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Abraham Gutnicki)	
Third Party Complainant)	
)	
v.)	Docket DOT-OST-2020-0048
)	
United Airlines, Inc.)	
)	

Communications with respect to this document should be addressed to:

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June 15, 2020

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Abraham Gutnicki)	
Third Party Complainant)	
)	
v.)	Docket DOT-OST-2020-0048
)	
United Airlines, Inc.)	
)	

ANSWER OF UNITED AIRLINES, INC. TO COMPLAINT

United Airlines, Inc. (“United”), pursuant to 14 C.F.R. § 302.405 of the Department of Transportation’s (“Department”) Rules of Practice, submits the following answer to the complaint filed in the above captioned action:¹

1. United denies that it is required to provide Complainant a refund based upon United’s cancellation of a flight. Complainant’s flight was subject to a schedule change such that Complainant would have arrived at the destination point two hours and 42 minutes *earlier* than originally scheduled, and, as such, Complainant is not entitled to a refund under United’s refund policy, which complies with the Department’s regulations and guidance. Prior to the filing of the complaint, United offered alternate compensation to Complainant, including (1) allowing him to keep the value of the unused tickets for future credit for twenty-four (24) months from the date of issuance, or (2) issuing a United travel voucher valid for travel on any United or

¹ Paragraph numbers in United’s answer correspond to paragraph numbers in the complaint unless otherwise noted.

United Express flight within twenty-four (24) months. Complainant refused all such offers. On June 5, 2020, United updated its guidance to its contact agents to provide refunds for all flights that had a carrier-initiated schedule change of more than two (2) hours. This change in guidance applies to all passengers, both moving forward and retrospectively, including for carrier-initiated schedule changes throughout the COVID-19 pandemic. Consistent with its change, United is in the process of providing a cash refund to Complainant for the tickets at issue.

I.A.2. United admits that on February 2, 2020, Complainant purchased six (6) round trip non-refundable tickets totaling \$2680.80 from Chicago O'Hare International Airport ("ORD") to Orlando International Airport ("MCO"), departing on April 6, 2020 and returning on April 19, 2020, with reservation confirmation number AL41M4. United admits that the flight from ORD to MCO on April 6, 2020 was flight number UA754. United is without knowledge as to whether the tickets were purchased for Complainant's family members, and as such can neither confirm nor deny that allegation.

1.B. United admits that flight number UA754 was cancelled due to a change in schedule frequency. As explained in United's public-facing flight schedule change policy, in order to give customers as much time as possible to plan their trips, United publishes its flight schedules up to eleven (11) months in advance. However, such advance posting sometimes requires United to make schedule adjustments to accommodate changes to aircraft and routes, including changing the frequency of flights. In the event of a schedule change, United may rebook the customer on an alternative flight. If such changes are unsuitable to the customer, the customer may request alternative travel plans or compensation. United's contract of carriage provides it substantial discretion for determining when a refund is owed due to a schedule

change,² however, through its internal guidance United gives broad discretion to its agents to grant refunds depending on a wide-range of factors and the passenger's individual circumstances. As a matter of practice, agents could be (and generally were) far more generous than United's contract of carriage. United also instructed customers to contact our customer service line if there was a carrier-initiated schedule change of two hours or more. Agents would then exercise their discretion regarding whether a refund should be granted.

As the Department has stated, because the terms "significant change" and "cancellation" are not defined in the context of ticket refunds, "airlines may develop reasonable interpretations of those terms."³ Before the COVID-19 pandemic, United's internal guidance informed agents that they may consider granting cash refunds to a passenger who could not be re-accommodated within two (2) hours of their original flight. United's policy also reasonably interpreted a "cancellation" for purposes of refunds as occurring if a passenger could not be re-accommodated on a flight within a significant amount of time of their original arrival or departure time or if United terminated service to that destination. During the COVID-19 pandemic, United did provide updated guidance to its customer service agents regarding how to exercise their discretion, including how to determine when a significant schedule change occurred. As noted in its e-mail to Mr. Gutnicki on April 25, 2020 cited in the complaint, our contact agents were reasonably instructed to provide a passenger a cash refund if United could not re-accommodate the passenger within six (6) hours.

² See Rule 24 of United's Contract of Carriage (revised May 4, 2020), <https://www.united.com/ual/en/us/fly/contract-of-carriage.html>.

³ U.S. Department of Transportation, *Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel*, at 2 (May 12, 2020) ("Refunds—Second Enforcement Notice").

