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Order 2002-3-10
Served: March 12, 2002



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

Issued by the Department of Transportation
on the 12th day of March, 2002

NORTHWEST AIRLINES, INC.

Violations of 14 CFR Part 382, and
49 U.S.C. §§41310, 41702, 41705, and 41712

Enforcement Proceeding

Docket OST-01-10598- 20

ORDER

On February 11, 2002, Chief Administrative Law Judge Ronnie A. Yoder served a settlement approval order in the above-captioned proceeding. He approved, under his delegated authority at 14 CFR §385.11(d), a proposed settlement reached between the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (the Enforcement Office) and the respondent, Northwest Airlines, Inc. on the formal enforcement complaint brought by an attorney from the Enforcement Office. The complaint alleged that Northwest had repeatedly failed to provide adequate wheelchair and other required assistance to travelers with disabilities in violation of Department regulations implementing the Air Carrier Access Act (ACAA) as well as other statutes of the transportation code. 14 CFR Part 382; 49 U.S.C. §§41705, 41702, 41310 and 41712.

The order becomes the final action of the Department on March 13 unless the Department takes its own review or a review petition is otherwise filed. A request to enter the proceeding and to oppose the settlement has been filed by a disabled Northwest passenger, Ms. Louise M. Caplan. Answers to the motion have been filed by Northwest as well as the Enforcement Office.

Northwest and the Enforcement Office each argue that the Department's Rules of Practice in Proceedings (14 CFR Part 302) do not permit the intervention of a non-party in an enforcement proceeding at this stage, namely, after approval by an administrative law judge (ALJ). See Rules 416, 417, 20, 6 and 17(a)(4). They argue that she has not shown good cause to excuse any late admission, with her mere claim that she was simply not aware of the case until very recently. Moreover, they both argue that the intervention by Ms. Caplan, based on the limited arguments she presented in her motion, will not assist in the proceeding or even change the facts or issues already presented and settled. They assert that she has not established any statutory right to intervene, let alone any property, financial or other interest warranting inclusion.

Upon consideration of the record of this proceeding, including Ms. Caplan's motions and the responses of Northwest and the Enforcement Office, we will deny her request to intervene and file an opposition to the settlement, since she has failed without good cause to comply with our procedural rules.

A person may become a party in a proceeding like this by filing a motion to intervene before the first prehearing conference. Rule 20. Parties to an enforcement proceeding may submit written comments supporting or opposing a proposed settlement within ten days of the date of its service. Rule 417. Since Ms. Caplan was not a party to this proceeding, and filed neither a timely motion to intervene nor timely comments on the proposed settlement, she may not file her opposition to the settlement without leave to file an unauthorized document under Rule 6(c). We may allow a person to file an unauthorized document "for good cause shown."

Ms. Caplan had an adequate opportunity to present her opposition to the settlement proposal within the time periods prescribed by our rules. The Enforcement Office filed its formal complaint against Northwest on September 7, 2001. The Enforcement Office and Northwest filed a joint motion for approval of the settlement agreement on November 23, 2001. The first prehearing conference in this case took place on January 16, 2002. The ALJ approved the settlement on February 11, 2002. His order, the motion for approval of the settlement, and all other pleadings in this proceeding were each posted on the Department's docket website shortly after their filing. The proceeding against Northwest also received wide publicity. Ms. Caplan, however, did not file her complaint against Northwest until February 23, 2002, when she also filed her motion to intervene in this proceeding and an opposition to the settlement. That was twelve days after the ALJ served his order approving the settlement and more than a month after the prehearing conference.

Ms. Caplan has failed to show good cause for her failure to seek party status earlier in the proceeding. Ms. Caplan has been involved in two other complaint proceedings based on allegations that other airlines violated the Department's rules prohibiting discrimination against disabled passengers, so she should be familiar with our rules and proceedings. In addition, allowing her to intervene at this stage would postpone the effectiveness of the settlement, which we believe should substantially improve Northwest's compliance with its

obligations to carry disabled passengers. On the other hand, the settlement will not take away any procedural rights given Ms. Caplan under the ACAA to an investigation of her own complaint against Northwest.

ACCORDINGLY,

1. We deny the petition of Ms. Louise M. Caplan to intervene, as well as her requests to file otherwise unauthorized documents, namely, her petition to intervene and her opposition to the proposed consent order;
2. We allow the proposed settlement approval order of Chief Administrative Law Judge Yoder, served February 11, 2002, to become a final Department order; and
3. We will serve a copy of this order on the persons on the attached service list.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at

<http://dms.dot.gov>

Attachment

← Service List
Enforcement Proceeding
Docket OST-01-10598

Frank J. Costello
Nisha Saxena
Counsel for Northwest Airlines
Zuckert, Scoutt & Rassenberger, L.L.P.
888 Seventeen St. , NW
Washington, D.C. 20006-3309

Stanley S. Sandiford
Corporate Counsel
Northwest Airlines, Inc.
5101 Northwest Drive
St. Paul, MN 55111-3034

Linda G. Cook
4326 Rabbit Foot Lane
Richmond, VA 23236-1153

Emma P. Duggan
106 Lee Highway
Roanoke, VA 24019

Louise M. Caplan
5338 Soledad Mountain Road
San Diego, CA 92109