

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

Linda G. Cook, and)	
Emma P. Duggan)	
)	
Complainants)	
v.)	
)	
Northwest Airlines, Inc.)	Complainants' Motion to Quash
)	Respondent's Memorandum of
Respondent)	Opposition
)	
_____)	

The complainants, pursuant to 14 CFR 302 Rule 18, respectfully address this motion to the DOT decisionmaker to quash the Respondent's Memorandum of Opposition (Ref.: Document OST-00-6951-2) for the reasons set forth herein below. Accordingly, the complainants request relief by having final judgement rendered against Northwest Airlines, Inc. Expedited treatment is requested.

Introduction

On February 4, 2000, the complainants filed a formal complaint (Ref.: Document OST-00-6952-1) with the U. S. Department of Transportation (DOT) against Northwest Airlines for violation of the Air Carrier Access Act. Each complainant is qualified as an individual with a disability, as defined by 14 CFR 382.5. Both complainants were discriminated against by reason of such disability through Northwest Airline's refusal and failure to provide wheelchair and electric cart services at flight departures, arrivals, and connections during the complainants' travel on Northwest Airlines on October 13, 1999, October 14, 1999 and October 19, 1999. The wheelchair and electric cart services were requested over one month in advance of the travel dates by the complainants. The wheelchair and electric cart requests were recorded in Northwest Airline's reservation system. Furthermore, adverse actions were taken by a supervisory employee of Northwest Airlines against the complainants on October 13-14, 1999 when they asserted rights protected by the Air Carrier Access Act. Furthermore, the compliance procedures at 14 CFR 382.65 for a complaint resolution mechanism were not adhered to by Northwest Airlines. And, the widespread, overall lack of awareness and inappropriate responses by Northwest Airlines employees to the complainants' disabilities, throughout their travel with the airline, strongly indicate that training, as required by 14 CFR 382.61, is non-compliant throughout the airline.

Argument

1. The Respondent's Memorandum of Opposition states: "Northwest's reservation entry regarding Complainants' request for wheelchairs did not reflect an independent judgement

by Northwest. Accordingly, 14 C.F.R. § 382.5(d)(3) does not apply as alleged by the Complaint." This statement lacks merit. The complainants informed the airline of their physical disabilities, and requested wheelchair and electric cart services while making flight reservations over a month prior to departure. The airline's reservation system acknowledged that these services were part of the travel arrangements (see Exhibit A, attached). Therefore, by agreeing to provide wheelchair and electric cart service, Northwest Airlines was treating the complainants as having such impairments under the definition at 14 CFR 382.5(d)(3). The complainants' reservations were made through an employee of the airline's reservation system. That employee exercised an independent judgement, as a representative of the airline, in treating the complainants as having such impairment. Therefore, the complainants have standing under 14 CFR 382.5(d)(3) in addition to 14 CFR 382.5(a)(1), (a)(2), (b) & (c).

Additionally, in the Preamble to 14 CFR 382, [55 FR 8008, pp. 27-28], the DOT states: "PVA and other commenters expressed concern that whether advance notice really works, suggesting that operating personnel may never get the word from reservation agents that advance notice has been provided. Obviously, if this internal carrier communication does not happen, advance notice is futile. Consequently, the rule will require that reservation systems and other carrier administrative systems provide for this communication to occur properly. When advance notice has been given, the carrier is required to provide the accommodation in question, assuming the service is one which the carrier makes available in the flight. Even if a passenger does not comply with the carrier's advance notice and advance check-in requirements, the carrier must provide an accommodation as long as it can do so with a reasonable effort and without delaying the flight... We regard such things as equipment used for boarding assistance and **ground wheelchairs**

[emphasis added] as so much a part of the normal, day-to-day business of getting people onto and off of airplanes that it is not appropriate to think of them as the kind of time-consuming assistance that would call for advance notice." Therefore, although advance notice for ground wheelchairs was not required by regulation, the complainants specifically requested this service over a month in advance of the flight dates. As stated by DOT above, **when advance notice has been given, the carrier is required to provide the accommodation in question** [emphasis added]. Furthermore, since the airlines reservation system must provide for this communication to occur, and since the airline did communicate the request for wheelchairs and electric carts through its reservation system, it is evident that Northwest Airlines was indeed treating the complainants as having such an impairment from that point forward. Consequently, the respondent's denial that 14 CFR 382.5(d)(3) applies to the complaint is without merit. The complainants hereby request that the respondent's argument regarding non-applicability of 14 CFR 382.5(d)(3) be annulled by the DOT decisionmaker.

