

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**Complaint of
LEN MAXWELL**

-against-

DELTA AIR LINES, INC.

under 49 U.S.C. § 41705

Docket OST-00-7591

ANSWER OF DELTA AIR LINES, INC.

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July 28, 2000

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On June 28, 2000, Len Maxwell filed a formal complaint with the Department alleging that Delta Air Lines, Inc. ("Delta") violated the Air Carrier Access Act of 1986 ("ACAA" or the "Act"), 49 U.S.C. § 41705, and the Department's regulations by stowing the Complainant's wheelchair in the cargo hold instead of in the onboard closet during Complainant's flight from New York to Fort Lauderdale on March 25, 2000. Delta hereby files this answer to Mr. Maxwell's complaint, pursuant to 14 C.F.R. § 302.401, *et seq.*

Delta denies the claim that Delta and its employees discriminate against passengers with disabilities. Delta also strongly disputes the Complainant's allegations that Delta "fail[s] to adequately educate its employees with regard to

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the stowage of personal wheelchairs, mobility aids and other assistive devices.”

Complaint at 2.

Delta’s policy is and has always been to provide air transportation to disabled passengers in compliance with the ACAA, the Department’s disabled passenger regulations, as well as Delta’s own high internal standards that often exceed applicable legal and regulatory requirements. To that end and as further discussed below, Delta has developed extensive ACAA procedures, practices and training programs, which are designed to ensure that the goals of such policy are fully realized.

With respect to the specific issue of stowage of wheelchairs, it is Delta’s policy and practice to give priority to wheelchair stowage in the cabin if an approved storage area in the cabin is available and the passenger has availed himself/herself of pre-boarding rights. Mr. Maxwell did avail himself of pre-boarding, but as discussed below, the reasons why the Complainant’s wheelchair was not stowed onboard the aircraft related to a good faith misunderstanding by the flight crew of Mr. Maxwell’s concern and their desire to make best efforts to meet his concerns.

Although both the Department and Delta’s own stowage policies may not have been followed in this instance, there is no basis to establish a pattern or practice by Delta of discrimination against passengers with disabilities that would

justify the initiation of an enforcement proceeding against Delta. Indeed, Delta believes that Delta has an excellent record of care and attention to its disabled customers, well beyond the industry norm.

Delta submits that the incident involving stowage of Complaint's wheelchair was an uncommon event and occurred because Delta personnel misapprehended Mr. Maxwell's concerns about his wheelchair. Delta's records show that the Captain of the flight, who was personally involved in discussions with Mr. Maxwell, understood that Mr. Maxwell's principal concern was about being able to quickly retrieve the wheelchair after the flight, rather than the specific location for stowage of his wheelchair. In fact, the Captain of the flight told Mr. Maxwell that he would personally ensure the immediate retrieval of the wheelchair upon arrival at Fort Lauderdale. The Captain kept his promise by personally retrieving the wheelchair and bringing it to Mr. Maxwell.

In retrospect, if there was room in the onboard stowage area, Mr. Maxwell's wheelchair should have been placed there (as Delta's letter to the EPVA dated June 5, 2000 acknowledged), as required by Delta's own policies and procedures and the Department's regulations. Nevertheless, the facts show that the Delta crew tried to accommodate what they perceived to be Mr. Maxwell's desire for immediate access to his wheelchair on arrival. To the extent that Delta personnel violated Delta's own express policies and procedures

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and the DOT's onboard stowage provision, this was an isolated and unintentional incident which does not rise to the level warranting enforcement action against the carrier.

Delta has already undertaken on a voluntary basis substantially all of the corrective actions urged by Mr. Maxwell with regard to company policies concerning the onboard stowage of wheelchairs and other assistive devices, and with respect to reinforcing to its ground and flight personnel the DOT's and Delta's own requirements through the dissemination of bulletins and other information to employees. In these circumstances, no legitimate enforcement purpose would be served by the prosecution of this complaint or the imposition of civil penalties. Therefore, Delta urges that the Complaint be dismissed.

In making the determination of whether to dismiss the Complaint, Delta urges the Department to take into account (i) Delta's overall excellent record of compliance with the ACAA and DOT regulations issued thereunder, (ii) the proactive systems Delta has in place to assist its disabled customers, (iii) the significant compensatory action undertaken by Delta in favor of Mr. Maxwell, and (iv) Delta's subsequent remedial action in (1) reinforcing to its personnel Delta's responsibility to customers with disabilities and (2) publishing a policy memorandum reemphasizing Delta's ACAA obligations to all station managers, regional directors, and the directors of Delta's major hubs and stations.

