

)	
Scott J. Reiners,)	
Third Party Complainant)	
)	
v.)	Docket DOT-OST-2020-0064
)	
United Airlines, Inc.)	
)	

Communications with respect to this document should be addressed to:

Marc L. Warren
Jenner & Block, LLP
1099 New York AV, NW
Washington, D.C. 20001-4412
(202) 639-6897
Counsel for United Airlines, Inc.

June 22, 2020

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

)	
Scott J. Reiners,)	
Third Party Complainant)	
)	
v.)	Docket DOT-OST-2020-0064
)	
United Airlines, Inc.)	
)	

ANSWER OF UNITED AIRLINES, INC. TO COMPLAINT

United Airlines, Inc. (“United”), pursuant to 14 CFR § 302.405 of the Department of Transportation’s (“Department”) Rules of Practice, submits the following answer to the complaint¹ filed in the above captioned action:²

1. United denies that it failed to provide passengers Scott J. Reiners and Ruslan Flek a refund pursuant to the Department’s guidance on refunds based upon United’s cancellation of flight number UA121 with service from Joseph Tarradellas Barcelona-El Prat airport (BCN) to Newark Liberty International Airport (EWR) on July 25, 2020. Complainant’s flight was subject to a schedule change, and Complainant refused United’s offer to be rebooked on a flight that would have arrived at EWR without a significant schedule change. As such, Complainant is not

¹ On June 5, 2020, Complainant filed the complaint, and then filed a “corrected complaint” which included an updated service list. However, as the corrected complaint includes additional allegations against United, United’s answer will respond to the corrected complaint, and all references to “complaint” are to the “corrected complaint” unless otherwise noted.

² Paragraph numbers in United’s answer correspond to paragraph numbers in the complaint unless otherwise noted.

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 allowing him to keep the value of the unused tickets for future credit for twenty-four (24) months from the date of issuance. 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 has provided a cash refund to Complainant for the tickets at issue.

2. United admits that on September 2, 2019, Complainant purchased two (2) tickets for himself and Ruslan Flek with confirmation number BYTB11 and eTicket numbers 0162470654790 (Complainant) and 0162470654691 (Ruslan Fleck) for a total price of \$1,749.86, or \$874.93 per ticket. United admits that, on the receipt sent to Complainant confirming purchase of the tickets at issue included at page 9 of the complaint, flight number UA70 was scheduled to depart EWR at 6:15pm³ on July 2, 2020 and arrive at Amsterdam Airport Schiphol (AMS) at 7:15am on July 3, 2020. United admits that, on the receipt sent to Complainant confirming purchase of the tickets at issue included at page 9 of the complaint, flight number UA121 was scheduled to depart BCN at 11:15am on July 25, 2020 and arrive at EWR at 1:55pm on July 25, 2020.

3. United admits flight number UA121 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

³ All times are local times.

eleven (11) months in advance.⁴ However, such advance posting sometimes requires United to make schedule adjustments to accommodate changes to aircraft and routes, including changing the frequency of flights.⁵ 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,⁶ 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 (2) 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

⁴ See United, *Schedule Changes* (last visited June 22, 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.

⁵ As shown in the email sent by United to Complainant confirming his purchase was processing, included at pages 12-13 of the complaint, flight number UA70 was originally scheduled to depart EWR at 5:45pm on July 2, 2020, but was immediately changed to a departure time of 6:15pm. Similarly, at the time of actual purchase flight number UA121 was originally scheduled to arrive at EWR at 1:50pm on July 25, 2020, but was immediately changed to arrive at 1:55pm. Complainant purchased the tickets at issue 10 months in advance.

⁶ 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>.

of those terms.”⁷ 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.

Flight schedules can be subject to changes due to operational requirements, particularly those schedules set significantly in advance. In this case, Complainant purchased the tickets at issue ten (10) months in advance. Flight number UA121 was originally scheduled to depart BCN at 11:15am on July 25, 2020 and arrive at EWR at 1:50pm the same day.⁸ However, UA121 was removed from the schedule due to a change in flight frequency. United offered an opportunity for Complainant to rebook on another flight without a significant schedule change, and United’s agent did not offer Complainant a cash refund. Complainant did not accept this opportunity, and United offered alternate compensation to Complainant, including allowing him to keep the value of the unused tickets for future credit for twenty-four (24) months from the date of issuance. Complainant refused all such offers.

