

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

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Miriam Edelman,)
 third-party complainant)
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v.) Docket DOT-OST-2016-____
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American Airlines, Inc.)
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COMPLAINT OF MIRIAM EDELMAN

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Dated: June 14, 2016

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COMPLAINT OF MIRIAM EDELMAN

1. This complaint arises out of American’s refusal to transport passenger Miriam Edelman on a flight for which she had a ticketed and confirmed reservation, for which she presented herself for check-in within the period provided by American’s Conditions of Carriage (COC) as then published on American’s web site. Nonetheless American denied her transport, by all indications because its airport staff—and even its customer service staff in subsequent email correspondence—misapplied and/or

misrepresented the applicable check-in requirements contrary to the unambiguous requirements of the publicly-posted COC as it stood on the date of ticket purchase (and also, though irrelevant, on the date of travel). As a result, American provided Ms. Edelman with neither the compensation nor the written notice required by applicable regulation.

2. Moreover, available information suggests this was not a one-off error. By all indications, other passengers are similarly situated, including those traveling during a period when the posted COC did not match AA's operating practices as well as those who purchased based on one COC but traveled after AA substituted a revised COC that purports to impose additional requirements.

I. Ticket, Check-In, and Airport Experience

3. On February 14, 2016, Ms. Edelman's brother Mr. Edelman used the AA.COM web site to redeem AAdvantage miles for her travel BOS-DCA on February 16 at 8pm.¹ On February 15, Mr. Edelman noted that the 4pm flight, Ms. Edelman's preference, had become available. Because the AA.COM site cannot make changes to the date or time of an AAdvantage award, Mr. Edelman called the AA Executive Platinum desk to make the change. The ticket was reissued and Ms. Edelman was confirmed to travel on the 4pm flight.

4. Ms. Edelman arrived at Boston Logan airport on February 16 at approximately 3:00pm. She was traveling with only a carry-on bag. She attempted to check in at an AA kiosk but, for a reason unknown to her, was unable to do so.

¹ Mr. Edelman also files this complaint as Ms. Edelman's attorney.

5. Ms. Edelman then waited in line to speak with a check-in agent, ultimately reaching an agent shortly after 3:15pm.² The agent handed her a piece of paper the size and shape of a boarding pass but which, Ms. Edelman learned later, was actually a “priority verification card” indicating that she was no longer confirmed to travel on the flight she had booked. She mistook the priority verification card for a boarding pass because it had the same general format as a boarding pass, including the same distinctive cardstock paper with the same color scheme (including white background and several blue stripes), same typeface and layout, the same barcode at top-center, and the same presentation of departure time, destination, gate, and associated information in the usual locations. See Exhibit 1.³ Nothing on the paper explicitly indicated that it was not a boarding pass or that Ms. Edelman was no longer confirmed to travel. Notably, the check-in agent did not explain to Ms. Edelman that she was (purportedly) late to check in, nor did the agent indicate that she was at risk of being denied transport for (supposed) failure to comply with AA’s check-in requirement.

6. Ms. Edelman proceeded through the security check to the designated gate, B19. She reached the gate while boarding was still in progress. Her contemporaneous notes indicate that she reached the gate at approximately 3:30 and that the agent was calling for “priority boarding” passengers. Seeing the word “priority” on her travel

² American’s records indicate that Ms. Edelman attempted to check in with the agent at 3:19pm. See Attachment 3b. Ms. Edelman does not dispute this claim.

³ An experienced traveler might notice the lack of a seat assignment, denoted by the word “SEAT” with no seat indicated and by an empty white box labeled (in tiny print) “SEAT.” An experienced traveler might know that “PRIORITYVERIFICATION” means that a passenger is on standby and can only board if the standby clears. But Ms. Edelman did not recognize these indications, and these indications are not obvious or explicit. Indeed, the dictionary definition of “priority verification” in no way indicates that a passenger is not confirmed to travel. American’s word choice thus failed to put Ms. Edelman on notice of the problem, and indeed prevented her from taking timely action to learn her rights. Nor is the absence of a seat assignment so unusual as to alert a passenger to something amiss. Indeed, Southwest does not provide seat assignments, and historically neither did Delta Shuttle.

document, she thought she was among those requested to board. But when she reached the gate agent, the gate agent told her that she could not board because she did not have a seat assignment. At that time, she still did not understand that she was at risk of being denied transport.

7. Ms. Edelman watched as other passengers boarded the 4pm flight. She also heard announcements indicating that the flight was oversold and soliciting volunteers to take a later flight. Eventually the gate agent told her that all passengers had boarded, that the plane was full, and that she would not be able to travel on that flight.

8. The 4pm flight gate agent made an announcement that all passengers who were standing by for the 4pm flight would be automatically moved to the standby list for the 5pm flight. Ms. Edelman understood that this applied to her. She later spoke with a gate agent for that flight, Roberto, who told her that she was a “no-show” for the 4pm flight, had not been on standby for the 4pm flight, and was not on the standby list for the 5pm flight. Ms. Edelman responded that she had been at the 4pm flight’s gate on time but that she understood that she was unable to board because she did not have a seat assignment or because the flight was overbooked. Ms. Edelman believes she was subsequently added to the standby list for the 5pm flight. Based on the inconsistency between what Roberto told her versus what she is informed that a Priority Verification card ordinarily indicates, Ms. Edelman does not know whether she was in fact on standby for the 4pm flight.

