



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

Issued by the Department of Transportation
On the Twenty-Ninth day of March, 2013

Caribbean Airlines Limited

**Violations of 14 CFR Part 259 and
49 U.S.C. § 41712**

Served: March 29, 2013

Docket OST-2013-0004

CONSENT ORDER

This consent order concerns violations by Caribbean Airlines Limited (Caribbean) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, the carrier failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier (1) would not allow an aircraft to remain on the tarmac for more than four hours before providing passengers an opportunity to deplane, and (2) would provide customers with food and potable water no later than two hours after the aircraft left the gate in the case of a tarmac delay. This order directs Caribbean to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$100,000 in civil penalties.

Applicable Law

On April 25, 2011, the Department issued rules¹ designed to enhance protections for air travel consumers that, among other things, require “covered carriers,” which include foreign air carriers that operate scheduled passenger service to or from the United States with at least one aircraft with a design capacity of 30 or more passenger seats, to adopt and adhere to contingency plans for lengthy tarmac delays and customer service plans.

¹ 76 Fed. Reg. 23110 (April 25, 2011).

The rules also require covered carriers to file data with the Department regarding lengthy tarmac delays. The effective date for these rules was August 23, 2011.

Contingency Plan for Lengthy Tarmac Delays

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S.² using any aircraft with a design capacity of 30 or more passenger seats are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large, medium, small, and non-hub U.S. airport at which they operate scheduled or public charter air service. The rule requires covered carriers to provide ten assurances that are specified in the rule at section 259.4(b)(1)-(10). Under section 259.6, each covered foreign carrier that has a website marketed to U.S. consumers, and that is required to adopt a contingency plan for lengthy tarmac delays, is required to post its current contingency plan on its website in an easily accessible form.

For an international flight, which is at issue here, section 259.4(b)(2) requires covered carriers to provide an assurance that they will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency, etc.); and (2) where Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. Furthermore, section 259.4(b)(3) requires covered carriers, for all flights delayed on the tarmac, to provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival), unless the pilot-in-command determines that safety or security requirements preclude such service. An air carrier's failure to comply with the assurances required by Part 259 and as contained in the carrier's contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

Caribbean is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)³ that operates scheduled service from John F. Kennedy International Airport (JFK), a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. Caribbean's contingency plan states that for the carrier's international flights to

² According to 14 CFR 259.2, Part 259 does not apply to foreign carrier charters that operate to and from the United States if no new passengers are picked up in the United States.

³ 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

and from the U.S., “Caribbean will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to disembark” unless “there is a safety-related or security-related reason precluding this, or Air Traffic Control advise that returning to the gate or other disembarkation point would significantly disrupt airport operations.” Caribbean’s plan further states that it will “provide at least a snack and potable water, from the on-board catering supplies, no later than two hours after the aircraft leaves the gate” in the case of departure unless the pilot in command determines that safety or security considerations precludes this service.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on August 15, 2012, Caribbean flight 421 was scheduled to depart JFK, at 2:55 pm EDT and arrive at Piarco International Airport (POS) in Trinidad at 9:25 pm EDT. Flight 421 pushed back from the gate at 3:07 pm EDT, but was unable to depart because Air Traffic Control temporarily suspended departures due to poor weather conditions at JFK. After a lengthy wait time, the captain of flight 421 determined that the aircraft needed to be refueled. At 5:00 pm EDT, one hour and fifty-three minutes after leaving the gate, the aircraft parked on a hard-stand at a remote gate to be refueled, where the aircraft remained for 36 minutes. The carrier informed the Department that it did not offer passengers the opportunity to deplane while the aircraft was being refueled because the terminal was unable to provide the carrier with a staircase at its remote location due to the inclement weather and the number of aircraft on the ramp.

Flight 421 pushed back from the remote gate at 5:36 pm EDT, but the aircraft was unable to depart as the weather continued to hinder landings and takeoffs. After another lengthy wait, the captain of flight 421 returned to another remote gate to refuel. However, due to the heavy ramp activity, the aircraft was delayed on the tarmac. The aircraft blocked in at the remote gate at 7:10 pm EDT, 4 hours and 3 minutes into the tarmac delay. The carrier states that passengers were not immediately given the opportunity to deplane at this time because it needed to wait for a proper staircase to be delivered. A staircase was eventually delivered, and the pilot permitted passengers who wished to deplane to disembark from the aircraft at 7:35 pm EDT, 4 hours and 28 minutes after the aircraft initially left the gate.