⁷ 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”).

⁸ At the time that Complainant received confirmation of the purchase of the tickets at issue, flight number UA121 had been changed to arrive at EWR at 1:55pm.

4. United admits that in April of 2020, Complainant applied for a refund for ticket 0162470654790 on United.com with tracking number 30391123, and for ticket and 0162470654791 with tracking number 30391124.

5. United is without knowledge at this time as to whether in May of 2020, a United representative contacted Complainant via telephone, and as such can neither admit nor deny the allegations that (1) the United representative offered to rebook Complainant and Ruslan Flek on an alternate flight with a connection in Frankfurt, Germany, (2) that Complainant refused United's offer to re-accommodate him and Ruslan Flek and instead requested a cash refund, and (3) that Complainant was advised to wait for resolution of the refund requests with tracking numbers 30391123 and 30391124. United denies that the schedule change involving flight number UA121 constituted a significant schedule change.

6. United admits that United notified Complainant via electronic mail on May 31, 2020, that tickets 0162470654790 and 016247065791 were not eligible for refunds. United offered Complainant the option to receive a travel voucher for the full value of the tickets to any new flight within twenty four (24) months. Complainant refused this offer. 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. Consistent with its change, United has provided a cash refund to Complainant for the tickets at issue.

7. United admits that on June, 1, 2020 Complainant contacted the United Airlines Social Care to again request a cash refund. United admits that Complainant was informed that the flight number UA121 on July 25, 2020 had been subject to a flight schedule change and had been removed from the schedule. United admits that Complainant was not offered a cash refund at this time. United admits that Complainant cited the language from Department's Consumer

Protection Website quoted in paragraph 7 of the complaint.⁹ 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.”¹⁰

8. United admits that on June 4, 2020 Complainant contacted United Airlines customer support via telephone to again request a cash refund. United admits that Complainant was not offered a cash refund at this time. United admits that Complainant cited the language from Department’s Consumer Protection Website quoted in paragraph 8 of the complaint.¹¹ United denies that the quoted language requires United to provide Complainant a refund as alleged in the complaint.

United denies that United did not provide guidance to its customer care representatives to issue refunds in this circumstance. United’s contract of carriage provides it substantial discretion for determining when a refund is owed due to a schedule change,¹² 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

⁹ See U.S. Department of Transportation, *Refunds* (last visited June 22, 2020), <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>.

¹⁰ *Id.*

¹¹ *Id.*

¹² 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>.

change of two hours or more. Agents would then exercise their discretion regarding whether a refund should be granted.

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. 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 has provided a cash refund to Complainant for the tickets at issue.

9. United admits that the language quoted in paragraph 9 of the complaint is accurate and is located on the Department's website identified in footnote 3 of the complaint. 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

10. United admits that flight number UA121 was cancelled due to a change in schedule frequency. 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 offer rebook the passenger on a new flight, and if the 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.

11. United denies that it is intentionally disregarding the Department’s guidance on refunds. United denies that it is willfully disregarding federal guidance and regulations. United denies that it is withholding monies due to U.S. passengers.

12. United denies that it has failed to comply with the Department’s Notice of August 2, 2002 regarding agents of service. United has recently updated its agent of service in docket DOT-OST-2002-12555. United is unable to confirm or deny the allegation in paragraph 12 of the complaint that Complainant “waste[d] several hours in the research and preparation of this

¹³ See U.S. Department of Transportation, *Refunds* (last visited June 22, 2020), <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>.

¹⁴ See United, *Schedule Changes* (last visited June 22, 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.

complaint” because it has no knowledge as to how long Complainant spent researching and preparing the complaint.

13. 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 has provided 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 has provided a refund to Complainant, affording him the relief he seeks, and further action by the Department is unnecessary.

Respectfully submitted,

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

Marc L. Warren
Jenner & Block, LLP
1099 New York AV, NW
Washington, D.C. 20001-4412
(202) 639-6897
Counsel for United Airlines, Inc.

CERTIFICATE OF SERVICE

I certify that I have, on June 22, 2020, served the foregoing document on the following persons in accordance with the Department's Rules of Practice:

scottreiners@gmail.com
kimberly.graber@dot.gov
blane.workie@dot.gov
robert.gorman@dot.gov

A handwritten signature in blue ink, appearing to read "Marc L. Warren", with a stylized flourish at the end.

Marc L. Warren
Counsel for United Airlines, Inc.