9. In due course the 5pm flight boarded. Ms. Edelman’s experience was much like the 4pm flight: Others filled the flight, and the gate agent did not call her to board.

10. At this point Ms. Edelman contacted her brother, a more frequent traveler (and her attorney for this complaint). He immediately called the American Executive Platinum desk which stated, incorrectly, that Ms. Edelman had been transported on the 4pm flight as ticketed. Mr. Edelman then instructed Ms. Edelman to approach the gate agent for the 6pm flight and hand her mobile phone to the agent so Mr. Edelman could speak with her. The agent refused, indicating that she could only speak with passengers in the airport. Mr. Edelman then instructed Ms. Edelman to tell the gate agent “involuntary denied boarding,” and she did so. Ms. Edelman took a seat near the gate agent, and a few minutes thereafter, the gate agent provided her with a boarding pass to travel on the 6pm flight.⁴ Ms. Edelman tentatively concluded that she was allowed to travel only because she had pointed out that she had been involuntarily denied boarding.

11. AA’s denial of boarding of Ms. Edelman caused more than a two hour delay in her scheduled arrival to Washington. The 4pm flight, on which Ms. Edelman was ticketed and confirmed, was scheduled to reach Washington at 5:25pm. The 6pm flight was scheduled to reach Washington at 7:34pm, two hours and nine minutes later. As a result of this flight delay, Ms. Edelman missed an important social function.

12. Ms. Edelman was not provided with any IDB compensation, nor any pamphlet or printout of disclosures pertaining to denied boarding, rights, and compensation.

13. During subsequent visits to Boston Logan, Mr. Edelman noticed that gate B19—the gate where Ms. Edelman’s 4pm flight departed—lacked the required disclosures pertaining to denied boarding. On February 19, just three days after Ms.

⁴ The boarding pass indicated that Ms. Edelman would travel in first class, and she did so. Ms. Edelman did not request any such accommodation. In particular, the first class travel was provided unsolicited and was not compensation or settlement for prior denied boarding of Ms. Edelman.

Edelman was denied transport, Mr. Edelman checked gate B19 and noticed no such disclosures present. He spoke with an AA employee who appeared to be a manager (based on style of dress) and pointed out the absence of the disclosure at gate B19. The employee indicated that the disclosures on that gate had been removed and were slated to be replaced. Mr. Edelman photographed B19's counter from all relevant angles, showing that the disclosure was not present on the side of the counter where passengers approach the gate, nor elsewhere at the gate. See Attachment 2(1). On February 23, Mr. Edelman visited gate B19 again and again found no such disclosure. See Attachment 2(2). On March 31, Mr. Edelman's friend Shawn Cole visited gate B19 and again found no such disclosure.⁵ See Attachment 2(3). Finally, on April 5, Mr. Edelman again checked B19 and found that the disclosure placard had been installed or reinstalled. In contrast, Attachment 2(4) shows the location of the disclosure as seen at adjacent AA gates. These observations indicate that the disclosure was missing at least from February 19 to March 31 but in all likelihood somewhat longer.

II. Customer Service Correspondence

14. As of the conclusion of Ms. Edelman's travel, neither she nor Mr. Edelman knew *why* she had been denied transport. AA's statements in its Conditions of Carriage suggested that she might have been selected due to travel on an award ticket, due to lack of a seat assignment, other factors, or a combination of factors. (Notably, no AA employee had indicated to Ms. Edelman that she had been late to check in.)

15. Mr. Edelman therefore contacted American customer relations to learn the reason for denial of transport to Ms. Edelman. See Attachment 3a. After confirming that

⁵ Mr. Cole is prepared to sign a declaration authenticating these findings if they are in dispute.

Mr. Edelman was authorized to inquire about Ms. Edelman's travel, AA replied on February 29 as shown in Attachment 3b. Quoting in relevant part:

For travel within the U.S., recommended passenger check-in time is 90 minutes prior to departure if you have bags to check, 60 minutes if you have no luggage to process. For most airports, you must check your baggage 30 minutes prior to scheduled departure time (depending on the airport, baggage check-in cut-off time may be 45 minutes). In addition, you must be checked in and be present at the departure gate at least 15 minutes before scheduled departure time to retain your reservation and seat. ...

Our records show that Miss Edelman was not checked in on time for her departure and therefore was put on standby for subsequent flights. Our records show she arrived at the ticket counter at 3:19pm for a 4:00pm flight. Cutoff time was 3:15pm, therefore, she is not due involuntary denied boarding compensation. Also to be eligible for denied boarding compensation she must be at the gate at the time of departure and she was not.