In further support of its position and in response to the Complaint, Delta states as follows:

1. Delta's policy and programs were fully compliant with the ACAA on the date Mr. Maxwell traveled aboard Delta flight 2051, and Delta remains in compliance with the Act today. Delta has developed extensive systems, procedures and training programs to educate personnel on their responsibilities and obligations in dealing with customers with disabilities and to continually reinforce those commitments. With respect to the issue of onboard stowage of wheelchairs, Delta's employee training course materials and Delta's In-Flight Service and Pilot's On-Board manuals specifically provide that a disabled passenger who pre-boards the aircraft "must be allowed to stow his/her wheelchair in the cabin" and that disabled passengers "ha[ve] priority for closet space stowage over other passengers . . ." See Attachments 1 and 2.

2. Notwithstanding Delta's aggressive efforts to educate its employees concerning ACAA requirements, there are occasional rare instances where individual employees fail to follow Delta's carefully prescribed company procedures for accommodating disabled passengers. The incident in question relates not to a denial of the service which Delta agrees should have been afforded Mr. Maxwell but rather to a misunderstanding of the Complainant's real concern about the stowage of his wheelchair. With the best of intentions,

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the crew believed they were acting to further his desires. Thus, the Captain's contemporaneous written statement made soon after the incident states that he believed that Mr. Maxwell was primarily concerned about being able to access his wheelchair immediately upon his arrival in Fort Lauderdale: "When I asked the passenger why he did not want the wheel chair checked, it seemed to me a matter of him having to wait a long time for the wheel chair to be brought back up upon our arrival at destination." The Captain personally assured the Complainant that the wheelchair would be stowed and he offered personally to take the wheelchair to the compartment and to retrieve the wheelchair on arrival: "I offered to personally take it to the baggage bin and to retrieve it upon arrival. He seemed to be happy with that promise and I did exactly as I said I would. On arrival I did not notice anything wrong with the wheel chair and the passenger got in it and went on his way." Attachment 3.

3. Delta submits that the personal intervention by the Delta Captain illustrates the positive corporate commitment of the airline to go the extra mile to satisfy the needs and desires of its disabled customers. To the extent that the wheelchair could have been stowed in the onboard stowage area and it was not so stowed (which was a decision contrary to Delta's own internal policy), under the circumstances, the crew's decision in light of the care and attention afforded

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to the Complainant, does not rise to a level of non-compliance warranting finding Delta, as a company, in violation of the ACAA.

4. The Captain did not observe and Mr. Maxwell did not note any damage to the wheelchair when it was returned to Mr. Maxwell upon arrival at Fort Lauderdale. Nonetheless, as soon as the claim for damage was filed by Mr. Maxwell, Delta, without hesitation, voluntarily agreed to replace Mr. Maxwell's four-year-old wheelchair with a brand new wheelchair at a cost of over \$2,800.

5. With regard to the allegations of paragraph 7 of the Complaint, Delta lacks sufficient knowledge to admit or deny whether and under what circumstances Mr. Maxwell fell and broke his leg. In any event, the Department's established policy is not to use its enforcement proceedings to vindicate private actions. See, e.g., Orders 94-10-36, 94-12-37, 95-2-40. Delta does, however, deny that any damage alleged to have occurred to Mr. Maxwell's wheelchair aboard flight 2051, and the discovery of such alleged damage by Mr. Maxwell, is causally connected to Mr. Maxwell's broken leg.

6. In any event, unintentional damage to stowed cargo -- for which Delta has already made full restitution -- could in no way constitute a violation of the ACAA or any other regulation of the Department, and is not an appropriate subject of this complaint.

7. Delta has taken every reasonable action to prevent the happening of similar future occurrences. All of the individuals involved in the March 25 incident have been personally informed as to ACAA compliance responsibilities, company procedures for accommodating disabled passengers and their assistive devices, and specific requirements for stowage of wheelchairs onboard the aircraft.

8. Moreover, on April 3, 2000 – long before any formal or informal complaint had been filed by Mr. Maxwell – Delta issued a company-wide policy directive to review and reinforce company procedures with respect to cabin stowage of personal wheelchairs and seating of passengers traveling with service animals. See Attachment 4. Delta has also taken action to ensure that these procedures are emphasized in training classes. The training programs are mandatory for all public contact and contract personnel and include initial as well as recurrent training. One component of the training program for Passenger Service Agents and Complaint Resolution Officials includes an eight hour interactive classroom sensitivity course which is supplemented by two videos produced in-house at Delta. One video highlights Delta's wheelchair handling procedures. The other video features people with disabilities and Delta employees demonstrating and discussing the proper ways to assist persons with different kinds of disabilities. In addition to classroom training, Delta utilizes

individual study modules and has an ongoing program to distribute training and informational bulletins to its airport customer service and flight crew personnel. These bulletins focus on specific ways to enhance or improve Delta's service to its disabled customers. A computer-based reference system is also available to all public contact employees with details on Delta's policies and procedures for accommodating customers with disabilities.

