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Order 2003-7-12



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

Issued by the Department of Transportation  
on the 11th day of July, 2003

**Trans World Airlines, Inc.**

**Violations of 14 CFR Part 382 and  
49 U.S.C. § 41705**

**Docket OST 2003-14194 -13  
Served July 11, 2003**

**CONSENT ORDER**

This order concerns certain violations by Trans World Airlines, Inc. (Trans World) of the requirements of 14 CFR Part 382, with respect to providing assistance to passengers in wheelchairs and dispositive responses to persons who complained to the carrier about its failure to comply with Part 382. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. 41705, and violations of that part also violate the ACAA. The order directs Trans World to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$200,000 in civil penalties for such violations.

Part 382 requires air carriers to provide passengers with disabilities assistance in enplaning and deplaning aircraft and imposes specific requirements in doing so. Under 14 CFR 382.39 (a) and (b), several requirements are prescribed regarding the quality of service carriers must provide when assisting passengers in wheelchairs. Moreover, 14 CFR 382.65 requires a carrier to respond to a customer's complaint about a disability related issue in a dispositive manner. This order finds that on a number of occasions, as revealed both in complaints filed with the Department and with Trans World, the carrier has failed to comply with these requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Trans World's compliance with the relevant provisions of Part 382 by requesting that the carrier provide copies of all complaints it received from disabled passengers from April 2000 to March 2001 that alleged a failure to provide adequate wheelchair assistance. Similarly, the Enforcement Office reviewed other similar complaints against Trans World filed directly with the Department between October 1999 and March 2001. The records indicated a significant number of apparent violations of section 382.39 during the period between October 1999 and

January 9, 2001. Many of the complaints involved incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.<sup>1</sup>

A number of complaints, furthermore, appear to reflect a serious dereliction on the part of the carrier in meeting the requirements of section 382.39, such as the carrier failing to provide requested wheelchair service entirely, or providing a wheelchair only after a long time delay resulting in the passenger missing a flight. Additionally, in several of the complaint files examined, the carrier did not provide a written response to the complainant that complied with the requirements of section 382.65, which prescribes that the carrier must give a "dispositive response" to each complaint postmarked within 45 days of the complained of incident. An appropriate response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and state that the complainant may refer the matter to the Department's consumer office.

We view seriously the failure by carriers to provide proper wheelchair service to passengers pursuant to 49 U.S.C. 41705 and Part 382. After carefully considering all the facts in this case, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, Trans World has agreed to a settlement of this matter with the Enforcement Office. Trans World consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. 41705 and Part 382, and to the assessment of \$200,000 in compromise of potential civil penalties. The payment provisions of this order have been fashioned to take into account the carrier's bankruptcy proceeding, and the fact that the violations covered by this order occurred prior to the carrier filing for bankruptcy. The carrier filed for reorganization under the U.S. Bankruptcy Code on January 10, 2001, in the U.S. Bankruptcy Court for the District of Delaware. The assessment of this compromise civil penalty is accepted as a pre-petition general unsecured claim in the carrier's bankruptcy proceeding.<sup>2</sup> The Department and the Enforcement Office acknowledge that neither of them nor this order holds any of the trade creditors of Trans World responsible for causing any of the violations that are the subject of this order. This order and the penalty it assesses serves the public interest and represents an incentive for all carriers to comply with ACAA and Part 382.

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

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<sup>1</sup> Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000). Section 707(b) of AIR-21 amended 49 U.S.C. 46301(a)(3) to apply a \$10,000 maximum civil penalty to each violation of the ACAA.

<sup>2</sup> The Department filed a general unsecured pre-petition proof of claim with the Bankruptcy Court for \$900,000 on June 28, 2001. That proof of claim shall be deemed allowed in the amount of \$200,000, and it shall be paid in accordance with the applicable provisions of the Bankruptcy Code and the confirmed plan of reorganization. Pursuant to Paragraph 39 of the Order Confirming Joint Liquidating Plan of Reorganization, the United States may, to the extent funds are available, recover its claim through setoff and/or recoupment.

order as being in the public interest;

2. We find that Trans World Airlines, Inc., on numerous occasions violated the requirements of 14 CFR 382.39 with regard to providing assistance to passengers in wheelchairs;

3. We find that Trans World Airlines, Inc., violated the dispositive response requirements of 14 CFR 382.65 in connection with some of the violations described in ordering paragraph 2;

4. We find that Trans World Airlines, Inc., in the instances described in paragraphs 2 and 3 violated the Air Carrier Access Act, 49 U.S.C. 41705;

5. We order Trans World Airlines, Inc., to cease and desist from further violations of 49 U.S.C. 41705 and 14 CFR Part 382, as described above; and

6. Trans World Airlines, Inc., is assessed a civil penalty of \$200,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in Paragraphs 2 and 3 above. The Department filed a general unsecured pre-petition proof of claim with the Bankruptcy Court for \$900,000 on June 28, 2001. That proof of claim shall be deemed allowed in the amount of \$200,000, and it shall be paid in accordance with the applicable provisions of the Bankruptcy Code and the confirmed plan of reorganization. Pursuant to Paragraph 39 of the Order Confirming Joint Liquidating Plan of Reorganization, the United States may, to the extent funds are available, recover its claim through setoff and/or recoupment.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

**BY:**

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**(SEAL)**

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