16. AA's reply suffers several important errors. For one, the first quoted paragraph discusses check-in timing requirements for passengers checking bags. But Ms. Edelman was not checking a bag. Moreover, the second quoted paragraph purports to apply a 45 minute check-in requirement. Such a requirement is without basis in the first quoted paragraph and most of all is specifically contrary to the AA Conditions of Carriage, as they stood on February 16 (the date of travel), February 17 (the date of Mr. Edelman's inquiry), and February 29 (the date of AA's reply) as posted to AA's web site. Rather, the AA Conditions of Carriage required only a 30-minute check-in for passengers at Boston Logan.⁶ Finally, the AA representative was in error in contending that Ms.

⁶ Ms. Edelman does not have a copy of the AA COC as preserved from AA.COM on those precise dates. However, Mr. Edelman checked the COC on March 3, as discussed in the next paragraph, and found that it specified a 30-minute check-in requirement, not 45, with no exception for Boston passengers not checking bags. Archive.org preserves historic versions of the AA COC and is in accord. See e.g. <http://web.archive.org/web/20160119024434/http://www.aa.com/i18n/customerService/customerCommitment/conditionsOfCarriage.jsp>, preserving the AA COC as posted to AA.COM as of January 19, 2016.

Edelman was not at the gate at the time of departure; she was. (Video surveillance would confirm it.)

17. On March 3, Mr. Edelman replied to point out these errors. See Attachment 3c. Mr. Edelman pointed out that the posted Conditions of Carriage specified a 30-minute check-in requirement, not 45. Mr. Edelman pointed out that no Boston-specific exception applied, as the only Boston exception in the COC covered timing for passengers checking bags. Mr. Edelman specifically asked: “Is a 45 minute check-in requirement specified in some other contract of which we may be unaware? If so, please point me to it.” Mr. Edelman also challenged AA’s contention that Ms. Edelman was not at the gate at the required time, and he asked what records indicate otherwise.

18. On March 19, Mr. Edelman noticed that AA had not responded to his March 3 reply. He also noticed that AA had modified the Conditions of Carriage posted to AA.COM to (purport to) require check in 45 minutes before departure, and due to that change he requested a copy of the Conditions of Carriage as they stood on March 3 (date of prior correspondence) and February 16 (date of travel). See Attachment 3d.

19. On May 16, Mr. Edelman noticed that AA still had not responded to his March 3 or March 19 replies. He reiterated the outstanding questions including the need for a copy of the Conditions of Carriage that applied to Ms. Edelman’s travel. See Attachment c. To date, AA still has not replied or provided the requested information or documents.

III. Improper Implementation of Changes to Check-In Time Requirements

A. Period where AA Imposed More Restrictive Requirements than the COC Publicly Posted on AA.COM

20. By all indications, AA recently changed its airport procedures, perhaps at some point in February 2016, to begin to require that passengers check in 45 minutes before scheduled departure. AA's message in Attachment 3b specifically indicates a 45 minute requirement. Twitter user @SDYankee69 reports the same experience (albeit there with a gate agent advising that the change was made on March 1, which contradicts Ms. Edelman's experience approximately two weeks earlier).⁷

21. Notably, as of March 3, the date of Mr. Edelman's message in Attachment 3c, the version of the COC posted to AA.COM still specified that check-in 30 minutes before departure is sufficient. Thus, as Mr. Edelman pointed out in Attachment 3c, the COC posted as of the date of Ms. Edelman's travel actually required check-in just 30 minutes before departure—yet AA airport staff and customer service staff both acted as if the 45 minute requirement was already in effect.

22. It is grossly unfair for AA to publish one requirement on its web site, then impose more restrictive requirements to passengers' detriment. Such a practice has obvious harm to passengers, who rely, to their detriment, on AA's unambiguous statement of applicable requirements—and who face penalties and forfeitures as detailed in paragraph 31. There is no plausible proper purpose for AA's practice in this regard.

B. AA To This Day Imposes More Restrictive Check-In Requirements, Contrary to Requirements in Effect at the Time of Purchase

23. Although AA eventually updated the COC on AA.COM to indicate the requirement of checking in 45 minutes before travel, it purported to apply the change to

⁷ <https://twitter.com/SDYankee69/status/711290884487127040> ,
<https://twitter.com/SDYankee69/status/711299146431344640>

passengers who had already booked tickets (contrary to standard notions of contract) and it provided no affirmative notice to passengers (making it virtually certain that most passengers would not learn about the change until it was too late).

24. Consider a passenger who bought a ticket prior to the COC change, perhaps even checking COC check-in requirements as of the date of purchase, and in any event agreeing to be bound by the COC in all its particulars including check-in time. Unbeknownst to that passenger, AA moved the goalposts, requiring that the passenger check in at a time earlier than previously agreed and earlier than specified in the contract the passenger accepted.

