



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

**Issued by the Department of Transportation
On the Thirtieth day of August, 2011**

Emirates

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

Docket OST 2011-0003

Served August 30, 2011

CONSENT ORDER

This consent order involves violations by the foreign air carrier Emirates 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 damage, loss, or delay to baggage checked on Emirates' flights to or from the United States. It directs Emirates to cease and desist from future violations of Articles 17 and 19 and section 41712, and assesses the carrier a compromise civil penalty of \$100,000.

Applicable Law

Article 22 of the Montreal Convention currently sets the liability limit for damages associated with lost, damaged, or delayed passenger baggage at 1,131 Special Drawing Rights (SDRs) for each passenger.² Article 17 of the Montreal Convention provides that carriers are liable for damaged or lost baggage, up to the limit set by Article 22, if "the destruction, loss or damage" occurred while the checked baggage was within the custody of the carrier, except to the extent that the damage "resulted from the inherent defect, quality or vice of the baggage." Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Further, Article 26 states that any provision tending to relieve a carrier of liability or to fix a lower limit than that which is laid down in the Montreal Convention is

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

² *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 FR 59017, available at http://airconsumer.ost.dot.gov/rules/Notice_11_09_09.pdf (November 9, 2009).

null and void. 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 items. Such exclusions have the effect of limiting liability to less than the limit set by Article 22 in contravention of Article 17 of the Montreal Convention. Violations of the Montreal Convention constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Background

Based on a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Emirates' policies and practices in connection with its handling of monetary claims for baggage checked on flights to or from the United States that was lost, damaged, or delayed. That investigation showed multiple instances of violations of the Montreal Convention by Emirates. For example, in many cases, Emirates denied reimbursement for high value items such as lost electronics, jewelry, and cameras. In its written responses to passengers, Emirates stated that its contract of carriage limited its liability for lost high value items such as jewelry and electronics and certain damage to baggage and incorrectly stated that limiting its liability in that manner was in accordance with the Montreal. In addition, the page on Emirates' website with "Delayed and Damaged Baggage" information stated that Emirates was not liable for valuables damaged in transit.

Furthermore, in connection with delayed baggage, in many instances Emirates provided limited or no compensation to passengers and indicated that any compensation provided was a "courtesy" by Emirates and would be the only compensation offered for costs incurred by passengers whose baggage was delayed. In some responses to passengers, Emirates incorrectly stated that limiting its liability for costs related to delayed baggage was in accordance with the Montreal Convention and airline industry standards. Emirates' actions in those cases effectively limited its liability for costs incurred by passengers as a result of baggage delays to far less than the minimum 1,131 SDRs required by the Montreal Convention.

Mitigation

In mitigation, Emirates states that it takes seriously its responsibility to comply with all applicable laws and regulations, including the Montreal Convention and the Department's rules. Emirates further states that it has a strong compliance history and has never before entered into a consent order with the Department. After the Department issued its October 2009 guidance³ to carriers regarding baggage liability, Emirates modified its Conditions of Carriage and related provisions of its internal policy documents to conform to the Department's requirements. Emirates asserts that any errors made in implementing these changes were inadvertent, and that Emirates never had any

³ *Notice Providing Guidance on Reimbursement of Passenger Expenses Incurred as a Result of Lost, Damaged or Delayed Baggage*, 74 FR 53309, available at <http://airconsumer.ost.dot.gov/rules/Notice.Expense.Reimburse.final.pdf> (Oct. 9, 2009).

intention of purposely misstating its policies or misinforming passengers as to their rights under the Montreal Convention.

Emirates declares that, after receiving the Department's inquiry, it conducted a thorough review of its baggage liability policies and practices. As a result of this review, Emirates retrained relevant employees to ensure that they understand and correctly apply the company's baggage liability policies; revised its internal customer service manuals, including changes to more specifically address requirements that apply to flights serving the United States; and revised the standardized documents used when responding to passenger baggage claims to ensure greater clarity and conformity with company policy. Emirates also undertook a detailed review of the company's baggage claim handling procedures to ensure that the company is applying best practices in this important area.

Decision

The Enforcement Office has carefully considered the information provided by Emirates but continues to believe that enforcement action is warranted. The Enforcement Office and Emirates have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violation described above, Emirates consents to the issuance of an order to cease and desist from future violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712 of the Department's regulations, and to the assessment of \$100,000 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 Emirates, as well as by other air carriers and foreign air carriers.

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 Emirates violated Article 17 of the Montreal Convention by denying liability for lost or damaged high value items;
3. We find that Emirates violated Article 19 of the Montreal Convention by limiting its reimbursement for expenses resulting from a delay in returning checked baggage to significantly less than the maximum liability amount set forth in the Montreal Convention;

4. We find that by engaging in the conduct and violations described in ordering paragraphs 2 and 3 above, and by informing passengers the liability limits for damaged, lost, or delayed baggage in its contract of carriage were in accordance with the Montreal Convention, Emirates has also engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
5. We order Emirates, and all other entities owned or controlled by or under common ownership with Emirates, and its successors and assignees, to cease and desist from violations of Article 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Emirates and its successors and assignees to further enforcement action;
6. We assess Emirates a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4, above. Of this total amount, \$50,000 is due and payable within 30 days after the service date of this order. The remaining \$50,000 shall become due and payable if Emirates violates this order's cease and desist or payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered shall subject Emirates 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; and
7. We order Emirates to make the payment set forth in ordering paragraph 6 above, by wire transfer through the Federal Reserve Communications System commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to 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:

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