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Order 2001-2-6



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

Issued by the Department of Transportation
on the 7th day of February, 2001

Complaint of

**Len Maxwell v.
Delta Air Lines, Inc.**

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

OST-00-7591- 4

Served February 7, 2001

CONSENT ORDER AND ORDER OF DISMISSAL

This order concerns certain alleged violations by Delta Air Lines of the requirements of 14 CFR Part 382 with respect to the stowage of wheelchairs aboard aircraft. Part 382 prohibits discrimination against the disabled in air transportation and imposes specific requirements for their accommodation. Under 14 CFR 382.41(e), a carrier must in certain circumstances stow the wheelchairs of disabled passengers in the cabin area, rather than in the cargo hold, in order to make them more accessible and to minimize the likelihood of loss or damage to such assistive devices. On several occasions, as revealed both in complaints filed with the Department and with Delta, the carrier appears to have failed to comply with this requirement.

Our investigation of this issue stems from a formal complaint filed by Len Maxwell. Mr. Maxwell, in a complaint filed June 28, 2000, alleged that on a flight in March 2000, Delta failed to store his wheelchair in the passenger cabin area, as required by section 382.41(e), but instead stowed it in the cargo hold. The complainant states that he specifically requested that his wheelchair be placed in the passenger cabin. When the complainant received his wheelchair on arrival at his destination, it had been damaged, according to the complaint, and when he attempted to use the wheelchair he suffered minor injuries. The complaint alleges that the incident, in addition to representing a violation of the stowage requirements under the Department's rule, demonstrates a failure of the carrier's training program to address the needs of disabled travelers.

Delta filed an answer to the complaint in which it denies that Delta discriminates against passengers with disabilities, in general, or that it discriminated against Mr. Maxwell in particular. Delta's answer also disputes the assertion that the carrier does not adequately educate and train its employees with regard to the stowage of wheelchairs. Delta states that it is the carrier's express policy to give priority to wheelchair stowage in the cabin if an approved storage area is available, and that Delta's training programs highlight this requirement.

Delta's response states that the incident involving Mr. Maxwell occurred because of a misunderstanding on the part of the Delta flight crew personnel regarding Mr. Maxwell's real concern about the stowage of his wheelchair. According to Delta, its crew believed they were acting in accordance with Mr. Maxwell's desires by stowing the wheelchair in the cargo hold and arranging for its immediate return to him at the arrival gate. Delta states that the Captain of the flight offered to, and did in fact, personally retrieve the wheelchair for Mr. Maxwell upon arrival, to his apparent satisfaction. Furthermore, according to Delta, once the carrier was advised of the damage alleged to have occurred to the wheelchair on the flight in question, it provided Mr. Maxwell full restitution by promptly replacing his old, damaged wheelchair with a brand-new wheelchair, at a cost of nearly \$3,000.

Delta's answer stresses that the carrier commits substantial resources to innovative programs and systems to address the needs of its disabled customers, including extensive mandatory training programs for all public contact personnel. Delta further states that the complainant's experience was an aberration to an otherwise exemplary compliance record.

We have carefully reviewed the pleadings in the case, as well as records of other correspondence received by Delta and the Department which involved complaints with regard to the issue of onboard wheelchair stowage. Delta cooperated fully with the Department's investigation, including the request of the Department's Office of Aviation Enforcement and Proceedings for all of Delta's relevant complaint records. We believe that some of these incidents may involve violations of section 382.41. Additionally, in several of the complaint files we examined, the carrier did not provide a written response to the complainant that complied with the notice requirements of section 382.65, which prescribe that the carrier must give a "dispositive response" to each complainant. An appropriate response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and state that the complainant may refer the matter to the Department's consumer office. The Department views seriously the obligation of all carriers to comply with the Air Carrier Access Act and 14 CFR Part 382, the Department's implementing regulation. Accordingly, enforcement action is warranted.

