

ORIGINALDecision No. 67493

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the reasonableness of
 Rule 10 of Intrastate Local and Joint
 Passenger Rules Tariff No. 1, of
 AMERICAN AIRLINES, INC., and others.

Case No. 7711
 (Filed September 10, 1963)

D. P. Renda and Gordon Pearce for Western Air Lines,
 Inc., respondent.

V. A. Bordelon, for Los Angeles Chamber of Commerce,
 and Charles C. Miller for San Francisco Chamber of
 Commerce, interested parties.

Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

This proceeding was commenced by an Order Instituting
 Investigation to determine whether or not Rule 10 (so-called "Denied
 Boarding Compensation" rule) of respondent airlines,^{1/}
 Intrastate Local and Joint Passenger Rules Tariff No. 1, should be
 amended.^{2/}

Rule 10(B) is, in part, as follows:

"(2) (a) Subject to the provisions of Paragraph B(1) of
 this rule, carrier will tender liquidated damages in the
 amount to be determined as stated below which, if accepted
 by the passenger, will constitute full compensation for all
 actual or anticipatory damages incurred or to be incurred
 by the passenger, as a result of carrier's failure to
 provide passenger with confirmed reserved space:".

The suggested amendment to Rule 10 is the addition of the
 following sentence thereto:

"Where the passenger refuses to accept the tendered
 compensation, all of the existing legal rights and remedies
 of the passenger are preserved."

^{1/} Respondent airlines are American Airlines, Inc., Delta Airlines,
 Inc., National Airlines, Inc., Trans World Airlines, Inc.,
 United Air Lines, Inc. and Western Air Lines, Inc.

^{2/} Rule 10 in its entirety is reproduced in Appendix A hereto.

A duly noticed public hearing was held before Examiner Mallory on January 16, 1964, at San Francisco. The matter was submitted May 15, 1964 on the filing of briefs by the Commission staff and respondent Western Air Lines, Inc. Evidence was adduced by Western Air Lines, Inc. (Western).

At the opening of the proceeding, the Commission staff counsel stated that the Commission staff would not present any testimony in this proceeding, confining its presentation to oral argument. The staff counsel stated the provisions of Rule 10(B)(2)(a)^{3/} are ambiguous and do not clearly spell out the rights of passengers, in that the rule tends to suggest that there is no alternative to acceptance by the airline passenger of the compensation tendered by the airline in accordance with the rule. According to the staff counsel, the added language, as set out in the Order Instituting Investigation in this proceeding, is necessary in order to clearly indicate that the passenger has the benefits of all existing legal rights and remedies which he had prior to the publication of this rule. The staff counsel urged that the suggested additional language is in the public interest and that respondents should be directed to include such amendment in their present rule.

Evidence was adduced by a witness from Western Air Lines, Inc. on behalf of all respondents concerning the development of the present rule. According to this witness, Rule 10 is in effect on a nationwide basis for the trunk-line air carriers which are respondents in this proceeding. The specific language of the rule was established by the Civil Aeronautics Board (CAB) in a rule making proceeding before that body.^{4/} The respondent airlines were directed in the CAB

^{3/} Hereinafter referred to as Rule 10.

^{4/} Order E-12064, dated March 1, 1962, in Docket 13327, In the matter of an agreement among Domestic Trunkline Carriers filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, (Agreement CAB 16012).

order to establish the present language of the rule, upon a finding by the CAB that the language of the rule proposed by the airlines

" . . . would incorporate into the implementing tariff a provision which precludes the oversold passenger from seeking further redress. Thus, the language (proposed by the airlines) provides, in effect, that the passenger must accept the prescribed penalty as full compensation for all damages . . . Moreover, to the extent that the proposed tariff provision is designed to restrict a passenger from seeking damages to which he would otherwise be entitled under common law, we find it to be adverse to the public interest. Accordingly, we shall condition our approval of the agreement to make clear that the prescribed penalty is a minimum obligation of the carrier which, only if accepted by the passenger, would terminate the carrier's obligations."

The witness testified that the language of the rule originally proposed by the airlines provided that the ". . . carrier will pay, and passenger will accept, as full compensation for all actual or anticipated damages incurred or to be incurred by the passenger . . .". The language substituted by the CAB in its order for the above was as follows: ". . . if accepted by the passenger, carrier will tender liquidated damages . . .". The witness asserted that the language substituted by the CAB for that originally proposed by the airlines is clear and unambiguous and that any passenger can readily understand that he is not required by said provision to accept the amount tendered by the carrier under the rule.

The witness stated that uniformity of provisions for intrastate and interstate service are desirable, not only to the airlines but to the passenger, unless conditions are materially different within the separate jurisdictions. In the present case, he asserted, conditions are the same within both jurisdictions. The Los Angeles Chamber of Commerce and the San Francisco Chamber of Commerce reiterated the desirability of a uniform rule on both intrastate and interstate traffic, and urged that the Commission not require that the airlines amend the rule by the addition of the language set out in the Order Instituting Investigation herein.

Respondents argued that this Commission has no jurisdiction to prescribe any changes in Rule 10. Respondents asserted that the rule relates to a practice of the airlines, rather than to airline fares or rates; that the Commission has acknowledged that it has no jurisdiction over airline practices under the Constitution of this state; and that the Federal Aviation Act of 1958 gives to the CAB exclusive jurisdiction over airline agreements involving the establishment of uniform nationwide practices of airlines. Therefore, the CAB has occupied this field of regulation. Respondents also asserted that, while the California Supreme Court^{5/} held that the Civil Aeronautics Act (predecessor statute to the Federal Aeronautics Act of 1958) had not pre-empted the field of rate regulation because the CAB's jurisdiction was limited to rates in interstate air transportation, CAB jurisdiction (under Section 401) over agreements "affecting air transportation" is not limited to interstate commerce, but extends to any such agreement.

