

*B.L.*

Order 2003-1-26



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

Issued by the Department of Transportation  
on the 27th day of January, 2003

**Complaint of**

**Dr. Maureen Lynch v.  
British Airways, Plc.**

**Violations of 49 U.S.C. § 41705**

**Served January 27, 2003**

**OST 2002-12378**

**ORDER AFFIRMING DISMISSAL OF COMPLAINT**

By this order we affirm our dismissal of a formal third-party complaint filed by Dr. Maureen Lynch (Dr. Lynch or Complainant) against British Airways, Plc. (British Airways). On May 7, 2002, Dr. Lynch filed a formal complaint under section 302.401 of the Department's Procedural Regulations (14 CFR 302.401) against British Airways alleging violations of the Air Carrier Access Act (49 U.S.C. § 41705) and 14 CFR Part 382, the Department's rule prohibiting discrimination against the disabled in air transportation. The Assistant General Counsel for Aviation Enforcement and Proceedings dismissed the complaint in Order 2002-11-11, issued on November 22, 2002. Dr. Lynch sought a review of that decision in a petition for reconsideration filed on December 13, 2002.

Dr. Lynch, a disabled passenger who requires boarding assistance, claimed in her complaint that British Airways failed to provide adequate assistance on the first segment of her journey from Cork, Ireland, to Atlanta in July 2000. In her petition, Dr. Lynch specifically requests that the Department seek further corroboration of the carrier's assertions regarding the difficulty in accommodating a boarding wheelchair on the type of aircraft operated on the flight from Cork to London, an Avro RJ-100. According to the carrier's pleadings, the method approved by the manufacturer for bringing a wheelchair on board that specific aircraft type requires widening the center aisle in the coach cabin by shifting the passenger seats from their usual position. In this case, according to information that is undisputed, Dr. Lynch arrived at the departure gate late, after the boarding process had begun. Moving the seats in order to accommodate a boarding wheelchair, according to the carrier's answers to the complaint, would have entailed deplaning passengers already seated and would have further delayed a flight that was already late.

British Airways filed an answer to Dr. Lynch's Petition on December 20. The carrier claims that the petition was filed late, without a request for late receipt, and should be dismissed on that ground. Substantively, the carrier refers to records it produced in its answer to the complaint, including the manufacturer's manual for the aircraft type involved which clearly states the recommended procedure for accommodating a boarding wheelchair, and the contemporaneous station reports of the incident, which indicate that Dr. Lynch arrived at the gate after the boarding process had begun. The Complainant, British Airways points out, provides no basis for questioning the evidence it has provided. In response to Dr. Lynch's claim that the carrier failed to make a reasonable effort to board her, the carrier reiterates its contention, advanced in its earlier answer, that making reasonable efforts to accommodate a disabled passenger does not extend to delaying the departure of a flight when that passenger has not complied with the carrier's check-in requirements.

On review of the Complainant's petition, we see no reason to alter the determination in Order 2002-11-11 to dismiss her complaint.<sup>1</sup> The Complainant concedes that she was late in arriving at the departure gate and has offered, as basis for a revision of our prior decision, only the bare assertion that she is not satisfied with the air carrier's explanation of the difficulty in bringing a wheelchair aboard the aircraft used on the flight. We do not believe that it is reasonable to impose further evidentiary requirements on the carrier absent a *prima facie* rebuttal showing by the Complainant which would call into question the carrier's submissions that on their face are credible. The Complainant has failed to make such an initial showing. We therefore affirm the prior decision to dismiss the complaint and find that further review of this matter is not in the public interest.

ACCORDINGLY, I affirm the dismissal of the third-party complaint in this docket.

This order is issued under authority assigned in 14 CFR 385.34(b) and shall be effective as the final action of the Department 30 days after service.

By:

ROSALIND A. KNAPP  
Deputy General Counsel

(SEAL)

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<sup>1</sup> Although, as the Respondent points out, Dr. Lynch's petition was not filed within the time prescribed under 14 CFR 302.14, we will address the petition on its merits.