



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

**Issued by the Department of Transportation
on the 26th day of August, 2016**

Air Canada

**Violations of 14 CFR 382, 14 CFR 259.5(b)(6),
and 49 U.S.C. §§ 41705, and 41712**

Docket OST-2016-0002

Served August 26, 2016

CONSENT ORDER

This consent order concerns violations by Air Canada of 14 CFR Part 382 (Part 382) with respect to providing passengers with timely dispositive written responses to written disability-related air travel complaints, and allowing passengers with service animals to travel in the cabin. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. Further, pursuant to 14 CFR 259.5(b)(6), a covered carrier must adhere to a customer service plan which includes a commitment to properly accommodate passengers with disabilities as required by Part 382. Violations of 14 CFR Parts 259 and 382 as well as 49 U.S.C. § 41705 constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

The violations addressed in this order were found during an August 2013 on-site regulatory compliance inspection at Air Canada's customer relations headquarters in Canada conducted by the staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office). This order directs Air Canada to cease and desist from future similar violations and assesses a compromise civil penalty of \$225,000.

Failure to Provide Dispositive Responses to Disability Complaints

Applicable Law

Pursuant to 14 CFR 382.155(d), carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. An appropriate dispositive response must specifically discuss the complaint at issue, specifically admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances, summarize the facts that led the carrier to

its conclusion of whether or not a violation of Part 382 occurred, and advise the complainant of his or her right to refer the matter to the Department for an investigation.

Facts and Conclusions

The Enforcement Office found that Air Canada regularly failed to respond in conformity with 14 CFR 382.155(d). The problematic responses did not inform complainants of their right to pursue enforcement action with the Department. In early 2013, the carrier did alter the method it used to respond to consumer complaints. However, it still frequently failed to inform complainants of their right to pursue Departmental enforcement action. Air Canada attempted to resolve the problem for a small number of complaints by sending subsequent emails to complainants informing them of their rights, but those emails came after the 30-day requirement of 14 CFR 382.155(d). Additionally, Air Canada consistently failed to specifically admit or deny that a violation of the substantive portions of Part 382 that were at issue in the complaints occurred, in violation of 14 CFR 382.155(d).

Service Animal Harness and Training Documentation Policy

Applicable Law

Pursuant to 14 CFR 382.117(a), carriers must permit a service animal to accompany a passenger with a disability in the cabin of the aircraft. Section 382.117(d) requires carriers to accept as evidence that an animal is a service animal, identification cards, other written documentation, presence of harness, tags, or the credible verbal assurances of a qualified individual with a disability using the animal. Under this section, documentation may be required when the passenger fails to provide credible answers in response to inquiries concerning how a service animal assists with the passenger's disability and how it has been trained to behave appropriately in a public setting. As a condition for transporting an emotional support or psychiatric service animal, section 382.117(e) permits carriers to require current documentation from a licensed mental health professional indicating that the passenger has a recognized mental or emotional disability and that the passenger needs the animal as an accommodation for air travel and/or for activity at the passenger's destination. Section 382.117 does not allow a carrier to require that a service animal be harnessed or to have had training from a specific organization.

Pursuant to 14 CFR 382.9, foreign carriers may petition the Department for a waiver from a provision of Part 382 if it believes that an applicable provision of the law of a foreign nation precludes it from complying with a provision of Part 382. Such petitions for waiver are referred to as conflict of law waiver requests.

Facts and Conclusions

On September 9, 2008, Air Canada submitted a conflict of law waiver request in accordance with 14 CFR 382.9, requesting that the Department grant a waiver to Air Canada regarding compliance with 14 CFR 382.117. Air Canada stated that section 149 of the Canadian Transportation Agency's (CTA) Air Transport Regulations (ATR) limited Air Canada's acceptance of service animals to animals that have been trained by specific organizations and animals that are properly harnessed. On October 20, 2009, the Department denied Air Canada's waiver request noting that the plain language of the ATR did not prevent Air Canada from accepting other types of service animals, and, therefore, did not conflict with 14 CFR 382.117. On November 10, 2009, Air Canada filed an appeal of the denial. On March 22, 2010, the Department once again denied the waiver.