25. Tellingly, Department regulations specifically prohibit airlines from changing the applicable COC in this way. As part of the Final Rule on Enhancing Airline Passenger Protections, the Department sought comment on retroactive applicability of amendments to contracts of carriage. The Department concluded that consumers have the right to receive accurate information at the time of purchase about the terms to which they will be held, and the Department creates a new rule 14 CFR 253.9 which precisely speaks to this situation: “An air carrier may not retroactively apply to persons who have already bought a ticket any material amendment to its contract of carriage that has significant negative implications for consumers.” The changes at issue are plainly material, in that they lead to forfeiture of ticketed and confirmed reservations as well as the additional harms listed in paragraph 31. 253.9 specifically disallows AA from applying such a change to tickets that passengers have already purchased.

26. Traditional contract principles similarly disallow AA’s attempt to impose more restrictive terms. Check-in time is a material element of a passenger’s contract with

an airline, as failure to check in on time entails a forfeiture of confirmed travel with attendant losses and penalties. Moreover, AA specifically requires customers to accept its Conditions of Carriage during the process of buying a ticket on AA.COM, and every AA eticket confirmation email includes the sentence “Air transportation on American Airlines and the American Eagle carriers® is subject to American's conditions of carriage” (hyperlinking to the COC on AA.COM). These actions cause the COC to be incorporated by reference into each passenger’s contract with AA. It is a fundamental principle of contract law that one party to a contract cannot change the contract, to its benefit and to the other party’s detriment, after the contract is executed. Such a change would make a mockery of the contract established at the time of purchase.

27. The change to check-in time requirements is particularly harmful to passengers because it violates longstanding expectations and continuing industry practice. Passengers reasonably expect to be able to check in for domestic flights, when traveling with carry-on bags only, as little as 30 minutes before travel based on years, indeed decades of doing so. Moreover, AA’s key competitors similarly allow check-in a little as 30 minutes before travel.⁸ AA errs in deviating from this practice with no announcement to affected passengers.

28. Indeed, Ms. Edelman is among the passengers on specific notice of AA’s prior 30 minute check-in requirement. During a November 2015 trip, an AA representative told Ms. Edelman that she needed to be checked in 30 minutes before

⁸ See United: <https://www.united.com/web/en-US/content/travel/airport/process/default.aspx> (“The minimum check-in time requirement for customers without checked baggage is 30 minutes prior to departure”). Delta: http://www.delta.com/content/www/en_US/traveling-with-us/check-in/requirements.html (“You must be checked in at least 30 minutes before your scheduled departure time.”). Southwest: http://www.seatguru.com/airlines/Southwest_Airlines/checkin.php (“The minimum time to check-in for a Southwest Airlines (WN) flight is: 30 minutes before scheduled departure time for US domestic flights”).

departure. Had Ms. Edelman known that this requirement had been changed to 45 minutes, she would have attempted to bypass the check-in line (discussed in paragraph 5) when she realized that she was at risk of checking in less than 45 minutes before scheduled departure. Instead, believing that 30 minutes was permissible because an AA employee had previously personally and specifically told her so, Ms. Edelman thought that she had plenty of time.

29. On information and belief, in the unlikely event that a passenger noticed the revision in COC and called AA to request a penalty-free change or refund, AA would decline in that no rule provides for the requested benefits. It is particularly unlikely that a passenger would notice the revision to COC because the old version is not posted and because AA staff do not provide it upon request. (Note AA's failure to provide it even in response to Mr. Edelman's specific request, repeated three times in the messages of Attachment 3c, 3d, and 3d.)

30. AA has not taken steps to notify affected passengers. AA knows which passengers are affected: Those who 1) booked domestic travel 2) before the change in requirements was announced in COC on AA.COM, 3) for travel after the change in requirements took effect. Via information in reservations and in AAdvantage membership records, AA has contact information for most or all passengers. But AA has not taken affirmative steps to notify passengers to the change. In addition, although the AA.COM web site has the ability to provide announcements to passengers, AA has not used the announcement feature to alert passengers to this new requirement.

C. Passengers Are Harmed by AA's Imposition of More Restrictive Terms

31. It is clear why AA's more restrictive COC, requiring check-in further in advance, harms passengers: Passengers who seek to check in 31 to 44 minutes before

travel are now unable to do so. Such passengers thereby lose confirmed space—potentially requiring travel on another flight or even another day. Passengers in a premium class of service may be accommodated only in a lower class, and AA will likely contend that passengers on restricted tickets who are downgraded in this way are due no compensation. Passengers also lose preferred seating, whether provided based on prepayment of a fee or due to elite status or fare type. Passengers also lose access to priority boarding, whether based on prepayment of a fee or due to elite status or fare type. Passengers may be charged a change fee and/or fare difference to resume travel or may be deemed no-shows and may even face forfeiture of their prepurchased tickets. AA's change clearly makes passengers worse off.

D. AA Benefits by Imposing More Restrictive Terms

32. Whatever the purpose of AA's changes, they yield direct pecuniary benefits to AA. Consider AA's response to an oversold flight, such as Ms. Edelman's 4pm flight. By declaring some passengers to be late check-ins, AA can remove them from the flight without paying IDB or VDB compensation—yielding significant operational flexibility and direct cost-savings. A second benefit to AA comes from the prospect of additional opportunities to collect change fees and/or fare differences. AA's tariffs require passengers to pay change fees and/or fare difference when they miss flights due to late check-in. On information and belief, AA has charged some passengers change fees and/or fare differences when passengers missed flights even when passengers complied with the check-in time posted on AA.COM as of the date of ticket purchase.

