

Before the
DEPARTMENT OF TRANSPORTATION
Washington, DC 20590

MIKE BORSETTI,
Third-Party Complainant
vs.
AMERICAN AIRLINES, INC.,
Respondent

(Docket DOT-OST-2015-0087)

COMMENTS OF
EDWARD
HASBROUCK

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110

telephone 415-824-0214
edward@hasbrouck.org
<http://www.hasbrouck.org>

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I am a travel expert and consultant, consumer advocate for travellers, author of two books of consumer advice for travellers on issues including airline ticket purchasing and Internet airfare information (with particular emphasis and specialization in international airfares and travel), author/publisher of a Web site and blog of consumer advice and information for travellers, and an affiliate of an Internet travel agency specializing in international airline ticket sales.

I wish to comment on the arguments made by American Airlines ("AA") in its answer of May 22, 2015, to this complaint (document DOT-OST-2015-0087-0004).

With respect to the complaint that AA violated 14 CFR § 399.83, AA makes a lengthy but irrelevant argument that nothing in Department of Transportation (DOT) regulations requires an "e-ticket confirmation" or "receipt" to contain a fare calculation or other specific information.

But 14 CFR § 399.83 long predates, and is independent of, the more recent DOT regulations requiring that an air carrier must include specified information in e-ticket confirmations, in addition to the ticket still required by 14 CFR § 399.83.

Whether such e-ticket confirmations should be required to include additional information is not before the DOT in this enforcement proceeding.

While AA attempts to read 14 CFR § 399.83 out of existence, no such interpretation is warranted by the regulatory history or the principles of statutory construction. When it adopted new rules requiring specified information in e-ticket confirmations, DOT could have, but did not, rescind the portion of 14 CFR § 399.83 requiring provision of a "ticket".

If AA wants DOT to rescind 14 CFR § 399.83, it can petition for rulemaking to that effect. AA has not done so, and I would strongly oppose any such change. But while 14 CFR § 399.83 remains in force, it must be interpreted as having independent meaning and effect.

The issue in this proceeding is whether AA complied with the plain language of 14 CFR § 399.83 by providing Mr. Borsetti, at the time of confirmation of his reservations, with either a ticket or an alternate confirmation of his reservations by a means specified in AA's tariff. In fact:

1. AA provided Mr. Borsetti with nothing labeled or identified as a "ticket".
2. AA did not provide Mr. Borsetti with a ticket as defined in AA's tariff: "TICKET MEANS THE "PASSENGER TICKET AND BAGGAGE CHECK, INCLUDING ALL FLIGHT, PASSENGER AND OTHER COUPONS THEREIN, ISSUED BY CARRIER, WHICH PROVIDE FOR THE CARRIAGE OF THE PASSENGER AND HIS BAGGAGE." ("International General Rules (AA1)", available at <<http://www.aa.com/i18n/Tariffs/AA1.html>>, retrieved 21 June 2015).
3. AA makes no claim in its answer that it provided Mr. Borsetti with a ticket.
4. AA's tariff does not provide, and AA does not claim that it provides, any means for providing confirmation of reservations other than provision of a ticket.

There is simply no basis in any plausible reading of the record of this proceeding for any finding that AA has complied with the plain language of 14 CFR § 399.83, even as its key term ("ticket") is defined by AA in its own tariff.

Where the tariff defining the terms of the contract is drafted by AA itself, and is not a product of negotiation, any ambiguity in its terms must be interpreted against AA as the drafter.

AA has provided, in its tariff, a clear and unambiguous definition of a ticket. 14 CFR § 399.83 entitles each ticket purchaser to receive that ticket, and passengers are entitled to rely on AA's own definition in forming their expectations of what to expect that ticket to include.

AA can, and does, enforce contract terms (such as refund value, stopover and routing rules, etc.) discernable only from the full ticket as defined in AA's tariff. It is clearly an unfair, deceptive, and harmful practice for AA to claim that terms are binding on purchasers, when a copy of the ticket containing those terms is not accessible to the ticket purchaser.

I urge DOT to uphold this complaint that AA has violated 14 CFR § 399.83, and to impose sanctions commensurate with the consequent damages to consumers.

Respectfully submitted,

_____/s/_____

Edward Hasbrouck

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San Francisco, CA 94110

telephone 415-824-0214
edward@hasbrouck.org
<http://www.hasbrouck.org>