

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS  
WASHINGTON, D.C.

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	)	
Abraham Gutnicki,	)	
third-party complainant	)	
	)	
v.	)	Docket DOT-OST-2020-_____
	)	
United Airlines, Inc.	)	
	)	
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**COMPLAINT OF ABRAHAM GUTNICKI**

Comments with respect to this document should be addressed to:

Abraham Gutnicki  
4711 Golf Rd  
Suite 200  
Skokie, IL, 60076-1224  
E-mail: agutnicki2488@gmail.com

Dated: May 11, 2020

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**COMPLAINT OF ABRAHAM GUTNICKI**

1. This complaint arises out of United Airlines (UA) failure to provide a refund as demanded and required by DOT based upon United's cancellation of a flight.

**I. FACTS**

**A. Booking**

2. I purchased roundtrip tickets on February 2, 2020 on UA for myself and 5 family members for a total of 6 passengers. This was a round trip on UA flight # 754 from ORD-MCO on April 6 with a return on April 19, 2020. The total price was \$2680.80.

**B. Cancellation**

I received notice on March that UA flight #754 was cancelled and I was automatically rebooked without my approval on UA 1660.

### C. Current Status

II. I notified UA that I did not accept the change and per DOT regulations demanded a refund. I was refused via the call center and filed an informal DOT complaint Case # DD2020040369. I was contacted by United via email and offered a credit towards a future flight. I refused such request and again demanded a full refunded as per my rights and demanded to know how they were legally withholding the refund. United then proceeded to notify me via email that they were using a new definition of the word “cancellation”:

“25 Apr 09:39 AM

From  
"customercare" <customercare@united.com >

To  
<agutnicki2488@gmail.com>

Dear Mr. Gutnicki:

I appreciate the time you took to respond; I recognize that you still have unresolved concerns and I regret that this is the case.

Please note the cancellation of UA 754 was due to to scheduled change. We had five schedule changes from the time the reservation was made to from UA 745 11:57am-3:45pm on April 6, 2020 to ending with UA 496 April 6, 2020 to depart at 9:12am arrive ORD at 1:03pm (one hour & nine minutes later than your original schedule).

Our Schedule Change Refund policy is in compliance with the DOT statement.

United definitions, which are compliant with applicable law:

Schedule change: A flight is removed from our schedule, but the customer can be accommodated within 6 hours.

Significant Schedule Change: A flight is removed, and a customer cannot be accommodated with an impact of 6+ hours.

Cancellation: A flight is removed, and we cannot accommodate the customer.

If we remove a flight from our schedule and can accommodate the customer with another flight within 6 hours, that is not considered a cancellation.

A cancellation is not based on flight number or tail number, but on the ability to provide transportation to our customer without significant delay.

I completely understand you'd prefer not to travel at this time. You are correct; we do have an obligation to refund your money if we cannot re-accommodate you on another flight without significant delay. If we can provide transportation within 6 hours of your original departure or arrival time, this is not defined as a cancellation.

It looks like we are able to provide transportation based on your ticket, but if you'd prefer not to travel, we do have other options for you as well."

After final review, we confirm that United Airlines complied with all of the applicable regulations at the time of your flight and maintain our original decision. We feel we have fully responded to your concerns and should you have any other travel-related issues, please contact us again.

We appreciate your loyalty, and while we realize that you have a choice of carriers, our goal is to be your carrier of choice. We look forward to welcoming you aboard another flight again soon.

I appreciate your

Kind regards,

Rosie Memari  
Corporate Customer Care  
Case:18717760"

### **III. LEGAL ANALYSIS**

#### **A. Explain applicable DOT regulation**

3. DOT rule per DOT notice to airlines on refunds from April 3 2020

requires a full refund regardless of reason when a flight is cancelled:

4. Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011) (citing July 15, 1996 Industry Letter which advises carriers that "applying . . . nonrefundability/penalty provisions in situations in which the change of flight time or travel date has been necessitated by carrier action or 'an act of god', e.g., where the carrier cancels a flight for weather or mechanical reasons . . . is grossly unfair and it violates 49 U.S.C. 41712, as would any contract of carriage or tariff provision mandating such a result" and putting carriers on notice that the Department "will aggressively pursue any cases of this type that come to our attention')

5. Further DOT specifically notes on its website

<https://www.transportation.gov/individuals/aviation-consumer-protection/refunds> the difference between a cancelled flight and a schedule change.

6. Cancelled Flight – A passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to travel.

7. Schedule Change/Significant Delay - A passenger is entitled to a refund if the airline made a significant schedule change and/or significantly delays a flight and the passenger chooses not to travel.

8. If United is allowed to redefine the term “cancelled” flight then the term “cancelled” flight would no longer be applicable under any situation and only scheduled change / significant delay would apply.

9. As to UA attempt to change the definition of what consists of a “flight” and “cancelled flight” the Bureau of Transportation Statistics Office of Airline Information Title 14 Code of Federal Regulations Part 234 Amended, Technical Directive #14 Issue Date: October 2, 2006 Effective Date: January 1, 2007 clearly states in section III Definitions section 3 “3. 'Flight' for purposes of the data to be reported to the Department, means one or more scheduled nonstop operations identified by a specific flight number in conjunction with a specific origin-destination city-pair designation; e.g., flight 102 DCA-ATL-MIA includes two separate flights (DCA-ATL, ATL-MIA).” <https://www.bts.gov/topics/airlines-and-airports/number-14-time-reporting> As such the government as well as the entire airline industry has already clearly defined the term “flight number” to specify the flight and no other definition should be allowed. I would stipulate that United is correct in saying the tail number does not define the flight but, the flight number clearly does so.

10. In addition to United not being allowed to change the definition of the word “cancelled” even if the DOT were to uphold this new definition, I purchased this on February 2<sup>nd</sup> when United’s policy was to refund all cancelled flights and not being based under their new terminology. As such any tickets purchased prior to United change of the word Cancelled should be enforced under the previous rules.

11. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of United Airlines, Inc for having engaged in the unfair or deceptive practices described above;
- (2) Order United Airlines, Inc to provide to the DOT and to me all notes, PNR annotations, call recordings, credit card dispute records, and other materials prepared by its systems and its staff in the course of the discussions herein;
- (3) Order United Airlines, Inc to comply with applicable DOT regulations;
- (4) Order United Airlines, Inc to refund to ticket purchaser a full refund plus interest.
- (5) Require United Airlines, Inc to search its records for other customers similarly situated, including those who complained about cancelled flight refunds, and require United Airlines, Inc to provide the details of such customers and complaints to DOT; and provide each customer a full refund plus interest.

- (6) Impose appropriate civil penalties on United Airlines, Inc for failing to comply with DOT rules as well as the DOT enforcement letter published on April 3.
- (7) Expedite this complaint under emergency procedures and refuse any delay request due to United Airlines being the only airline to fail to comply with the April 3<sup>rd</sup> DOT order and the amount of customers being affected.

Respectfully submitted,  
/s/  
Abraham Gutnicki

**Certificate of Service**

I hereby certify that I have, this 11 day of May 2020 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Hershel Kamen	hershel.kamen@united.com
Kimberly Graber, Esq.	kimberly.graber@dot.gov
Blane Workie, Esq.	blane.workie@dot.gov
Robert Gorman, Esq.	robert.gorman@dot.gov

/s/

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Abraham Gutnicki