E. Anticipated Defenses and Alternative Implementation

33. AA is likely to argue that it revised its COC for proper reasons, perhaps in response to increased TSA wait times at some security checks. But the plain language of

253.9 offers no exception even for exigent circumstances. Moreover, many passengers—such as experienced passengers, passengers at small airports, passengers with TSA Pre, and passengers who happened to find short TSA lines—could check in less than 45 minutes before departure and nonetheless reach their gates on time (as Ms. Edelman did).

34. If AA’s operations truly require a longer check-in time than that provided in the COC at the time of purchase, AA should have provided explicit notification to each affected passenger as well as an opportunity for passengers to accept or reject (yielding a full refund to the original form of payment). Notably, AA already has such a mechanism in its schedule change system.

35. No matter the difficulties of TSA wait times or other unexpected circumstances, those problems cannot excuse AA changing check-in requirements without even updating its web site (as in section III.A), nor silently making a change to a web page passengers infrequently check without any efforts to put passengers specifically on notice (as in Section III.B).

IV. Experience of Other Passengers

36. Other passengers report similar denials of transport by AA based on supposed failure to comply with check-in timing requirements that were recently and silently changed.⁹ For example, Twitter user @SDYankee69 (who describes himself in his Twitter name as “John”) remarked on March 19, 2016: “@AmericanAir: it would have been nice to email or notify your customers of the new check-in cutoff times (as of

⁹ Note that the passengers discussed in this paragraph were denied boarding after the increased check-in time requirement was posted to the COC on AA.COM, the problem discussed in section III.B, whereas Ms. Edelman was denied boarding during a period when the COC on AA.COM continued to state that 30 minutes was sufficient (the problem discussed in III.A).

3/1) to 45min. #missedflight.”¹⁰ On Flyertalk, Bobert24 on reported: “Add me to the list of people who missed a flight due to this. ... [S]ome kind (any kind) of notification of this change would have prevented it. ... AA, there are informed, properly prepared travelers who usually aimed for sometime around that 45 minute timeframe. Notification on this kind of thing really is required.”¹¹

V. Violations

37. Ms. Edelman was involuntarily denied boarding in violation of 14 CFR 250. For one, she was not provided with the written explanation required by 14 CFR 250.9 or the compensation required by 14 CFR 250.5. Furthermore, AA entirely missed the window to provide such compensation: 14 CFR 250.8(a) requires that such compensation be provided on the day and at the place where boarding was denied. The improper selection of Ms. Edelman to be denied boarding constituted a violation of 14 CFR 250.3, requiring that carriers establish and follow boarding priority rules, whereas in this case AA denied boarding to Ms. Edelman contrary to those rules.

38. AA’s denial of boarding of Ms. Edelman also violated AA’s Conditions of Carriage. At section Oversales, the COC commits AA to follow certain procedures and provide certain compensation in case of denied boarding. AA breached this contract when it denied boarding to Ms. Edelman without following those procedures and without providing that compensation.

39. Furthermore, Ms. Edelman was denied boarding at a gate that lacked the disclosures required by 14 CFR 250.11(a).

¹⁰ <https://twitter.com/SDYankee69/status/711281304315125760>

¹¹ <http://www.flyertalk.com/forum/26403260-post64.html>

40. Additional violations result from AA's failure to provide the applicable Conditions of Carriage upon Mr. Edelman's request, contrary to 14 CFR 221.100, "Public Notice of Tariff Information." That provision gives a carrier a choice of two methods of distributing information about tariffs, but American followed neither method. American did not comply with the first method because, among other reasons, its employees refused to provide assistance to Mr. Edelman when he sought information in tariffs (specifically, the applicable contemporaneous Conditions of Carriage). That failure constitutes a violation of 221.102 and thus establish noncompliance with the first method. American also did not comply with the second method because American refused to provide to Mr. Edelman, acting on behalf of Ms. Edelman, a copy of the relevant portions of the applicable contract, specifically the applicable contemporaneous Conditions of Carriage, in violation of 221.107(a)(2) and (4).

41. Pursuant to 14 CFR 259.5, American adopted a Customer Commitment and made it available on its website. In this Customer Commitment, American affirmed that with few exceptions, persons denied boarding involuntarily are entitled to compensation under federal law. American's failure to adhere to this commitment, as described herein, not only violates Part 250, but also violates 14 CFR 259.5.

42. A further violation results from AA's failure to reply to Mr. Edelman's messages of March 3 and March 19 (as well as his message of May 16). 14 CFR §259.7(c) requires carriers to acknowledge each complaint in writing within 30 days of receiving it, and to provide a substantive written response within 60 days. Those messages are plainly complaints, but AA replied to none of them.

