



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

Issued by the Department of Transportation
on the 27th day of February, 2004

American Airlines, Inc.
Violations of 49 U.S.C. §§40127, 41310, 41702 and
41712

Served: February 27, 2004,

Docket OST 2003-15046

CONSENT ORDER

This order closes an enforcement proceeding involving American Airlines, Inc.'s (American)¹ compliance with Federal statutes prohibiting air carriers from subjecting any air traveler to discrimination on the basis of race, color, national origin, religion, sex or ancestry. The consent order directs American to cease and desist from future violations and to provide civil rights training to its flight and cabin crews and customer service representatives.

Shortly after the terrorist attacks of September 11, 2001, the Office of Aviation Enforcement and Proceedings (Enforcement Office) began to receive complaints against American (and other carriers) from individuals removed from flights or denied boarding on flights allegedly because those persons were, or were perceived to be, of Arab, Middle Eastern or Southeast Asian descent and/or Muslim. Because of concerns about these complaints, the Enforcement Office requested information from American regarding incidents occurring between September 11, 2001, and December 31, 2001, involving the removal or denied boarding of a passenger for safety/security reasons.

Federal law is clear. An airline cannot refuse passage to an individual because of that person's race, color, national origin, religion, sex, or ancestry. 49 U.S.C. § 40127(a). Similarly, 49 U.S.C. § 41310 prohibits air carriers and foreign air carriers from engaging in unreasonable discrimination against individuals on flights between the U.S. and foreign points, 49 U.S.C. § 41702 requires that U.S. carriers provide safe and adequate transportation, and 49 U.S.C. § 41712 prohibits unfair and deceptive practices and, therefore, prohibits invidiously discriminatory practices on the part of U.S. carriers. This proceeding was instituted on April 25, 2003, with the filing of a Notice of Enforcement Proceeding and Assessment of Civil Penalties and related Complaint based on the Enforcement Office's investigation of American's compliance with the aforementioned statutes.

¹ In each instance in this consent order in which the name American Airlines or American appears, it shall refer to and be binding upon American Airlines, Inc., American Eagle, Inc., and all their subsidiary or wholly-owned air carriers.

In responding to the Enforcement Office's allegations, American states that it did not and does not discriminate against passengers on the basis of race, color, national origin, religion, sex or ancestry. According to American, it has a diverse workforce which serves a diverse customer base. American contends that diversity is a major part of American's business, and all of American's policy and training reflect this fact. While American acknowledges that pilots-in-command must have reasonable grounds before removing passengers or denying them boarding from flights for safety or security reasons, American further contends that, as a matter of law, the pilot-in-command must not allow a passenger to depart on a flight if he or she believes that carriage of that passenger is or might be inimical to safety. 49 U.S.C. § 44902(b), 14 CFR 91.3 and 49 CFR 1544.215(c). In addition, American asserts that the pilot-in-command must make that decision based upon the facts and circumstances presented to him or her at that time, taking into account the time constraints under which the decision must be made and the general security climate in which the events unfold. According to American, the circumstances that play a part in the pilot-in-command's decision include the heightened actual dangers arising from the increased risk of terrorist acts, the catastrophic consequences in the case of air travel of any failure to detect such acts in advance, and the necessity that pilots-in-command must make safety decisions on short notice without the opportunity to make an extensive investigation. American opines that the pilot-in-command may rely without further inquiry upon the representations of other crewmembers or other responsible authorities with respect to safety and security.²

With respect to the eleven instances cited in the complaint, American states that ten of the eleven occurred in the months immediately following the September 11 tragedies when airport security was still adjusting to the new travel environment. American asserts that in eight of those instances the pilot-in-command of the aircraft made a decision that security issues raised by the passenger's conduct and/or documentation, and not the passenger's protected status, could not be resolved before departure. In many of those instances, according to American, law enforcement authorities, including some who were employees of the Department, were advising the pilot-in-command on the scene. American asserts that in the ninth instance the passenger was removed by and at the behest of local law enforcement authorities. American argues that in each instance the security questions were resolved on the ground and the passenger was put on the next departing flight. With respect to the eleventh instance, which occurred in October 2002, American states that the passenger was removed for additional screening and was reboarded on his scheduled flight. American contends that in each instance, the decision to require further screening was responsible and lawful and that discovery in the case supports this conclusion.³

As a legal matter, American contends that there is no jurisdictional basis for enforcement action: pursuant to 49 U.S.C. § 46301(d)(2) and given the amount initially in controversy, American asserts that exclusive jurisdiction rests with the district courts of the United States for the alleged

² The Enforcement Office strongly disagrees with this position. It is the Enforcement Office's position that a pilot-in-command's failure to inquire independently into the reasons for such action is inconsistent with carriers' legal obligations.