We are not impressed by the testimony and argument of Respondents and the interested parties appearing herein. Uniformity for which they plead, while desirable, can only be justified when it promotes both efficiency and justice. If efficiency impinges upon justice, efficiency must give way to justice. The very nature of our dual form of government (state and federal) implies that there will be lack of uniformity of regulation as between state and federal jurisdictions.

The rule here involved, on its face, reveals its deficiency. No evidence on that point is necessary.

5/ People v. Western Air Lines, Inc., 42 Cal.2d 621, 263 P. 2d 723, (Cal. Sup. Ct. 1953).

The language of said rule is such that the impression would be conveyed to and be gained by a passenger, not skilled in the law or tariff provisions, that the rule provides the exclusive remedy of the passenger. The amending language proposed by the staff of the Commission would completely dispel any misunderstanding as to the operation of the rule. Clarity is most desirable, particularly when the public is required to rely to a great extent upon explanations which may be made by employees and representatives of public service companies. The language of the rule, as it now stands, is favorable to the air carrier and could operate prejudicially to the passenger. That is sufficient to condemn it. The amount of liquidated damage prescribed by the rule could well be questioned from the standpoint of the passenger.

The Commission finds that the public interest and the lawful interest of passengers of air carriers operating in intrastate commerce in California require the amendment of Rule 10(B)(2)(a), here involved, by adding thereto the following language:

"Where the passenger refuses to accept the tendered compensation, all of the existing legal rights and remedies of the passenger are preserved."

The fact that the interstate rule will be different than the intrastate rule which we will prescribe herein is immaterial both in fact and in law. This Commission cannot be bound by a rule prescribed by the Civil Aeronautics Board, applicable to rates for air transportation. As applied to intrastate rates for air transportation in California, the jurisdiction of this Commission is exclusive.

We further find that the herein involved rule, by its very nature, constitutes a part of the intrastate rates of air carriers operating in California.

ORDER

IT IS ORDERED that the Respondents, herein, amend Rule 10(B)(2)(a), here involved, by adding thereto the following language:

"Where the passenger refuses to accept the tendered compensation, all of the existing legal rights and remedies of the passenger are preserved."

Said Respondents are further ordered to refile said rule, as so amended, with the Commission pursuant to applicable rules and regulations heretofore promulgated by the Commission.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of JULY, 1964.

Richard E. Mitchell
 President

Edward D. Page

George H. Thayer

 Commissioners

I dissent.
Frederic B. Halbach

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

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RULE 10 of S. J. Rogers, Agent,
Intrastate Local And Joint Passenger
Rules Tariff No. 1, Cal. P.U.C. No. 1

RESERVATIONS

(A) Confirmation of Reserved Space

- (1) A reservation of space is tentative only and shall not be valid until the passenger has received a ticket specifying thereon his confirmed reserved space. As used in this Rule, the term "ticket" shall include "exchange order".
- (2) (Applicable to transportation via AA, DL, NA, TW, UA and WA). The carrier by or for whom a ticket is issued showing confirmed reserved space on such carrier, and the passenger accepting such ticket shall, by such acts, be subject to the terms and conditions of Paragraph B of this Rule.

(B) Compensation Payable to Passenger for Carrier's Failure to Provide Confirmed Reserved Space. (Applicable to transportation via AA, DL, NA, TW, UA and WA).

(1) Conditions for payment of compensation

Subject to the exceptions in this subparagraph, carrier will tender to passenger the amount of compensation specified in subparagraph (2) when:

- (a) Passenger holding a ticket for confirmed reserved space presents himself for carriage at the appropriate time and place, having complied fully with carrier's requirements as to ticketing, check-in, and reconfirmation procedures and being acceptable for transportation under carrier's tariff; and
- (b) The flight for which the passenger holds confirmed reserved space is unable to accommodate the passenger and departs without him.

EXCEPTIONS: The passenger will not be eligible for compensation if:

- (1) The flight upon which the passenger holds confirmed reserved space is unable to accommodate him because of:
 - (a) extraordinary fuel requirements;
 - (b) reduction in allowable take-off or landing weight for reasons beyond carrier's control;
 - (c) government requisition of space;
 - (d) substitution of equipment of lesser capacity when required by operational and/or safety reasons; or
- (2) Carrier arranges for alternate means of transportation for passenger which, at the time such arrangement is made, is planned to arrive at passenger's

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next point of stopover earlier than, or not later than one hour after, the time the flight, for which confirmed reserved space is held, is planned to arrive.

- (3) Passenger is accommodated on the flight for which he holds confirmed reserved space, but is seated in a section of the aircraft other than that specified on his ticket, provided that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund.

(2) Amount of compensation payable

- (a) Subject to the provisions of Paragraph (B)(1) of this rule, carrier will tender liquidated damages in the amount to be determined as stated below which, if accepted by the passenger, will constitute full compensation for all actual or anticipatory damages incurred or to be incurred by the passenger, as a result of carrier's failure to provide passenger with confirmed reserved space:

<u>Value of first remaining flight coupon for which space is confirmed on departed flight</u>	<u>Amount of Compensation</u>
\$ 0.05 - \$ 5.00	Full Value of the first remaining flight coupon
<u>\$ 5.05 - \$10.00</u>	<u>\$ 5.00</u>
\$10.05 - \$80.00	50% of the value of the first remaining flight coupon
<u>\$80.05 and over</u>	<u>\$40.00</u>

- (b) For the purpose of this Rule, the value of the first remaining flight coupon shall be the applicable one way local fare, including any surcharge, less any applicable discount.
- (c) Said tender will be made by carrier on the day and at the place where the failure occurs, and if accepted will be receipted for by passenger.

END OF APPENDIX A