Flight schedules can be subject to changes due to operational requirements, particularly those schedules set significantly in advance. In this case, flight number UA754 was originally scheduled to depart ORD at 1157 on April 6, 2020 and arrive at MCO at 1545 the same day.⁴ However, UA754 was removed from the schedule due to a change in flight frequency. Complainant was rebooked on flight number UA496, which after several minor schedule changes, was finally scheduled to depart ORD at 0912 on April 6, 2020 and arrive in MCO at 1303 the same day, or two hours and forty-two minutes *earlier* than originally scheduled. Because the schedule change was less than six (6) hours, United's agent did not offer Complainant a cash refund.

United admits that, consistent with its policy and as communicated with customers,⁵ Complainant was rebooked on flight number UA496 once flight number UA754 was removed from the schedule due to a frequency change. Once Complainant notified United that he was not satisfied with his new flight, United offered alternate compensation to Complainant, including (1) allowing him to keep the value of the unused tickets for future credit for twenty-four (24) months from the date of issuance, or (2) issuing a United travel voucher valid for travel on any United or United Express flight within twenty-four (24) months. Complainant refused all such offers.

United is unable to confirm or deny the date Complainant received notice of the schedule change as Complainant does not provide a specific date in the complaint. Complainant purchased the tickets through American Express, and United notified American Express of the schedule change on February 22, 2020.

⁴ All times are local times.

⁵ See United, *Schedule Changes* (last visited June 15, 2020), <https://www.united.com/ual/en/us/fly/help/faq/schedule-changes.html>.

C.II. United admits that Complainant notified United that he did not accept the change and that he demanded a cash refund. United admits that an informal complaint was filed with the Department, case no. DD2020040369. United admits that United's customer care center contacted Complainant via email on April 23, 2020 to discuss a request for refund for reservation AL41M4. United admits that United's customer care representative explained United's refund policy to Complainant, reiterated that the flight had not been cancelled or subject to a significant change, that Complainant was not eligible for a cash refund, and then offered Complainant alternative compensation in the form of either (1) credit for twenty-four (24) months from the date of issuance, or (2) a United travel voucher valid for travel on any United or United Express flight within twenty-four (24) months.

United admits that Complainant responded to United's customer care center via email on April 24, 2020, stating that the options for compensation were not acceptable, reiterating his request for a cash refund, and demanding to know the legal authority United was citing to deny Complainant's refund request.

United denies that it notified Complainant that it was using a new definition of the word "cancellation."

United admits that the email dated April 25, at 0939 from the United customer care center included in paragraph C.II of the complaint was sent to Complainant by United's customer care center in response to Complainant's April 24, 2020 email. In the April 25 email, United reiterated that flight number UA754 was subject to a schedule change of less than six (6) hours

and therefore was not considered a cancellation or significant schedule change, and that Complainant was not entitled to a cash refund.⁶

III.A.3. United denies that the Department's Enforcement Notice to Airlines Regarding Refunds issued on April 3, 2020 requires a full refund regardless of reason when a flight is cancelled. In fact, as is consistent with the Department's precedent and regulations, carriers are required to issue cash refunds for non-refundable tickets only when the carrier cancels the flight.⁷ As the Department later confirmed, "[p]assengers who purchase a non-refundable ticket on a flight to, within, or from the United States that is still being operated without a significant change, but would like to change or cancel their reservation, are generally not entitled to a refund or a travel voucher for future use on the airline. This is true even if the passenger wishes to change or cancel due to concerns related to the COVID-19 public health emergency."⁸

III.A.4. United admits that the passages quoted in paragraph III.A.4 of the complaint are accurate.⁹ United denies that the cited passages require United to provide Complainant with a refund as alleged in the complaint.

III.A.5. United admits that there is a difference between a cancelled flight and a schedule change. United's flight schedule change policy provides that in the event of a change in flight frequency (as was the case with Complainant's flight), United will rebook the customer on another flight. If the customer is not satisfied with the new flight schedule, they may contact

⁶ In the email, United's customer care representative incorrectly stated that Complainant's rescheduled flight would arrive "one hour & nine minutes later than your original schedule." As noted in paragraph one of this answer, the schedule change actually resulted in Complainant arriving two hours and 42 minutes earlier than originally scheduled.

⁷ See U.S. Department of Transportation, *Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel*, at 2 (Apr. 3, 2020) ("Refunds—First Enforcement Notice").

⁸ Refunds—Second Enforcement Notice, at 2.

⁹ See Refunds—First Enforcement Notice, at 2 n.4.

