



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

Issued by the Department of Transportation
on the 22nd day of May, 2018

British Airways PLC

**Violations of 14 CFR Part 259 and
49 U.S.C. § 41712**

Docket DOT-OST-2018-0001

Served May 22, 2018

CONSENT ORDER

This consent order concerns violations by British Airways PLC (British Airways) of 14 CFR Part 259 and 49 U.S.C. § 41712 with respect to two separate flights. For these flights, the carrier failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. This order directs British Airways to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$225,000 in civil penalties.

Applicable Law

Pursuant to section 259.4, foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S. using any aircraft with a design capacity of 30 or more passenger seats are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large, medium, small, and non-hub U.S. airport at which they operate scheduled or public charter air service. For international flights, the rule requires covered carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency, etc.); or (2) where Air Traffic Control (ATC) advises the pilot-in-command that

returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. A carrier's failure to comply with the assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on the aircraft for more than four hours in the case of international flights without being provided the opportunity to deplane or being informed when an opportunity to deplane exists, a separate violation is considered to have occurred for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

British Airways is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)¹ that operates scheduled service from Logan International Airport (BOS) and Denver International Airport (DEN), among other large hub airports, using at least one aircraft having a design capacity of more than 30 passenger seats. The carrier has a tarmac delay contingency plan that states, “[w]e will not permit an aircraft to remain on the tarmac (stands, taxiways) for more than four hours without the opportunity for you to disembark.”

In February and May 2015, British Airways experienced lengthy delays on two flights, as described below.

Flight BA 202

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on February 9, 2015, flight BA 202, traveling from BOS to Heathrow Airport (LHR), was delayed on the tarmac at BOS for four hours and fifty-one minutes. BA 202 closed its aircraft doors and pushed back from the gate at 8:00 p.m. Due to wintry weather and difficult taxi conditions, the carrier determined that a second round of deicing would be needed prior to takeoff. The aircraft was towed to the vicinity of two gates on Terminal E at BOS, where it waited between approximately 10:00 p.m. and 11:30 p.m. for deicing services to arrive. The aircraft ultimately departed four hours and fifty-one minutes after the main aircraft door was closed, at approximately 12:51 a.m. on February 10, 2015.

Section 259.4(b)(2) requires carriers to provide passengers on international flights the opportunity to deplane before the flight has been on the tarmac for more than four hours, subject to safety, security, or ATC exceptions. British Airways did not adhere to the terms of its contingency plan and therefore violated 14 CFR 259.4 and 49 U.S.C. § 41712 when it failed to provide passengers on flight BA 202 an opportunity to deplane before the tarmac delay exceeded four hours.

¹ 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as “a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.”

Flight BA 218

On May 9, 2015, British Airways flight BA 218, traveling from DEN to LHR, was delayed on the tarmac at DEN for four hours and fifty-six minutes. BA 218 pushed back from the gate at 9:12 p.m. After an initial round of deicing, the aircraft taxied to the runway, where the carrier determined that additional deicing would be necessary at approximately 12:49 a.m. on May 10, 2015, over three-and-a-half hours into the delay. Instead of initiating a return to the gate to allow passengers an opportunity to deplane, the aircraft taxied to a deicing pad at 1:27 a.m. The deicing process and flight were eventually cancelled, and the aircraft began the process of returning to the gate at approximately 1:50 a.m. (more than four hours after the main aircraft door closed) and returned to the gate at 2:08 a.m.²

As noted above, the Enforcement Office views the carrier's decision not to return to the gate to allow passengers an opportunity to deplane as an operational decision that does not fit within the exceptions to the tarmac delay rule stated in section 259.4(b)(2). As a result, British Airways failed to adhere to its contingency plan and violated 14 CFR 259.4 and 49 U.S.C. § 41712, when it did not provide passengers on flight BA 218 an opportunity to deplane before the tarmac delay exceeded four hours.

Response

In response, British Airways states that the pilots who served as captains on the two flights at issue in this Order are trained professionals who each have many years of airline flying experience, and that each captain was confronted with blizzard-like conditions that made ground operations difficult. British Airways states that both captains made their decisions based on the information available and what they considered to be in the best interests and safety of their passengers.

BA202 was scheduled to depart Boston's Logan Airport the evening of February 9, 2015. British Airways states that heavy snowfall on that day added to previous record-breaking snow that winter and resulted in taxiways that were lined with snowbanks. According to British Airways, ground conditions were slick, aircraft movement required the assistance of tugs, and some of the tugs experienced difficulty maintaining sufficient traction. British Airways states that four out of six runways were closed due to snow accumulation, and the captain of BA202 was aware that another flight had taxied into a snowbank resulting in cancellation of that flight and probable engine damage.

² In accordance with the Department's *Enforcement Policy on Extended Tarmac Delays*, issued November 22, 2016, and as a matter of prosecutorial discretion, the Enforcement Office will not take action against airlines for not complying with 14 CFR 259.4(b) (2) with respect to departure delays so long as covered airlines begin to return the aircraft to the gate or another suitable disembarkation point no later than four hours after the main aircraft door has closed in preparation for departure.

British Airways states that during this period, the adverse weather conditions had required closure of the Boston public transportation system, and any return to the gate would have resulted in the passengers spending the night at the airport terminal. British Airways states no passenger requested an opportunity to deplane and the captain determined that his passengers would be better served by attempting an additional de-icing in the hope of departing that evening. The de-icing was successful and BA202 safely completed its flight to London.

According to British Airways, BA218 encountered similar blizzard-like weather conditions. British Airways states that a severe spring snowstorm arrived four hours earlier than predicted and wide-body de-icing facilities were initially closed. British Airways states that after the initial de-icing and upon arrival at the runway, the crew discovered ice and snow on the wings, necessitating another de-icing. British Airways asserts that the taxiways were not sufficiently clear for a large aircraft to turn around and the only way to return—to either the gate or the de-icing pad—was to enter the active runway. According to British Airways, as other aircraft were using the runway to take off and there were significant snowbanks on either side, entering the active runway required significant coordination between ATC, the captain, and the airport snow removal crew. British Airways states that the flight and cabin crew continuously communicated with passengers to determine if anyone preferred to return to the gate instead of continuing de-icing efforts in the hope of returning to London that evening, but since no passenger wanted to return to the gate, the aircraft proceeded to the de-icing pad.

British Airways believes that the captains of BA202 and BA218 made justifiable decisions based on their many years of experience and that neither incident should have been the subject of enforcement action. British Airways also respectfully disagrees with the Enforcement Office's view that a separate violation occurs for each passenger onboard the aircraft. British Airways believes that the applicable statutes provide for violations to be assessed on a per flight basis. However, in the interest of settling this proceeding, British Airways is agreeing to this settlement.

Decision

The Enforcement Office views seriously British Airways' violations of 14 CFR Part 259 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, British Airways consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and to the assessment of \$225,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by British Airways and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that British Airways PLC violated 14 CFR 259.4(b) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. By its actions, the carrier forced passengers on flights BA 202 and BA 218 to remain on the tarmac for a period exceeding four hours on February 9, 2015, and May 9, 2015, respectively;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, British Airways PLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order British Airways PLC and its successors and assigns to cease and desist from further violations of 14 CFR 259.4(b) and 49 U.S.C. § 41712;
5. We assess British Airways PLC \$225,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$112,500 shall be due and payable within 30 days of the issuance of this order. The remaining \$112,500 shall become due and payable if, within one year of the issuance of this order, British Airways PLC violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and British Airways PLC may be subject to additional enforcement action for failure to comply with this order;
6. We order British Airways to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 5, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject British Airways PLC to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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