

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS

JANE DOE¹)
)
 Complainant,)
)
 v.) Docket DOT-OST-2022-_____)
)
 UNITED AIRLINES, INC.)
)
 Respondent.)

COMPLAINT OF JANE DOE

Comments with respect to this docket entry should be directed to:

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Dated: November 1, 2022

¹ This complaint is filed utilizing a pseudonym to protect the Complainant's identity.

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS

JANE DOE)	
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Complainant,)	
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v.)	Docket DOT-OST-2022-_____
)	
UNITED AIRLINES, INC.)	
)	
Respondent.)	

COMPLAINT OF JANE DOE

JANE DOE is a frequent business flyer with tree nut allergies who travels via UNITED AIRLINES, INC. for work and was removed from and denied passage on a flight for which she paid because she disclosed her food allergies. JANE DOE alleges that UNITED AIRLINES, INC.’s actions were in violation of the Air Carrier Access Act and in blatant disregard for the Airline Passengers with Disabilities Bill of Rights. In support thereof, JANE DOE states as follows:

1. I am a frequent business traveler with UNITED AIRLINES, INC.
2. On Sunday, June 19, 2022, I boarded UNITED Flight UA4325 from Huntsville, Alabama to Washington Dulles Airport. I had previously disclosed that I have a severe food allergy.
3. I had been traveling for business, and I needed to return home in order to pick-up my child from camp the following afternoon.
4. At the time, UNITED AIRLINES, INC.’s stated nut allergy policy was: “If you have a severe food allergy and are traveling on flights between the U.S. and Canada, please notify a flight attendant on board the aircraft to request an allergy buffer zone so we

- can notify customers seated nearby to refrain from eating any allergen-containing products they may have brought on board.”
5. Upon boarding and taking my seat, I disclosed to the flight attendant that I have a tree nut allergy. The flight attendant immediately became hostile and began berating me. She questioned whether I should be flying and said that she did not want to have to “epi” me. She raised her voice at me, “Are you sure you can fly? Do you want to die in the sky?”
 6. I attempted to reassure the flight attendant by telling her that I fly all the time with UNITED AIRLINES, INC. but she continued to berate me in front of other passengers. I was embarrassed and humiliated.
 7. I tried again to both placate the flight attendant and get her to stop verbally berating me for my allergies but she insisted it was not safe for me to fly and this “was deadly serious” with the emphasis on “deadly”. I went silent and eventually she stopped berating me and walked away.
 8. A few minutes later a gate agent hurried onto the plane, asking loudly to our seating area, “Are you the woman with the peanut allergy?” Confused, as I had disclosed a tree nut allergy, but I presumeing she was referring to me, I stood-up from my seat, and stated to the gate agent, “Yes, I have a nut allergy.” She continued, “You need to leave the plane. You didn’t declare the nut allergy on your travel reservation, you can’t fly with United.”
 9. As a frequent business traveler with UNITED AIRLINES, INC., my food allergies are always disclosed prior to travel and flight attendants are notified aboard flights. Therefore, I asked the gate agent to “please double check” that I could not fly because

- “it had never been an issue before”. The gate agent left the plane and returned soon after, excitedly and loudly saying, “You have to get off now.”
10. I complied and exited the plane while the other passengers watched because I had no other choice.
 11. As instructed, I stood on the jet bridge waiting for my baggage, the pilot came off the aircraft onto the jet bridge and informed me the flight had six cannisters of almonds for sale on the plane and therefore it was “unsafe for you to fly.”
 12. With baggage in hand, I continued up the jet bridge and re-entered the terminal, where I was met by the female gate agent who had asked me to leave the flight, and a male baggage handler. The baggage handler approached me, animated, hurriedly asking if I was ok because he had “heard something about nuts.” He asked, “Do you need medical care. Are you ok?” I assured him that I was ok and explained what had happened.
 13. As the gate agent and baggage handler were assisting me, the closed jet bridge door suddenly swung open. The pilot had come off the plane again. She was visibly agitated and yelled at the baggage handler to “hurry-up it up” and “remove the jet bridge because the flight needed to leave”. Following this exchange, both the gate agent and baggage handler indicated the flight crew’s behavior was unacceptable and unprofessional. The ground crew further indicated the flight crew was the problem, not me.
 14. The baggage handler indicated that he would file a written complaint with UNITED AIRLINES, INC. and alert his manager because of the way I was being treated. While I sat at the gate, the baggage handler alerted his manager, who likewise