³ The Enforcement Office disagrees with American's assertions. Nothing learned during discovery in this case dissuades the office that strong evidence exists indicating American acted inconsistently with the applicable civil rights laws in removing and denying boarding to passengers on its flights.

violations of section 40127; and sections 41310 and 41702 do not create an administrative remedy for discrimination on the basis of protected status.⁴

American further emphasizes that all of the alleged incidents occurred shortly after September 11, 2001 a period of unprecedented security concerns and tension for all participants in the nation's air transportation system, especially American one of the two carriers that lost employees, passengers and aircraft in the attacks. During the period following September 11, American states that it was scrupulous in exercising its authority and responsibility under section 44902(b), and remains so today. As one of two carriers that were direct victims of the attack, American points out that it is particularly sensitive to claims that its employees acted in disregard of the law regarding aircraft security following September 11. American, having thoroughly investigated the complaints in question, remains resolute in its conviction that none of its employees, in conducting themselves as they did under extremely difficult and historically unprecedented, circumstances, acted wrongly or with intent to violate any law.

American states that, even though it continues to deny strenuously that any violation of Federal law occurred, it made more sense to settle this matter with the Enforcement Office than to continue with costly and protracted litigation to vindicate the actions of its employees. This is especially the case as the Enforcement Office is willing to settle the matter without the assessment of civil penalties, but rather a commitment by American to incorporate civil rights training into existing training programs for pilots, flight attendants, and customer service representatives. According to American, since it is already fully committed to vigorous compliance with the country's civil rights laws, this training will serve simply to reinforce the company's commitment to these core civil rights protections, an objective to which American is fully committed in any event.

The Enforcement Office recognizes that the September 11 terrorist attacks were unprecedented and clearly created a difficult situation for the airline industry, acting pursuant to FAA-approved security programs, in trying to protect passengers and crew from further attacks. Nonetheless, based on its review of the post-September 11 incidents in which American removed or failed to board passengers purportedly for safety/security reasons, the Enforcement Office believes that some passengers were denied boarding or were removed from flights because, or principally because, of the passenger's ethnic background. Even though the Enforcement Office does not dispute that the American employees involved believed they were acting to ensure the safety and security of passengers and crew, the Enforcement Office believes some passengers were denied boarding or removed from flights in a manner inconsistent with the carrier's non-discrimination obligations under Federal law.

The Enforcement Office has carefully considered all the information provided by American, but continues to believe that enforcement action is warranted. In order to end the litigation, the Enforcement Office and American have reached a settlement of this matter. Without admitting

⁴ American raised these arguments in a motion to dismiss in this proceeding which was denied by the Administrative Law Judge in an order issued on August 21, 2003. See American Airlines Inc., OST-2003-15046-18.

any violations of the law occurred, and without waiving its legal arguments as set forth above, American consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 40127, 41310, 41702, and 41712 and to provide civil rights training to its flight and cabin crewmembers, as well as its customer service representatives. The Deputy General Counsel and the Enforcement Office believe that this settlement is appropriate and serves the public interest and creates an incentive for all carriers to comply fully with the civil rights laws enforced by the Department of Transportation.⁵

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 American Airlines, Inc., acted in a manner inconsistent with the requirements of 49 U.S.C. §§ 40127, 41310, 41702 and 41712 when it removed from or refused to board on its flights certain individuals as discussed above;
3. We order American Airlines, Inc., and all other entities owned and controlled by it or under common ownership and control with it, and their successors and assigns to cease and desist from future violations of 49 U.S.C. §§ 40127, 41310, 41702 and 41712, as described above;
4. We order American Airlines, Inc., and its successors and assigns to provide civil rights training to its flight and cabin crewmembers and passenger service representatives. The total cost of the training shall be no less than \$1.5 million and shall be expended by a date three years after the service date of the order.⁶ Upon the completion of that training, and in no event later than the 14 months after the service date of this order and every 12 months thereafter for two subsequent years, American shall submit a sworn statement from an appropriate company official certifying that all flight and cabin crewmembers and passenger service agents have received the civil rights training required under this order.
5. Any failure by American Airlines, Inc., to conduct the training in accordance with ordering paragraph 4 or to document it adequately to the Enforcement Office shall

⁵ Additionally, this consent order will settle any and all complaints that could be asserted against American alleging violations of 49 U.S.C. §§ 41310, 41702, 41705 or 41712 arising out of or relating to incidents where American removed from a flight or failed to board a passenger on the basis of the passenger's assumed ethnic background or national origin occurring on or after September 11, 2001, and through the service date of this order.

⁶ The Department has contracted with a company to develop an easy to understand technical assistance manual that details the responsibilities of air carriers under Federal nondiscrimination statutes and to develop a model training program, which will include, at a minimum, an overview of the applicable laws and regulations, a cultural awareness component and a job-specific training segment. To support the Department in its mission of ensuring nondiscrimination in air transportation, American has agreed to share with the Department's contractors its civil rights training materials for possible inclusion in the Department's technical assistance manual and model training program.

constitute a continuing violation of this consent order and subject American to enforcement action; and

6. This order makes no findings of violations with respect to any individual incident of alleged civil rights violations and the findings herein shall have no effect in any proceeding not before the Department of Transportation.

This order is issued under authority assigned in 14 CFR 385.11(d) and shall become a final order of the Department 30 days after its service unless a timely petition for review is filed or the Department takes review on its motion.

By:

BURTON S. KOLKO
Administrative Law Judge

(SEAL)

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