2. The respondent attributes its failure to provide wheelchair service to a 28-minute flight delay on October 13, 1999. It further asserts that "...a short delay does not constitute violation of the ACAA". And, it pleads lack of knowledge to defend its failure to again provide wheelchair service for the return flights on October 19, 1999. The respondent's arguments are without merit. As stated in the complaint: "Northwest Airlines denied the complainants with the benefit of wheelchair and electric cart service..." As this states, the complainants do not base their complaint on a delay in wheelchair service. Their complaint is in regards to the fact that such wheelchair services were never provided during their travel with Northwest Airlines. As indicated by the complaint, requests for wheelchair service were made by the complainants, but the airline did not comply with

the requests. The respondent's argument that this does not constitute a violation of the ACAA is erroneous. In the Preamble to 14 CFR 382, [55 FR 8008, p. 33], the DOT states: "The basic requirement remains intact: carriers must provide assistance to handicapped passengers in enplaning and deplaning. **This assistance includes the services of personnel and the use of ground wheelchairs** [emphasis added], boarding wheelchairs, on-board chairs (where provided in accordance with the rule), and ramps or mechanical lifts." Furthermore, in the Preamble to 14 CFR 382, [55 FR 8008, p. 34], the DOT states: "The Department emphasizes that enplaning and deplaning assistance is not extraordinary or extensive special assistance; it is a key, regular part of everyday operations. There is little point in pretending that the Air Carrier Access Act has meaning if carriers can refuse to take steps essential to enabling handicapped passengers to get onto airplanes. Further down on the same page of the Preamble, it states: **"If a carrier fails or refuses to provide boarding assistance at an airport, the carrier has violated this regulation."** [emphasis added] The requested wheelchair service was never provided by Northwest Airlines throughout the complainants' travel with that airline; therefore, a violation of the Air Carrier Access Act occurred. The respondent's assertion that wheelchair service was provided after a short delay is false. Consequently, the complainants hereby request that the DOT decisionmaker annul the assertion by the respondent that this violation of the ACAA did not occur.

3. The respondent typifies the behaviors of its supervisor at the ticket counter in Detroit on October 13, 1999 as a "mis-communication between Mrs. Cook and the supervisor who was seemingly unaware of the Complainants request for two wheelchairs." The respondent further describes the supervisor's behavior as "an effort to provide good customer service and thus avoid the Complainants from experiencing a brief wait for the

arrival of the wheelchair attendants, the supervisor indicated that Ms. Cook could use a wheelchair that was stationed nearby if the Complainants wished to do so." The respondent goes on to state: "...the supervisors actions were not based on any discriminatory animus."

This is a misleading description of the facts surrounding Mrs. Cook's encounter with this Northwest Airline's management official. As can and would be attested to by both Mrs. Cook and Mr. Cook, who was standing next to Mrs. Cook and witnessed what happened, the need for wheelchair service was clearly communicated to the supervisor, along with a complaint that wheelchair service was not provided at the arrival gate even after Mrs. Cook had made several telephone calls to Northwest from the arrival gate area requesting the service. The complainants refute the respondent's statement that an attempt to provide good customer service resulted from Mrs. Cook's encounter with the management official. The supervisor pointed out one wheelchair about 100 feet away and said, "You can use that one over there." That was the extent of the supervisor's assistance in providing wheelchair service. Upon receiving this response from a Northwest Airline's management official, the complainants were reasonable to assume that the wheelchair service was not going to be provided. No statement as to waiting for attendants after some delay was made by the supervisor in question. The one wheelchair was used out of necessity by Mrs. Duggan, while Mrs. Cook was obliged to walk some distance, overexerting herself and exacerbating her heart problem. The "seeming unawareness" of the supervisor to the request for two wheelchairs was not attributable to any failure of the complainants to communicate the requirement. Mrs. Cook clearly communicated to the supervisor that a reservation for two wheelchairs had been made in advance. There was no excusable reason for this supervisor to not provide two wheelchairs with attendants.