In order to avoid litigation and without admitting the alleged violations, Delta has agreed to settle these matters with the Enforcement Office and enter into this

consent order to cease and desist from future similar violations of Part 382. By this order, the Department finds that Delta has, on occasion, failed to stow wheelchairs properly in the cabin area in violation of the Air Carrier Access Act (49 U.S.C. 41705) and 14 CFR 382.41(e)(2), and finds that the carrier failed to comply with the notice requirements of 14 CFR 382.65(b) in its correspondence with complainants.

The order, in addition, directs the carrier to cease and desist from similar violations in the future and assesses a civil penalty of \$25,000 in compromise of the penalties otherwise assessable under 49 U.S.C. §46301. Of this amount, the carrier will pay \$15,000 according to the terms stated in the ordering paragraphs below. This order provides that a credit of \$10,000 will be allowed toward the purchase of no fewer than 10 new hydraulic-lift boarding chairs beyond the number Delta previously intended to purchase.¹ We believe that this consent agreement and the penalty that it assesses will provide a strong incentive for all carriers to comply with the Federal statute prohibiting discrimination against the disabled and the related Department rule.

We have also determined, on review of the materials submitted in the captioned docket and on the basis of our action here, that no further formal investigation is warranted.² Accordingly, we will dismiss the complaint under section 302.205. Although we believe Delta's conduct violated certain requirements of Part 382, we also believe those violations are adequately addressed by the settlement reached in this case. The incidents in question were limited in number and, while troubling in and of themselves, do not appear to reflect a policy of noncompliance with Part 382 on the part of the carrier.³ These factors render further investigation of this matter, through the institution of a formal proceeding, not to be in the public interest.

¹ These advanced boarding chairs, which cost approximately \$1,500 each, provide, among other features, a hydraulic lift capability to facilitate the safe transfer of mobility-impaired passengers to and from their aircraft seats. Although Delta states that it has committed substantial sums to equipping a number of its stations with these new chairs, equipping all stations would be cost-prohibitive. Under this order, Delta will allocate additional chairs to stations that were not scheduled to receive them because of cost considerations and the limited traffic at those stations.

² Delta submitted training materials relevant to the stowage and handling of the wheelchairs of disabled travelers and they appear to be adequate. We have reviewed these materials and believe that they properly state the requirements of the Department's rule.

³ This consent order will also settle all violations of 14 CFR 382.41 regarding the in-cabin stowage of wheelchairs which Delta may have committed between January 1, 1995, and the service date of this order.

This order is issued under the authority contained in 49 CFR 1.57a, 14 CFR 302.205 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 Delta Air Lines, Inc., on a number of occasions violated the specific requirements of 14 CFR 382.41 with regard to wheelchair stowage;
3. We find that Delta Air Lines, Inc., on a number of occasions violated the specific requirements of 14 CFR 382.65(b) in its correspondence with disabled travelers who submitted written complaints to the carrier regarding the on-board stowage of wheelchairs;
4. We find that Delta Air Lines, Inc., in the instances described in paragraphs 2 and 3 above engaged in discriminatory conduct toward disabled travelers in violation of the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We order Delta Air Lines, Inc., to cease and desist from further violations of 49 U.S.C. § 41705 and 14 CFR Part 382, as described above;
6. Delta Air Lines, Inc., is assessed \$25,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Payment of \$15,000 shall be due and payable within 21 days of the date of issuance of this order, and 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 Delta Air Lines 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;
7. In addition, Delta is given an allowance of \$10,000 of the assessed penalty as a partial offset toward the purchase cost of no fewer than 10 new hydraulic-lift boarding chairs in addition to those funded in the carrier's current budget. These boarding chairs are to be assigned to stations that would not otherwise have received them.⁴ If the carrier fails to provide adequate documentation verifying the purchase of at least 10 new hydraulic-lift boarding chairs within the year following the date of this order, the offset amount shall become due and payable

⁴ The carrier will submit documentation confirming the purchase and receipt of these additional chairs, as well as a statement regarding the stations to which they are assigned, within one year of the date of this order.

immediately; and

8. We dismiss the formal complaint in Docket OST-00-7891.

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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