43. These violations are more than mere technicalities. To wit, Ms. Edelman was prejudiced by American’s failure to alert her to the denial of boarding or the supposed basis for that denial. Had American told her that she was denied boarding because she had not checked in on time, she would have called Mr. Edelman immediately, and he would have checked the COC to confirm that in fact she did check in on time. But at the airport, American failed to make any such statement to Ms. Edelman, delaying her efforts to determine her rights and preventing her from effectively arguing her position.

44. These violations are egregious because AA staff misapplied the then-applicable COC as posted to AA.COM; because AA completely failed to provide the required compensation or indeed any compensation; because AA failed to provide the required disclosures; because the required gate disclosure placard was missing; because AA continued to provide false information in response to customer correspondence; because AA failed to correct its position after Mr. Edelman explicitly pointed out its error; and because, for some passengers, AA purported to change its contract of carriage retroactively, despite the specific prohibition in 253.9. These violations are particularly serious because the ink is not yet dry on the Department’s most recent enforcement action against American for improper handling of oversales, Order 2015-9-10 less than one year ago, a matter in which the Department also found American’s conduct to be “egregious.”¹²

45. American’s actions also provided false information to the Department and to the interested public. 14 CFR 250.10 requires carriers to file quarterly reports with the

¹² It would be unusual for the DOT to bring two enforcement actions in two years as to a single carrier. Compare Docket OST 2013-0004, as to Delta Airlines, finding “serious concern” based on two separate dockets as to oversale violations during a *five*-year period.

Department's Bureau of Transportation Statistics (BTS Form 251) listing, among other things, the number of passengers denied boarding involuntarily and the number of passengers who volunteered to give up their seats. These numbers are then published and made available to the public in the Department's monthly Air Travel Consumer Report (ATCR), which ranks carriers according to their rate of involuntarily denied boardings. ATCR data may be used by members of the traveling public when choosing among transportation options and by carriers as a basis for composing advertising materials regarding the quality of their service compared to other carriers. It is imperative, therefore, that the ATCR data be accurate. On information and belief, when American misclassified Ms. Edelman as a purported late check-in rather than a denied boarding, it did not report her as either an IDB or VDB and she thus was not included in American's submissions to the Department. Moreover, given the likelihood that numerous other passengers are similarly situated, the total extent of AA's inaccurate information could be substantial and thus particularly likely to affect passenger decisions. This inaccurate information, in violation of section 250.10, also constitutes a violation of 49 U.S.C. § 41708, which authorizes the Department to require airlines to file reports in the form prescribed by the Department.

VI. Requested Resolution

46. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC §41712 to open an investigation of American Airlines for having engaged in, and continuing to engage in, the unfair or deceptive practices described above;

- (2) Order American to provide Ms. Edelman with the applicable historic Conditions of Carriage as they stood as of the date of travel and each revision throughout the period covered in this complaint; and order American to post such historic documents to its public web site, or otherwise make them available to the public, so that passengers can review the contract terms that actually apply based on their respective dates of ticket purchase;
- (3) Order American to provide Ms. Edelman with a corrected statement of its position as to her denial of transport, including an admission that she was incorrectly denied transport (and then to provide any IDB compensation required by law and/or contract); or, if American continues to contend that Ms. Edelman was correctly denied transport, all documents and records supporting that contention;
- (4) Find that it is an unfair and deceptive practice, in violation of 49 USC §41712 and specifically contrary to 14 CFR 253.9, for an airline to change check-in time requirements to a passenger's detriment after a passenger has booked a ticket;
- (5) Order American to honor its Conditions of Carriage check-in time requirements for all passengers, based on the requirements present on AA.COM, and incorporated into the contract by reference, at the time of the passengers' respective ticket purchases;
- (6) For this and any future changes to check-in time requirements, to the extent that such changes are permitted under 253.9, require that American prominently alert affected passengers to such changes, including via a statement on the home page of AA.COM and/or via email;

- (7) Order American to search its airport system records (including searching records of the time of attempted check-ins) to identify other passengers who were denied boarding or converted to standby when in fact they had satisfied the requirements posted on AA.COM as of the date of purchase; require that AA report to the Department the details and quantities of such occurrences; require that AA amend any inaccurate filings previously provided to the Department; and require that American pay IDB compensation to each such passenger;
- (8) Order that American refund passengers who were charged a fare difference or change fee, who were downgraded to a lower class of service, or who were denied the premium seating, priority boarding, or other benefits they had paid for, based on failure to satisfy purported changed check-in times when in fact they had satisfied the requirements posted on AA.COM as of the date of purchase;
- (9) Order American to search its customer correspondence for other passengers similarly situated; require that American provide all such correspondence to the Department; and require that American reply to each such passenger to provide accurate information about the check-in requirement actually in effect as of the passenger's ticket purchase and to correct any inaccurate or misleading information in American's prior messages to such passengers;
- (10) Investigate whether American has reported inaccurate IDB data to DOT, including omitting passengers from IDB and VDB reports due to their supposed failure to comply with check-in time requirements, when in fact they satisfied the requirements posted on AA.COM as of the date of purchase;