The wheelchair requirement was communicated to the airline, and acknowledged by same, well in advance of travel by the complainants. As DOT states in the Preamble to 14 CFR 382, **"...the rule will require that reservation systems and other carrier administrative systems provide for this communication to occur properly."**

[emphasis added] The responder's argument that a "mis-communication" occurred between Mrs. Cook and the supervisor is without merit because the airline reservation system is required to communicate wheelchair reservation information to such employees [Ref.: 14 CFR 382.33(d)] and the airline is required to train all personnel who deal with the travelling public to proficiency in meeting the requirements of 14 CFR 382 [Ref.: 14 CFR 382.61(a)(1)(i)]. The action of the supervisor in failing to provide the required wheelchair services violated the ACAA (e.g.: 55 FR 8008, p. 34: "If a carrier fails or refuses to provide boarding assistance at an airport, the carrier has violated this regulation."; 55 FR 8008, p. 33: **"This assistance includes the services of personnel and the use of ground wheelchairs..."**) [emphasis added]. The behavior of the supervisor in directing the complainants to acquire the sole empty wheelchair in sight for use by only one of the complainants was an adverse action which occurred immediately after voicing a complaint. In complaining that an adverse action occurred in violation of 14 CFR 382.7(a)(4), the complainants note that the regulations at 14 CFR 382 nowhere state that "discriminatory animus" must be present for violation of the ACAA to occur. The supervisor's action in providing only one unattended wheelchair, which violated the ACAA in and of itself, immediately followed Mrs. Cook voicing a complaint about the airline's failure to provide the required wheelchair services. The timing of the supervisor's punitive action directly links it to Mrs. Cook's complaining. Therefore, it constituted an adverse action for all intents and purposes, and violated the prohibition of 14 CFR 382.7(a)(4). Consequently, the respondent's arguments concerning the Northwest

Airline supervisor's actions and alleged compliance with the ACAA on October 13, 1999 are nonfactual and lack merit. Consequently, the complainants hereby request that the DOT decisionmaker annul the assertion by the respondent that this violation of the ACAA did not occur.

4. The respondent refers to Hurricane Irene as the cause of the travel interruption and delay in Detroit, and as the reason food and lodging were denied the complainants while being delayed in Detroit. The respondent's arguments based on this weather event are without basis in fact. The following information is from the National Hurricane Center: Hurricane Irene did not reach tropical storm status until 1200 UTC on October 13, 1999. The tropical storm did not make landfall in Cuba until 1200 UTC on October 14, 1999. On October 14, 1999, the tropical storm was over Havana, Cuba. It did not reach hurricane strength until October 14, 1999 over the Florida Straits. [Ref.: Preliminary Report - Hurricane Irene, 13-19 October 1999, Lixion A. Avila, National Hurricane Center, 22 November 1999, http://www.nhc.noaa.gov/1999irene_text.html. Pages 1 and 2 of this report are attached as Exhibit B.] In addition, the On-Time Statistics from the Office of Airline Information, for flights on October 13, 1999 from Richmond, VA - Richard E. Byrd Field (RIC) to Detroit, MI - Wayne County (DTW), and DTW to Las Vegas, NV - McCarran International (LAS) do not support the respondent's contention that the tropical storm, which had not even reached Cuba on October 13, 1999, was the cause of delay. Any reference to Hurricane Irene in the Respondent's Memorandum of Opposition is totally without basis in fact. Therefore, it is hereby requested by the complainants that the DOT decisionmaker annul all reference and reliance upon any statement made in the Memorandum of Opposition based on weather events (e.g., Hurricane Irene).