9. Delta is proud of the innovative programs that it has developed to improve services for passengers with disabilities and to make sure that such passengers have a pleasant and convenient flying experience. To the best of Delta's knowledge, Delta is unique among major carriers in that it has created a special management position whose primary responsibility is to promote and address consumer advocacy issues for disabled passengers, such as those raised by Mr. Maxwell. This individual has been given the power and resources necessary to fulfill Delta's unparalleled commitment to meeting the needs of its disabled customers. Delta's Manager heads a group dedicated primarily to dealing with issues affecting passengers with disabilities. This group was established by Delta to perform the following activities: (1) continuous and comprehensive corporate oversight responsibility for the wide range of services that Delta provides to its disabled customers; (2) communication of job-specific information and instructions to employees concerning passengers with disabilities

through periodic bulletins and other resources; (3) frequent monitoring and auditing to ensure Delta's compliance with the ACAA and DOT disability regulations, including effecting ongoing revisions to Delta's policies and training programs; (4) frequent tours of Delta's facilities systemwide to meet with Delta personnel and outside contractors to discuss or to implement enhancements to Delta's programs affecting customers with disabilities; and (5) ongoing coordination with organizations that represent the interests of travelers with disabilities to learn how Delta can improve its programs.

10. In addition, Delta regularly consults with organizations that represent passengers with disabilities. Delta has established a Customer Advisory Board comprised of representatives of major disability organizations to advise Delta on how it can improve or enhance its programs to assist disabled passengers. The organizations represented by members of the Board include the following: Paralysis Society of America (PSA), The Seeing Eye, Inc., Self Help for Hard of Hearing People (SHHH), and American Association of Retired Persons (AARP). The role of the Advocacy Board is to partner with Delta in order to gain first-hand information about Delta's disability programs, services and training and to provide feedback from the organizations they represent on (i) the extent to which Delta is meeting the needs of disabled customers and (ii) the issues the Advisory Board would like Delta to address. The Board meets with

Delta at least twice a year to enhance existing programs, as well as develop new initiatives for customers with disabilities.

Delta's interaction with the disabled community extends beyond the establishment of the Advisory Board. For example, pursuant to one of Delta's innovative programs, individuals with disabilities have conducted seminars and informational programs for Delta's airport and in-flight employees, as well as employees of Delta's contractors who provide services to disabled customers.

11. Recognizing the seriousness of the matter, Delta immediately addressed Mr. Maxwell's issues. Thus, on April 17, 2000, Delta received a letter from counsel for the Eastern Paralyzed Veterans Association (EPVA), raising substantially the same allegations with respect to the March 25, 2000 Maxwell incident, and requesting a response in writing. Delta responded to the EPVA letter, apologized for any inconvenience experienced by Mr. Maxwell, and briefly explained some of the foregoing remedial actions. Nonetheless, on June 28, 2000, the Department received Mr. Maxwell's formal complaint.

12. Delta's commitment to disabled customers and its excellent record of performance is reflected in the Department's consumer report cards, issued quarterly. According to the Department's most recent May, 2000 Air Travel Consumer Report, Delta ranks in the top tier of major carriers with regard to Customer Disability complaints. The Department received less than one

disability-related complaint *per million* Delta passengers carried (0.085 complaints per 100,000 passengers).

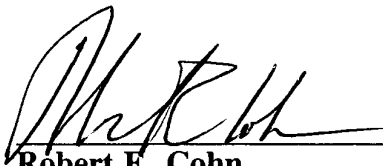
13. Delta is striving towards the uncompromising goal of 100 percent ACAA compliance, and Delta has the policies, procedures, training requirements, and senior management personnel in place to achieve that objective.

Conclusion

Delta submits that no further action in this case is warranted and that the complaint should be dismissed, pursuant to § 302.406(a)(2). As detailed above, Delta has already voluntarily undertaken substantially all of the corrective actions urged by Mr. Maxwell. Delta's ACAA program is in full compliance with the requirements of the Act and its implementing regulations. Delta has both counseled the individual employees involved in the incident at issue and published a company-wide policy memorandum underscoring Delta's ACAA obligations. Delta has fully compensated Mr. Maxwell for any alleged damage to his wheelchair (which in any event is not an appropriate subject of an ACAA or Part 382 complaint). And, finally, Delta has an overall excellent record of compliance with the ACAA. In these circumstances, no legitimate enforcement purpose would be served by the prosecution of this complaint or the imposition of civil penalties upon Delta.

WHEREFORE, for the foregoing reasons, Delta urges that the
Complaint be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. E. Cohn", is written over a horizontal line.

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