- expressed concern for the appalling treatment I had received. He further stated he was “impressed” I was “so calm and kind” considering UNITED AIRLINES, INC.’s treatment of me.
15. The gate agent suggested that I fly another airline or make a connection in North Carolina, as there were no other direct United flights out of Huntsville that night to Washington DC.
 16. I was stranded in Huntsville, Alabama and had to rent a car at my own expense and drive more than 12 hours through the night to get home in time to pick up my child from camp.
 17. As the result of discrimination and retaliation by UNITED AIRLINES, INC., I incurred charges related to car rental, gas, and additional travel related expenses in the amount of \$1,427.31, including \$1,053.08 for a one-way car rental from the Huntsville airport to Washington Dulles Airport.
 18. I called UNITED AIRLINES, INC. on the day of the incident and, per the recommendation from the UNITED AIRLINES, INC. ground crew, requested a full refund of the flight and reimbursement for the expenses to be incurred to travel home. In response, I was told that I could only receive a partial flight refund, so I requested that the matter be reviewed. At a later date, UNITED AIRLINES, INC. told me by telephone that I would receive a full refund of my ticket price. On June 24, UNITED AIRLINES, INC. refunded the ticket amount of \$730.20 to a business credit card.
 19. On June 27, 2022, I submitted a customer care complaint to UNITED AIRLINES, INC. in connection with the discrimination described above and requested reimbursement of my reasonable travel expenses. I included a detailed invoice and

copies of receipts seeking the amount of \$1,427.31 for the expenses incurred as the result of their discriminatory and retaliatory actions. I phoned UNITED AIRLINES, INC. numerous times to request an update on the status of my customer care complaint.

20. After much delay, on August 19, 2022, UNITED AIRLINES, INC. responded and refused to pay for my reasonable travel costs incurred as the direct result of their unlawful actions and offered only a small flight credit of \$300 for future travel or a stipend of \$200. UNITED AIRLINES, INC. stated “When customers have expenses as a result of a controllable flight event, we are able to reimburse up to \$200 per ticketed customer.”
21. Via email, I asked UNITED AIRLINES, INC. to explain what steps would be taken to ensure that I will not be removed from future flights due to disclosure of my tree nut allergy. I also asked what safety concerns relating to my tree nut allergy caused me to be removed from the flight and reiterated my request to be reimbursed for the costs I incurred as the result of my removal from the flight.
22. UNITED AIRLINES, INC. responded that an inquiry was being made to the flight crew as to the reasons for my removal and but that UNITED AIRLINES, INC. would not reimburse me for the expenses I incurred as the result of their actions.
23. I requested a copy of the report from the ground crew explaining the reasons for my removal but UNITED AIRLINES, INC. responded that “internal communications are proprietary and confidential and cannot be released outside of the company. I won't be able to send you any reports that may have been filed.”

24. Thereafter, UNITED AIRLINES, INC. indicated via email “we only reimburse reasonable expenses” and can make “a one-time exception” to “send a \$300 check towards the expenses, increasing from the \$200 previously offered,” but this was far less than the \$1,427.31 in costs that I had incurred.
25. UNITED AIRLINES, INC. further stated in writing, “After some discussion with the Captain, it was determined the safest thing would be to ask you to deplane and be re-booked for a less full flight.” At no time, following my removal from the aircraft did UNITED AIRLINES, INC. offer to book me on a “less-full flight”, nor did UNITED AIRLINES, INC. discuss the safety need for “a less full” flight during my removal, nor was this mentioned as a safety consideration during the attempt to re-book me on a new flight. Passenger load factor was never discussed by anyone from UNITED AIRLINES, INC. prior to this point. Further, this was the first time UNITED AIRLINES, INC. has ever indicated to me it is safer to fly on “less full flights” due to a tree nut allergy.
26. Although I need to travel for work, I am now afraid to disclose my food allergy when I fly for fear of again being removed from a plane.