5. The respondent asserts compliance with 14 CFR 382.65(a)(1) in opposition to the complaint that a complaints resolution officer (CRO) was not made available on October 13, 1999, nor at any time during the course of complainants' travel with Northwest Airlines. The respondent argues that the complainants did not complain of any discriminatory treatment to any Northwest Airline employee. The respondent's argument displays reluctance on the part of Northwest Airline to comply with the intent of the ACAA. In the Preamble to 14 CFR 382, [55 FR 8008, p. 3], it states: "Second, the legislation responded to Congress' concern about leaving 'handicapped air travelers subject to the possibility of discriminatory, inconsistent and unpredictable treatment on the part of air carriers.'" The respondent's argument clearly leaves open the possibility of such treatment by placing the responsibility for assuring compliance with the ACAA squarely on the backs of disabled air travelers. In essence, the respondent argues that all disabled travelers must be well versed in the applicable parts of the Code of Federal Regulations and use specific words, such as "discrimination" or otherwise have no rights under the ACAA. Acceptance of such an argument would increase the possibility of discriminatory, inconsistent, and unpredictable treatment. This fails to meet the intent as stated by Congress with passage of the ACAA.

The respondent further alleges that at no time while in Detroit did the complainants request to talk to a manager about treatment. This allegation is without merit. The "supervisor" in Detroit, whose actions are already described above, suffices as a "manager" under the commonly accepted definition of management as "the act, manner, or practice of managing, supervising, or controlling." [emphasis added] [Ref.: *The American Heritage Dictionary*, 2nd College Edition, 1982, Houghton Mifflin Company, Boston.]

In the Preamble to 14 CFR 382, [55 FR 8008, p. 48], DOT states: "When a handicapped passenger complains to any carrier employee that there is a problem with how the carrier is treating him or her, the employee has the responsibility of ensuring that the passenger is put in touch with the CRO, if the passenger wishes. (This is the meaning of 'make available' in §382.65(a)(1))." Therefore, under that meaning, DOT does not require the specific use of words, such as "discrimination", when a disabled passenger complains about airline treatment under the ACAA. In complaining about the lack of needed wheelchair services, the ACAA's coverage of the complainants was immediate, actual and direct; without any need for them to quote verse by verse from the CFR or the ACAA in order to preserve their rights under the law. Consequently, Northwest Airlines did in fact fail to make a CRO available to the complainants. The respondent's argument gives credence to the fact that a failure to provide a CRO occurred. It stresses that the complainants did not specifically request to speak to a CRO, and therefore, the airline did not violate 14 CFR 382.65(a)(1). The respondent's argument in essence clearly shows that Northwest Airline implements the CRO more as an adept legal subterfuge for defending against complaints than as an honest means of assisting disabled passengers. The respondent's argument is an antithesis to the intent of Congress and to DOT's meaning of "make available", therefore, it is hereby requested that the DOT decisionmaker annul the respondent's argument that it did not violate 14 CFR 382.65(a)(1).

6. The respondent alleges that the complainants called its 1-800 number on October 18, 1999 to voice displeasure, to refuse assistance, threaten a lawsuit, and wait to handle the matter by writing to Northwest's customer service after their return. A call took place. However, the respondent's characterization of the conversation is misleading and false.

Unquestionably, the complainants were displeased at that time and continue to be very displeased with the poor treatment they received from Northwest Airlines. One may reasonably assume that most calls to a company's 1-800# are to voice some sort of complaint or problem. The respondent uses false statements here in an apparent attempt to discredit the complainants as being threatening and unreasonable. The complainants did not refuse assistance. The complainants did not threaten lawsuits. The respondent is attempting to untangle itself from its violation of 14 CFR 382.65(a)(1) by stating: "In any event, the complainants were not at an airport at the time of the call." This further exemplifies the lack of sincerity and good faith on the part of Northwest Airlines in meeting Congress' intent under the ACAA. Because of false and misleading statements in the respondent's argument concerning the complainants' contact with the 1-800#, it is hereby requested that the DOT decisionmaker annul the respondent's statements concerning the complainants' contact with the 1-800#.