- (11) Require American to report to the Department the full circumstances surrounding the absence of required disclosures from Boston Logan gate B19, including the date and time when the disclosure was removed, the reason for removal, the date and time of restoration, the number of passengers who were voluntarily and involuntarily denied boarding from that gate during that period, and the number of passengers who were denied boarding from that gate during that period but not classified as such due to the practices detailed in this complaint;
- (12) Order American to provide additional compensation to each passenger who was denied boarding, voluntarily or involuntarily, at gate B19 during this period;
- (13) Impose appropriate civil penalties in light of the above;
- (14) Issue any guidance or revised regulations needed to clarify to other airlines and ticket agents, and to preclude any future claim of ambiguity, that these practices are unfair and deceptive in violation of 49 USC §41712.

Respectfully submitted,
/s/
Benjamin Edelman
Attorney at Law
Attorney for Complainant

Attachment 1

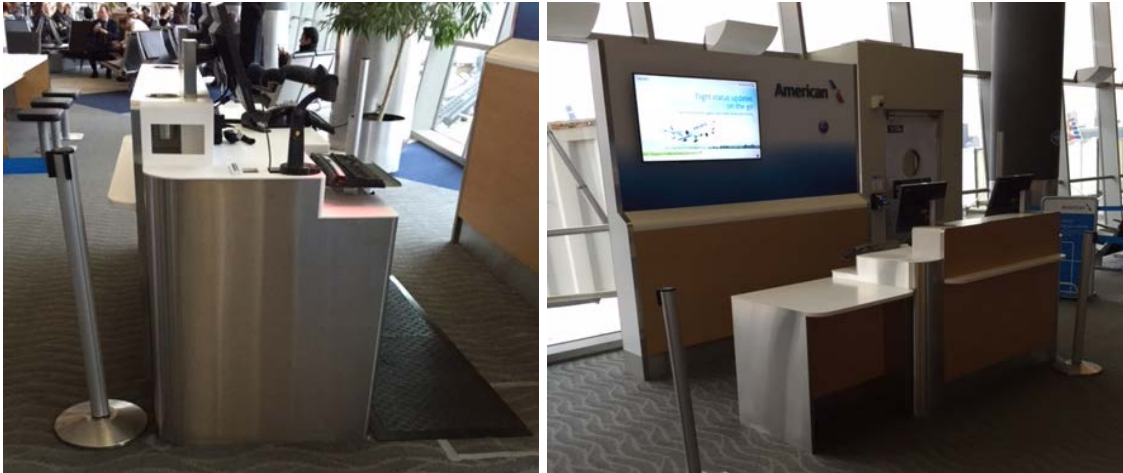


Attachment 2

(1) Mr. Edelman's photos of Boston Logan gate B19 on February 19, 2016
(showing no placard on either side of the B19 podium)

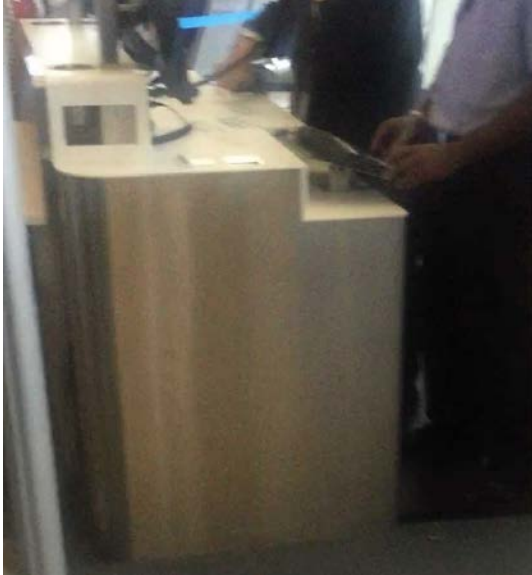


(2) Mr. Edelman's photos of Boston Logan gate B19 on February 23, 2016
(showing no placard on either side of the B19 podium)



Attachment 2 (continued)

(3) Shawn Cole photographed Boston Logan gate B19 on March 31
(showing no placard in the expected position on the B19 podium; photo taken from a
video confirming the location shown)



(4) Comparison photos of Boston Logan gate B17 on February 19, 2016
(showing the standard placard on the side of the podium facing the boarding lane)
(and similarly on all other gates in this area)



Attachment 3a

Submitted via AA.COM on February 17, 2016

[PNR and ticket number omitted] was ticketed and confirmed award travel with miles from my account, for travel by my sister Miriam on the 4pm flight BOS-DCA on 16 Feb. For reasons I do not yet fully understand, Miriam was not permitted to board the 4pm flight; she was apparently put on standby, involuntarily and against her wishes, and she did not clear. Apparently she was then put on the standby list for the 5pm flight and did not clear that either. She eventually managed to get onto the 6pm flight only when I instructed her to tell the gate agent "involuntary denied boarding" at which point she was accommodated in the front cabin.