Passengers were offered meals between 7:00 pm EDT and 7:30 pm EDT while at the gate awaiting clearance for take-off. The aircraft pushed back from the remote gate at approximately 9:20 pm EDT to await a departure slot and was airborne at approximately 10:00 pm EDT.

In summary, the Enforcement Office found that Caribbean failed to provide passengers an opportunity to deplane before the tarmac delay exceeded four hours and made no attempt to provide food or water to passengers within two hours after flight 421 left the gate. Caribbean’s failure to adhere to the terms of its contingency plan in this regard violates 14 CFR 259.4(b)(2), 14 CFR 259.4(b)(3), and 49 U.S.C. § 41712.

Mitigation

In mitigation, Caribbean states that the tarmac delay of flight 421 was due to conditions beyond the carrier's direct control including, but not limited to, poor weather conditions, heavy taxiway traffic, the airport's closure, insufficient gate space, and delays in ground services due to unavailable equipment. Caribbean states that heavy rains and lightning resulted in a ramp service suspension and the suspension of departures at JFK, which required Caribbean to refuel the aircraft twice.

With regard to Caribbean's failure to deplane passengers in accordance with its contingency plan, Caribbean states that it considered offering its passengers the opportunity to deplane the first time the aircraft returned to the gate for refueling, approximately two hours after the aircraft initially left the gate. Caribbean explained that it decided not to do so because the aircraft was only at the gate for 34 minutes and the carrier learned that the terminal was unable to immediately supply it with a staircase. After returning to the gate again, Caribbean states that it attempted to disembark its passengers from the aircraft soon after the four-hour mark, but the staircase provided by the airport was inadequate for the aircraft type. Caribbean states that when the correct staircase was finally provided, most passengers chose not to deplane due to the severe weather conditions. Caribbean states that one passenger requested to deplane to care for her handicapped daughter, and its crew readily assisted her needs. Caribbean states that it regrets any failure to provide food and beverages to passengers in accordance with its contingency plan and notes that all requests by passengers for beverages were honored during the entire duration of the delay. Additionally, Caribbean states that it kept passengers notified with up-to-date information at least every 30 minutes.

Caribbean states that the tarmac delay of flight 421 was regrettable and it takes its obligation to comply with the Department's regulations seriously. Caribbean states that during the flight 421 tarmac delay, it believes that it acted in the best interests of its passengers with regard to safety, convenience, and comfort.

Decision

We view seriously Caribbean's violation of 14 CFR Part 259 and 49 U.S.C. § 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. By this order, the Department finds that Caribbean failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane and that passengers would be provided with food and potable water no later than two hours after the aircraft left the gate. Caribbean forced a total of

154 passengers on flight 421 to remain on the tarmac for nearly four and a half hours without the opportunity to deplane. Additionally, Caribbean forced those passengers to remain on the plane for more than four hours before providing them with food and water.

In order to avoid litigation, Caribbean has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Caribbean to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assessing \$100,000 in compromise of potential civil penalties otherwise due and payable. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Caribbean, 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 Caribbean Airlines Limited violated 14 CFR 259.4(b)(2) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours without providing passengers an opportunity to deplane;
3. We find that Caribbean Airlines Limited violated 14 CFR 259.4(b)(3) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would provide food and potable water no later than two hours after the aircraft left the gate in the case of departure;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3 above, Caribbean Airlines Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Caribbean Airlines Limited and all other entities owned or controlled by, or under common ownership and control with Caribbean Airlines Limited, its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. § 41712;
6. We assess Caribbean Airlines Limited \$100,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 above. Of this total penalty amount, \$50,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, Caribbean Airlines Limited violates this

order's cease and desist or payment provision, in which case Caribbean Airlines Limited may become subject to additional enforcement action for any violation of the order; and

7. We order Caribbean Airlines Limited to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Caribbean Airlines Limited 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

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