7. The respondent argues that it did not violate 14 CFR 382.7(7)(4) by failing to provide meal tickets and overnight accommodations to the complainants after they complained of not receiving wheelchair service. The respondent alleges that Hurricane Irene caused the delay from Richmond to Detroit, and therefore, Northwest Airlines had no obligation to provide these services; although numerous other travelers in the vicinity at the time of this incident were receiving these same accommodations. It has already been shown herein that Hurricane Irene was still only a tropical storm over a thousand miles away, south of Cuba, and could have no bearing whatsoever on delaying the flight from Richmond to Detroit on October 13, 1999. Also, the respondent on page 3 of its Memorandum of Opposition states: "Due to a weather delay, the complainant's flight arrived 28 minutes late." This statement is contrary to the Office of Airline Information

On-Time Statistics for Flight #1537 on October 13, 1999 (see Exhibit C). The flight was 52 minutes late in departing from RIC. It arrived at DTW almost 2 hrs late (i.e., 115 minutes) at 1142. The respondent's argument once again hinges on a false statement of fact. The connecting flight (#1197) departed for Las Vegas at 1102 on 10-13-00 (scheduled departure: 1055). Given the delay by Northwest Airlines and the lack of wheelchair services by Northwest Airlines experienced at DTW, the complainants' boarding of the connecting flight would have been virtually impossible. Therefore, the airline transported the complainants to DTW with little chance of making the connecting flight, leaving them stranded at DTW. Ruling out Hurricane Irene as a plausible excuse; the airline was responsible for stranding the complainants at DTW and had an obligation to assist them with accommodations. In light of the fact that numerous other stranded travelers were receiving accommodations from Northwest Airlines while Mrs. Cook complained of the lack of wheelchair service, the only remaining plausible explanation is that the supervisor's denial was an adverse action. Therefore, the complainants hereby request that the DOT decisionmaker annul all reference to a 28 minute delay in Richmond and all reference to Hurricane Irene as a valid reason for Northwest Airline's refusal of accommodations and meal tickets to the complainants on October 13 & 14, 1999.

8. The respondent argues that Northwest Airlines did the complainants a favor by rebooking their return from Las Vegas an extra day without charge. The respondent blames the loss of a day in Las Vegas by the complainants on Hurricane Irene, implying that Northwest Airlines did the complainants an unjustified favor as a goodwill gesture. Again, Hurricane Irene, as is shown, was never a factor in this matter. Therefore, the complainants hereby request that the DOT decisionmaker annul all reference or inference

by the respondent that not charging for rebooking an additional day's stay in Las Vegas was a just compensation to the complainants.

9. The respondent argues that lodgings were refused the complainants because of weather (i.e., Hurricane Irene) and that only full fare passengers and Northwest Gold Card members generally receive this benefit. As above, Hurricane Irene was not even a hurricane at the time of this incident. Concerning the refusal to provide lodgings to the complainants because of their fare status, the respondent states: " Northwest does not generally provide passengers travelling on excursion fares with lodging when their travel has been interrupted by weather." The word "generally" implies that some excursion fare passengers receive lodgings even when delayed by weather. Since Hurricane Irene did not exist at the time of this occurrence, this excuse is invalid. Given the proceeding arguments on this incident, this most reasonable explanation for the denial is that of adverse action against the complainants for complaining of the lack of wheelchair service. Therefore, the complainants hereby request that the DOT decisionmaker annul all reference or inference by the respondent that the complainants were denied lodging because they were travelling on excursion fares and were delayed by weather.

