REVIEW

On March 3, 2000, Louise Caplan (Ms. Caplan or Complainant) filed a third-party complaint under section 302.201 of the Department's Procedural Regulations (14 CFR 302.201) against Continental Airlines, Inc. (Continental). The complaint alleged a number of violations of the Air Carrier Access Act (49 U.S.C. 41705) and 14 CFR Part 382, the Department's rule prohibiting discrimination against the disabled in air transportation.

The Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) dismissed the complaint in Order 2000-7-4, finding that it raised matters similar to those covered in Order 2000-3-24, a consent order against Continental, and that no public interest grounds existed for a separate investigation of Ms. Caplan's complaint.¹ Although the Department's rules do not specifically provide for review of such dismissal orders, the complainant filed a petition for review on July 18. As a matter of discretion, we are accepting the pleading as a petition for review of staff action under 14 CFR 385.30 *et seq.*

In her petition, the Complainant asserts the matters raised in her complaint are distinct from those settled in Order 2000-3-24. She claims that Continental "willfully and deliberately" failed to provide prompt wheelchair service and that an airline Complaint Resolution Officer (CRO) "willfully and

¹ In Order 2000-7-4, the consent order (Order 2000-3-24) is erroneously referred to as Order 2000-3-4.

deliberately" failed to provide assistance when requested to do so. The conduct of the carrier, according to the petition, was "well beyond simple negligence," in contrast to the cases that were the subject of the recent consent order. Moreover, the petition asserts that Ms. Caplan's experience occurred after the complaints relevant to the consent order.² The Respondent, Continental Airlines, filed an answer to the petition stressing that the dismissal was entirely appropriate given the factual setting of the case and was clearly within the proper exercise of the Department's discretion.

We affirm the Enforcement Office's decision to dismiss the complaint. Despite the petition's attempt to distinguish issues raised in the complaint from those addressed in Order 2000-3-24, we remain convinced that they are essentially the same. The petition seeks to depict Continental's actions toward the Complainant as "willful and deliberate," but neither the original complaint nor the petition provides evidentiary support for such a claim. To all appearances, based on the assertions contained in the complaint, Ms. Caplan's experience was comparable to those documented in complaints which were the basis of the prior consent order. The crux of Ms. Caplan's complaint is that she did not receive prompt wheelchair assistance. The Enforcement Office's review of the record in this case, we emphasize, disclosed numerous individual complaints describing similar experiences. Contrary to Ms. Caplan's assertion that the consent order dealt with incidents prior to her experience, the consent order did, in fact, specifically cover all disability complaints raising wheelchair assistance issues against Continental from April 1997 to the date of the settlement agreement in March 2000. While the initial formal complaint filed by the Enforcement Office relied on complaints prior to 1999, incidents subsequent to the date of the complaint were the subject of evidence requests submitted by that office and were contemplated in the settlement discussions leading to the consent order. We, therefore, agree with the Enforcement Office's view stated in Order 2000-7-4 that no public interest consideration exists that would warrant further investigation of this matter; rather, it is in the public interest for the Enforcement Office to use its limited resources to pursue other disability-related complaints.

ACCORDINGLY, I affirm the dismissal of the third-party complaint in this docket.

² The Complainant also asserts that a third-party complaint before the Department, such as the one filed in this docket, is the only legal recourse available to disabled travelers who seek redress for alleged discriminatory conduct by air carriers. This, however, is not the case, for in several circuits there is specific precedent supporting a private right of action under the Air Carrier Access Act. In particular, the Ninth Circuit, where the Complainant resides, has recognized such a remedy. (See *Adiutori v. Sky Harbor International Airport*, 103 F.3d 137 (9th Cir. 1996)).

This order is issued under authority assigned in 14 CFR 385.34(b) and shall be effective as the final action of the Department within 30 days after service.

By:

ROSALIND A. KNAPP
Deputy General Counsel

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