



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

Issued by the Department of Transportation
On the Fifth day of July, 2013

Korean Air Lines Co., Ltd.

Docket OST 2013-0004

**Violations of Articles 17 and 19 of the Montreal
Convention and 49 U.S.C. § 41712**

Served July 5, 2013

CONSENT ORDER

This consent order concerns violations by Korean Air Lines Co., Ltd., (Korean Air) of Articles 17 and 19 of the Montreal Convention¹ and the statutory prohibition against unfair and deceptive trade practices 49 U.S.C. § 41712, in connection with monetary claims resulting from mishandled checked baggage on Korean Air flights to and from the United States. It directs Korean Air to cease and desist from future similar violations of Articles 17 and 19 and section 41712 and assesses the carrier a compromise civil penalty of \$60,000.

Applicable Law

The Montreal Convention, to which the Republic of Korea and the United States are signatories, imposes restrictions on an air carrier's ability to limit its liability with respect to mishandled checked baggage. Baggage claims arising from flights between the two countries are subject to the provisions of the Montreal Convention. The liability limit for lost, delayed, or damaged checked baggage under Article 22 of the Montreal Convention

¹ *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999.

is currently 1,131 Special Drawing Rights (SDRs) for each passenger.² Article 17 of the Montreal Convention provides that carriers are liable for loss of or damage to checked baggage in the custody of the carrier, except to the extent that the loss or damage “resulted from an inherent defect, quality, or vice” of the baggage. With respect to claims for compensation resulting from delayed baggage, Article 19 of the Montreal Convention provides that carriers are liable up to the limits of Article 22, except in cases in which the carrier can show that it took all reasonable measures to avoid such delay or that it was not feasible to take such steps. Nothing in the Montreal Convention permits blanket exclusions or otherwise allows carriers to disclaim liability for any class or category of item, such as jewelry, electronics, or high value goods, that they have accepted for transport as checked baggage, or to limit to a pre-set amount compensation for expenses resulting from delayed baggage based on, e.g., class of service or length of delay. Such exclusions contravene Articles 17 and 19 because they have the effect of limiting—with respect to items falling within their ambit—a carrier’s liability to an amount lower than that set by Article 22. Under Departmental enforcement case precedent, violations of Articles 17 and 19 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.³

Background

Based on a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Korean Air’s policies and practices in connection with its handling of monetary claims for mishandled checked baggage on flights to and from the United States. A review of consumer baggage claims received by Korean Air disclosed that in some instances, the carrier limited reimbursement for delayed baggage to between \$50 and \$150, based on the passenger’s class of service, regardless of the amount of the expenses claimed, the length of the delay, or how many passengers were impacted by the delay. Additionally, we discovered that in a few instances, Korean Air improperly disclaimed liability for the loss of items that were included in the passengers’ checked baggage and accepted by Korean Air.

Korean Air’s actions effectively limited its liability for damage occasioned by the delay of checked baggage and the loss of items in checked baggage to an amount far less than the 1,131 SDRs for each passenger in violation of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712.

Mitigation

In mitigation, Korean Air states that it takes its obligations to settle mishandled baggage claims in accordance with the requirements of the Montreal Convention seriously, and

² *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 Fed. Reg. 59017 (Nov. 16, 2009) available at www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes.

³ *See British Airways Plc*, Order 2012-10-1 (October 1, 2012); *Caribbean Airlines Limited*, Order 2011-10-20 (October 28, 2011); and *Emirates*, Order 2011-8-24 (August 30, 2011).

strives at all times to minimize passenger hardships resulting from baggage irregularities. Korean Air maintains that, based on the Department's own air travel consumer data, the carrier has infrequently been the subject of consumer complaints to the Department. Korean Air asserts that any alleged violations were the result of inadvertent mistakes and were not the result of a practice to deny passengers the compensation to which they were entitled under the Montreal Convention. Nevertheless, Korean Air notes that as soon as it became aware of the Department's concerns, it undertook several immediate and proactive remedial measures in direct response to those concerns, including, but not limited to, enhancing initial and recurrent training for carrier personnel with responsibility for administering and settling mishandled baggage claims, introducing a completely re-designed passenger claim form, revising its customer handling manual to more precisely articulate the requirements of the Montreal Convention pertaining to mishandled baggage settlements, and strengthening internal claim file documentation requirements. Korean Air avers that these remedial measures have come at a significant cost to the carrier and will improve the overall claims handling process. Finally, Korean Air emphasizes that it has cooperated fully with the Department throughout the course of this investigation and seeks to maintain a positive compliance disposition with respect to all matters pertaining to the Department's consumer protection requirements.

Decision

The Enforcement Office has carefully considered the information provided by Korean Air, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Korean Air have reached a settlement of this matter. Without admitting or denying the violations described above, Korean Air consents to the issuance of this order to cease and desist from future violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712 and to the assessment of \$60,000 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 represents a strong deterrent against future noncompliance with the Montreal Convention by Korean Air, as well as by other carriers.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Korean Air Lines Co., Ltd., violated Article 17 of the Montreal Convention by disclaiming liability for certain classes of items, thereby effectively limiting its liability to an amount lower than that set forth in Article 22 of the Convention for the loss of items in checked baggage;

3. We find that Korean Air Lines Co., Ltd., violated Article 19 of the Montreal Convention by limiting reimbursement for expenses resulting from delays in returning checked baggage to amounts significantly less than the potential liability set forth in the Montreal Convention;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Korean Air Lines Co., Ltd., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Korean Air Lines Co., Ltd., its successors and assignees, to cease and desist from further similar violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712;
6. We assess Korean Air Lines Co., Ltd., \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4, above. Of this total penalty amount, \$30,000 shall be due and payable within thirty (30) days of the date of this issuance of this order. The remaining portion of the civil penalty amount, \$30,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Korean Air Lines Co., Ltd., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Korean Air Lines Co., Ltd., may be subject to additional enforcement action for violation of this order; and
7. We order Korean Air Lines Co., Ltd., to pay the penalty 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 Korean Air Lines Co., Ltd., 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at
www.regulations.gov