10. With regard to the complainants having only one blanket and two small pillows, and having to recline on the floor of the terminal at DTW, the respondent lightly discounts this episode by stating: "These items were provided on a first come first serve basis." This violation of 14 CFR 382.7(a)(3) was brought about by Northwest Airline's denial of lodgings (an adverse action) and its failure to then provide equal benefits as others received, i.e., pillows, blankets, and reclining surfaces. In the Preamble to 14 CFR 382, [55 FR 8008, p. 14], DOT states: "The Department will retain the 'except when

specifically permitted by another section of the Part' language. There may be a few instances (e.g., exit row seating under § 382.37 and the FAA safety regulation it references) in which some persons with disabilities may be excluded from services available to the general passenger population." Also, in the Preamble on page 9, the legislative intent of Congress is clarified as follows: "However, it is clear from the legislative history of the ACAA that Congress believed that a wide variety of discriminatory practices continued to exist under the old Part 382 and that legislative action was necessary to correct the abuses. For example, the Senate Report referred to the concern, post-DOT v. PVA, That handicapped passengers would be 'subject to discriminatory, inconsistent, and unpredictable treatment' and mentioned the concerns of disabled passengers about discriminatory or inconsistent requirements." The first come first serve argument of the respondent is inconsistent with the legislative intent of the ACAA in that it subjected the complainants to discriminatory, inconsistent, and unpredictable treatment by Northwest Airlines. Therefore, the complainants hereby request that the DOT decisionmaker annul all reference or inference by the respondent that a first come first serve policy as applied to basic necessities, such as pillows, blankets, and reclining accommodations, is consistent with the ACAA, and annul Northwest Airline's contention that it did not violate 14 CFR 382.7(a)(3).

11. The respondent denies noncompliance with the training requirements of 14 CFR 382.61. The complainants' complaint and the arguments presented herein are indicative of a failed training program. By and large, the Northwest employees encountered in the incidents cited herein were insensitive to the complainants' needs and behaved inappropriately. The tone and content of the Respondent's Memorandum of Opposition speaks volumes on the corporate approach of Northwest Airlines for combating the

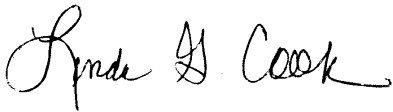
legislative intent of the ACAA. The respondent's inconsistencies and reliance on false statements (e.g., Hurricane Irene) are strongly indicative of the need for a top down approach to changing the corporate culture at Northwest Airlines through an effective training program that meets the intent of 14 CFR 382.61. Therefore, the complainants hereby request that the DOT decisionmaker annul all reference or inference by the respondent that Northwest Airlines complies with 14 CFR 382.61.

Remedy Sought

The complainants request that the entirety of the Respondent's Memorandum of Opposition be quashed. Each argument of the respondent in opposition to the complaint is based on false or misleading information, is counter to the legislative intent of Congress, or is inconsistent with the DOT Responses found in the Preamble to 14 CFR 382 as shown above. In quashing the Respondent's Memorandum of Opposition, the DOT decisionmaker is hereby requested to make summary judgement against Northwest Airlines, Inc., whereby enforcement action is sought and the maximum civil penalties are levied.

The weaknesses of Northwest Airlines in complying with the Air Carrier Access Act may constitute an ongoing threat to the health and well-being of numerous other disabled passengers. The complainants thank the Department for consideration of its requests in the present motion.

Respectfully submitted,



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Exhibits:

1. Exhibit A: E-Ticket, September 10, 1999, 1 Page.
2. Exhibit B: Preliminary Report - Hurricane Irene, 13-19 October 1999, Lixion A. Avila, National Hurricane Center, 22 November 1999,
http://www.nhc.noaa.gov/1999irene_text.html, Only Pages 1 and 2 of the report.
3. Exhibit C: Office of Airline Information On-Time Statistics [for Flight #1537 on October 13, 1999], OAJ On-Time Database Basic Search, <http://www.bts.gov/cgi-bin/oai/getotrep..ey=1999&st=2000&et=2359&dw=3&dw=33>, Pages 1 of 2 & 2 of 2.