United or their travel agency and request alternative flights or compensation, including a refund in the event the schedule change is significant.¹⁰

Additionally, as explained in the April 25, 2020 email from United’s customer care center to Complainant, United reasonably defines cancellation and a significant schedule change, as the Department has instructed airlines to do in its Second Enforcement Notice on Refunds, issued on May 12, 2020. In that Notice, the Department explained that “[b]ecause ‘cancellation’ and ‘significant change’ are not defined in the context of ticket refunds, airlines may develop reasonable interpretations of those terms.”¹¹

III.A.6-7. United admits that the quoted language in paragraphs III.A.6-7 of the complaint is accurately quoted from the Department’s Consumer Protection Website.¹² United denies that the quoted language requires United to provide Complainant a refund as alleged in the complaint. Additionally, United notes that the same website explains that the Department “has not specifically defined what constitutes a ‘significant delay’” and that “[w]hether you are entitled to a refund depends on many factors – including the length of the delay, the length of the flight, and your particular circumstances.”¹³

III.A.8. United denies that it is redefining the term “cancelled.” United’s public-facing flight schedule change notice explains that flights are often changed or removed from the schedule due to operational requirements, including for change in flight frequencies, as was the case here. When this happens, United will rebook the passenger on a new flight, and if the

¹⁰ See United, *Schedule Changes* (last visited June 15, 2020), <https://www.united.com/ual/en/us/fly/help/faq/schedule-changes.html>.

¹¹ Refunds—Second Enforcement Notice, at 2.

¹² See U.S. Department of Transportation, *Refunds* (last visited June 15, 2020), <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>.

¹³ *Id.*

proposed change is unacceptable to the customer, they may request alternative accommodations or compensation, including a cash refund in the case of a significant schedule change.¹⁴ United denies that the Complainant’s itinerary was “cancelled” under these circumstances or that its policies are contrary to the Department’s regulations.

III.A.9. United admits that the quoted language in paragraph III.A.9 of the complaint is accurate and available on the Bureau of Transportation Statistics’ (“BTS”) website at <https://www.bts.gov/topics/airlines-and-airports/number-14-time-reporting>. However, United denies that Part 234 serves to define cancellation for purposes of refunds and is not relevant to the matter at hand. The Department has made clear that the terms “‘cancellation’ and ‘significant change’ are not defined *in the context of ticket refunds*,” and, as such “airlines may develop reasonable interpretations of those terms.”¹⁵

III.A.10. United denies that it changed the definition of the word “cancelled.” United admits that Complainant purchased tickets on February 2, 2020. United denies that, at that time, “United’s policy was to refund all cancelled flights and not being based under their new terminology.”¹⁶ As discussed above, Complainant’s flight was subject to a schedule change of two hours and forty-two minutes. United’s contract of carriage provides it substantial discretion

¹⁴See United, *Schedule Changes* (last visited June 15, 2020), <https://www.united.com/ual/en/us/fly/help/faq/schedule-changes.html>. The relevant language of this notice has remained the same and did not change throughout the COVID-19 pandemic. United has long approached whether a cancellation occurs based upon whether a passenger arrives at his/her destination without a significant schedule change and not merely because a specific flight number was cancelled.

¹⁵ Refunds—Second Enforcement Notice, at 2 (emphasis added). Even assuming that 14 C.F.R. § 234.2 was the appropriate definition, which it is not, the Complainant’s flight would not meet that section’s definition of “[c]ancelled flight” because the flight was not “listed in a carrier’s computer reservation system within seven calendar days of the scheduled departure.”

¹⁶ Complaint, at 6.

for determining when a refund is owed due to a schedule change,¹⁷ however, through its internal guidance United gives broad discretion to its agents to grant refunds depending on a wide-range of factors and the passenger's individual circumstances. As a matter of practice, agents could be (and generally were) far more generous than United's contract of carriage. United's contact agents appropriately exercised their discretion in accordance with our internal guidance to deny a refund to Mr. Gutnicki because he was re-accommodated on a flight less than six (6) hours from his original flight (specifically only a two hour and forty-two minutes difference from his original flight).

III.A.11. United denies that Complainant is entitled to the relief sought in paragraph III.A.11(1)-(7), or any relief whatsoever; however, as a result of its recent change in guidance United will provide the Complainant a refund.

United further urges the Department to dismiss the complaint in accordance with 14 C.F.R. § 302.406(a)(2).

First Affirmative Defense

Complainant's cause of action is not justiciable because it is moot. United is in the process of providing a refund to Complainant, affording him the relief he seeks, and further action by the Department is unnecessary.

¹⁷ See Rule 24 of United's Contract of Carriage (revised May 4, 2020), <https://www.united.com/ual/en/us/fly/contract-of-carriage.html>.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marc L. Warren". The signature is fluid and cursive, with a long horizontal stroke at the end.

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CERTIFICATE OF SERVICE

I certify that I have, on June 15, 2020, served the foregoing document on the following persons in accordance with the Department's Rules of Practice:

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A handwritten signature in blue ink, appearing to read "Marc L. Warren".

Marc L. Warren
Counsel for United Airlines, Inc.