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ORDER 2001-8-17

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

Issued by the Department of Transportation
on the 21st day of August 2001

Atlantic Southeast Airlines

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

Served August 21, 2001

CONSENT ORDER

This consent order concerns a complaint filed by an individual with a disability (Mr. A¹) alleging that Atlantic Southeast Airlines ("ASA") violated 14 CFR Part 382 for its refusal to board a qualified disabled passenger due to the passenger's disability. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. §41705, and violations of that part also violate the ACAA. This consent order directs Atlantic Southeast to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier a civil penalty of \$5,000 in compromise of penalties otherwise assessable under 49 U.S.C. §46301.

On September 17, 2000, Mr. A was denied boarding on Flight 4201, which was operated between Dothan, Alabama, and Atlanta, Georgia, by ASA under a code-share arrangement. Mr. A is a paraplegic and uses a wheelchair. The ASA representative in Dothan asked Mr. A whether "he could evacuate himself off the aircraft" and when he answered that question in the negative, advised Mr. A that he had to travel with an

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

attendant. The ASA representative did not ask whether Mr. A was able to *assist himself* in his own evacuation. Ultimately, the ASA representative denied boarding entirely to Mr. A, explaining that ASA could not provide an employee to accompany Mr. A in this instance as the flight was oversold and there was not an available seat. Soon thereafter, the Department's Aviation Consumer Protection Division received a complaint about the denial of boarding of Mr. A by ASA.

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), in view of the complaint, conducted an investigation of ASA and determined that ASA's decision to deny boarding to Mr. A was based on an incorrect determination that he could not travel without an attendant. Section 382.35 outlines the situations in which carriers may require disabled passengers to travel with attendants. Section 382.35(b)(3), which pertains to situations where passengers have mobility impairments, requires a passenger with a disability to be accompanied by an attendant when that passenger has "a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft." Otherwise, the passenger must be carried unattended.

From the information provided to us by Mr. A, there is nothing to show that Mr. A could not assist himself in his own evacuation. From the information received by the Department and the Enforcement Office's understanding of Mr. A's condition, it finds that Mr. A could have assisted in his own evacuation. Since an attendant is unnecessary when a passenger can assist in his or her own evacuation, ASA's refusal to transport Mr. A based on his physical condition was improper.

In mitigation, ASA states that Part 382 allows airlines to require a passenger with disabilities to travel with an attendant under certain safety related circumstances including a situation where the passenger is unable to assist in his or her evacuation, and that section 382.35(c) describes that standard to mean "is he or she capable of travelling independently." ASA further states that the decision of ASA's agent to deny boarding to Mr. A was premised on this safety-related factor and was based on information and resources available to ASA at the time of the incident. Although the DOT preamble to Part 382 states that the carrier has "decisional discretion" in this area, ASA has acknowledged that the ASA agent did not follow the correct wording of the regulation in asking Mr. A whether he could assist himself in an evacuation. ASA further states that it has extensive procedures and policies, including comprehensive initial and recurrent training programs to educate and sensitize ASA employees on issues affecting passengers with disabilities, in general, and on the requirements for attendant assistance, in particular. Finally, ASA states that this incident was the result of a misunderstanding by an employee and was an isolated event that does not reflect a policy or practice by ASA of noncompliance with Part 382.

Based on the complaint referred to above and the investigation undertaken by the Enforcement Office, there are reasonable grounds to believe that ASA violated provisions of 14 CFR Part 382 and the ACAA. In order to avoid litigation, and without admitting the alleged violation, ASA has agreed to settle this matter with the Enforcement Office and enter into this consent order to cease and desist from future similar violations of Part 382

and the ACAA. Although we believe that ASA's conduct violated section 382.35, we also believe that the discrepancy is adequately addressed by the settlement reached in this case. This order directs ASA to cease and desist from similar violations in the future and assesses a civil penalty of \$5,000. Of this amount, the carrier will pay \$2,500 according to the terms stated in the ordering paragraph below. This order provides that a credit of \$2,500 will be allowed toward the purchase of new wheelchairs or other similar equipment for passengers with disabilities. We believe that this consent agreement and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and 14 CFR Part 382.

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 Atlantic Southeast Airlines violated 14 CFR 382.35 by improperly failing to transport a qualified disabled passenger due to the passenger's disability;
3. We find that Atlantic Southeast Airlines in the instance described in paragraph 2 violated the Air Carrier Access Act, 49 U.S.C. §41705;
4. We order Atlantic Southeast Airlines to cease and desist from further violations of 49 U.S.C. §41705 and 14 CFR Part 382, as described above;
5. Atlantic Southeast Airlines is assessed \$5,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order, which amount shall be due and payable within 21 days of the date of issuance of this order. Payment of \$2,500 shall be made 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 Atlantic Southeast 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; and
6. ASA is given an allowance of \$2,500 of the assessed penalty as a partial offset toward the purchase, within one year after the date upon which this order becomes final, of new wheelchairs or other similar equipment for passengers with disabilities. These equipment are to be assigned to stations that would not otherwise have received them. If the carrier fails to provide adequate

documentation verifying the appropriate expenditure of the \$2,500 offset, the offset amount shall become due and payable immediately. ²

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)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

² The carrier will submit documentation confirming the purchase and receipt of these equipment as well as a statement regarding the stations to which they are assigned, within 30 days after the end of the one-year period described in paragraph 6.