During the course of the Enforcement Office's regulatory compliance inspection, the Enforcement Office reviewed Air Canada's website and personnel training manuals. On Air Canada's webpage that details accommodations for passengers with disabilities on flights between the United States and Canada, Air Canada stated that service animals must be certified as having been trained to assist a person with a disability by a professional service animal institution and must be harnessed, and that emotional support animals and psychiatric service animals also must be harnessed. Additionally, the Enforcement Office discovered that Air Canada's flight attendant manual, its Special Assistance Desk (known as the MEDA desk) training materials, its inflight training materials, its airport training materials, and its call center training materials, all stated that animals must be certified as having been trained and must be harnessed. Therefore, Air Canada had a policy in place in contravention of 14 CFR 382.117.

Response

In response, Air Canada states that it is fully committed to compliance with all Department regulations concerning passengers with disabilities. Air Canada notes that its policies toward passengers with disabilities often go well beyond what is required by U.S. law to accommodate passengers with special needs.

Air Canada emphasizes that the alleged violations concerning dispositive responses described by the Department already had been discovered and corrected by Air Canada at the time DOT initiated its audit. Accordingly, Air Canada asserts that many of the complaint responses reviewed by the Department predated Air Canada's correction of the omission. Further, Air Canada explains that only 16% of the complaints reviewed by DOT staff were filed by U.S. residents; the remaining 84% originated from passengers listing mostly Canadian addresses. Air Canada believes that these passengers have primary recourse to the CTA and these complaints should not be counted in the Department's analysis. Air Canada further states that it has taken additional corrective actions, such as centralizing its supervisory review of complaint handling, and conducting audits of complaint responses on a quarterly basis, as well as auditing the responses of each Special Needs Team member on a monthly basis. Air Canada also

notes that it has augmented its training materials and required refresher training, which must be repeated on an annual basis, as well as enlisted the assistance of an airline partner to develop best practices for complaint handling.

Air Canada states that the alleged violation with regard to training and harnessing of service animals involved a failure to codify policy, rather than a violation of the service animal requirements. Although Air Canada's written policies were not updated in a timely manner, Air Canada states that it has never to its knowledge denied a passenger boarding on a flight governed by 14 CFR Part 382 based upon a failure to harness an animal or provide training certification. However, in response to DOT's concerns, Air Canada has revised all of its policies and public information to strictly comply with 14 CFR 382.117.

Decision

The Enforcement Office views seriously Air Canada's violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41705 and 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Air Canada consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41705 and 41712, and to the assessment of \$225,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Air Canada and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

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 14 CFR 382.155(d) by failing to provide dispositive written responses to written complaints involving travelers with disabilities;
3. We find that Air Canada violated 14 CFR 382.117 by having a policy in place requiring that service animals be trained by specific training organizations and be harnessed in the cabin;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Air Canada failed to adhere to its Customer Commitment in violation of 14 CFR 259.5(b)(6);

5. We find that Air Canada in the instances described in ordering paragraphs 2 and 3 above, violated, 49 U.S.C. § 41705;
6. We find that by engaging in the conduct described in paragraphs 2 through 5, above, Air Canada engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
7. We order Air Canada and its successors and assigns, to cease and desist from violations of 14 CFR Part 382, and 49 U.S.C. §§ 41705 and 41712 by engaging in the conduct described in paragraphs 2 through 6 above;
8. We assess Air Canada \$225,000 in compromise of civil penalties that might otherwise be assessed for the violations described above; of this total amount, \$112,500 shall be due and payable within 30 days of the service date of this order. The remaining \$112,500 shall become due and payable if, within one year of the service date of this order, Air Canada violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Air Canada may be subject to additional enforcement action for failure to comply with this order.
9. We order Air Canada to pay within 30 days of the issuance of this order the penalty assessed in ordering paragraph 8, above, through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Air Canada to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

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:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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