COUNT I
VIOLATION OF THE AIR CARRIER ACCESS ACT AND THE AIR
PASSENGERS WITH DISABILITIES BILL OF RIGHTS

27. The Air Carrier Access Act provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation. *See* 49 U.S.C. § 41705.
28. Discrimination includes the failure to make necessary accommodations in order to allow safe and equal transport of individuals with disabilities.

29. Discrimination also includes maintaining policies that single out specific disability groups for lesser protection.
30. Discrimination includes hostile treatment on the basis of disability or request for accommodation.
31. Discrimination includes denying access to services.
32. Discrimination includes retaliation for disclosure of disability.
33. Discrimination includes requiring individuals with disabilities to pay for needed accommodations.
34. UNITED AIRLINES, INC. is an air carrier required to comply with the Air Carrier Access Act.
35. An individual with a disability is defined to include any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities. A physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems.
36. Individuals with life threatening food allergies are individuals with a disability because their food allergies substantially impair the major life activities of breathing and eating. During an anaphylactic reaction, an allergic individual experiences a complex immune response involving many body systems and resulting in compromise of multiple body systems, including the respiratory system, digestive system, and circulatory system. An unchecked response can be fatal. Avoidance of known allergens is critical not only to physical wellbeing of allergic individuals but to their emotional wellbeing as well.

37. JANE DOE has a life-threatening allergy to tree nuts. When she ingests tree nuts she experiences symptoms involving multiple body systems and which require emergency treatment.
38. In refusing transport to JANE DOE, UNITED AIRLINES, INC. violated the Air Carrier Access Act, its implementing regulations, and the Airline Passengers with Disabilities Bill of Rights.
39. The Airline Passengers with Disabilities Bill of Rights describes the fundamental rights afforded passengers with disabilities pursuant to the Air Carrier Access Act and its implementing regulations.
40. Section 1 of the Bill of Rights includes the Right to be Treated with Dignity and Respect which includes the right not to be refused transport because of disability.
41. The implementing regulations specify that an air carrier may not refuse transport because of a disability. *See* 14 C.F.R. § 382.11; 14 C.F.R. § 382.19.
42. The implementing regulations specify that in the event an air carrier believes a passenger creates a direct threat *to others*, it still cannot refuse transport if it can address the perceived threat to others by a means other than refusing transport. *See* 14 C.F.R. § 382.3; 14 C.F.R. § 382.19.
43. The implementing regulations further specify that if transport is refused because the air carrier cannot safely transport a passenger, they must within 10 days provides written documentation containing the specific basis for such opinion.
44. Transporting JANE DOE did not in any way present a direct threat to others and no written documentation explaining a basis for claiming direct threat was provided as would be required by regulation if such a threat was perceived.

RELIEF REQUESTED

45. Therefore, JANE DOE requests that the Department of Transportation take immediate steps to address UNITED AIRLINES, INC.'s blatant disregard for its legal obligations pursuant to the Air Carrier Access Act. Specifically, JANE DOE seeks the following:

- a. Reimbursement of all costs incurred as the result of UNITED AIRLINES, INC.'s unlawful actions;
- b. a statement that UNITED AIRLINES, INC. discriminated in violation of the Air Carrier Access Act in denying JANE DOE passage because she disclosed her disability.
- c. Imposition of a meaningful fine against UNITED AIRLINES, INC. as consistent with the Air Carrier Access Act.
- d. mandated training to ensure UNITED AIRLINES, INC. employees do not remove or otherwise prevent food allergic passengers from traveling on its airlines.
- e. any and all other relief that may be available including but not limited to attorneys' fees and costs.

DATED: November 1, 2022

s/Mary C. Vargas
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the following via electronic mail on November 1, 2022:

James Conneely, Associate General Counsel
United Airlines, Inc.
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James.Conneely@united.com

/s/Mary C. Vargas
Mary C. Vargas