Please check your records and tell me why your records indicate that she did not travel on the flight on which she was ticketed and confirmed. If she was involuntarily denied boarding, please confirm that she was provided with the information and benefits required by regulation, and tell me by whom and in what form. Please also indicate what factors led her to be the person selected for involuntary denied boarding. If you believe that she was denied boarding in some other way or for some other reason, please send details of what occurred according to your records.

My tentative conclusion, based on interviewing Miriam and reviewing her notes, is that she was IDB'ed. I do not believe she received the information or benefits required by 14 CFR 250.2b(b). I do not know whether gate staff followed the priority required by 14 CFR 250.3(a). She did not receive compensation on the day and place where the denied boarding occurred, contrary to 250.8(a). She did not receive a written explanation of denied boarding compensation or priorities, contrary to 250.9(a)-(b). I do not know whether the disclosures required by 250.11 were provided. I appreciate your attention to these requirements and to figuring out what went wrong here and what needs to be done now.

Attachment 3b
February 29, 2016

Dear Mr. Edelman:

Thank you for the information you sent. We're glad you took the time to contact us, allowing us to respond to your concerns and clarify some of our policies.

We are working hard on the consistent on-time departures of our flights because we know the importance our customers place on this particular element of our service.

Accordingly, to ensure that our flights depart on time, we have established minimum passenger and baggage check-in requirements.

For travel within the U.S., recommended passenger check-in time is 90 minutes prior to departure if you have bags to check, 60 minutes if you have no luggage to process. For most airports, you must check your baggage 30 minutes prior to scheduled departure time (depending on the airport, baggage check-in cut-off time may be 45 minutes). In addition, you must be checked in and be present at the departure gate at least 15 minutes before scheduled departure time to retain your reservation and seat.

For international flights, we recommend you arrive at the airport at least 2 hours prior to scheduled departure to allow sufficient time to complete all necessary international requirements. You must check-in at least 60 minutes before scheduled departure time and be present at the departure gate 30 minutes prior to scheduled departure to retain your reservation and seat.

Our records show that Miss Edelman was not checked in on time for her departure and therefore was put on standby for subsequent flights. Our records show she arrived at the ticket counter at 3:19pm for a 4:00pm flight. Cutoff time was 3:15pm, therefore, she is not due involuntary denied boarding compensation. Also to be eligible for denied boarding compensation she must be at the gate at the time of departure and she was not.

There are some exceptions to these check-in times; for check-in information specific to your airport of departure, please visit AA.com or click on the following link: www.aa.com/arrivaltimes.

Mr. Edelman, thanks for this opportunity to expound upon some of our policies and procedures with the hope that your sister's future travel will proceed more smoothly. We look forward to welcoming your sister aboard again soon, and thank you for choosing American.

Sincerely,
Heather Land
Customer Relations
American Airlines

AA Ref#1-5543630005

Attachment 3c

From: Ben Edelman
Sent: Thursday, March 03, 2016 11:00 AM
To: 'AACustomerRelations@aa.com' <AACustomerRelations@aa.com>
Subject: RE: Your Response From American Airlines

Ms. Land,

Thanks for getting back to me.

Ms. Edelman was traveling with carry-on baggage only. Reviewing AA's Conditions of Carriage, <http://www.aa.com/i18n/customerService/customerCommitment/conditionsOfCarriage.jsp?anchorLocation=DirectURL&title=conditionsofcarriage>, I believe the only relevant requirements are that a passenger must check in 30 minutes before departure and must be present at the gate 15 minutes prior departure. In contrast, you specify a 45 minute check-in requirement which I do not see in the COC. The COC does specify a 45 minute bag check cutoff for Boston, but that's irrelevant as Ms. Edelman was traveling with carry-on baggage only. Is a 45 minute check-in requirement specified in some other contract of which we may be unaware? If so, please point me to it.

Despite difficulty at the check-in kiosk and a queue to speak with a check-in agent, you indicate that Ms. Edelman did attempt to check in (and receive a priority verification card) at 3:19. That is broadly consistent with her contemporaneous notes. Her notes then indicate entering the security queue at 3:23 and reaching the gate at 3:30, times that make sense given the size and layout of the terminal and prevailing security lines at that checkpoint at that time of day. She reports that she attempted to board during ordinary boarding but was turned away for lack of a seat assignment. She says she then spoke with a gate agent, was advised to sit at the gate to wait for a seat assignment, and did so, all as boarding continued and completed. This is contrary to your contention that she was not present at the departure gate at the required time, 15 minutes before boarding. What records indicate that she was not at the gate at the required time? Is that in fact indicated in her PNR?

My contention remains that Ms. Edelman complied with the requirements for check-in and arrival at the gate. I look forward to any further evidence supporting your arguments to the contrary.

Thanks,

Ben Edelman

[quotation of prior messages omitted]

Attachment 3d

From: Ben Edelman
Sent: Saturday, March 19, 2016 9:42 PM
To: 'AACustomerRelations@aa.com' <AACustomerRelations@aa.com>
Subject: RE: Your Response From American Airlines

Ms. Land,

I have not received a response from you, or anyone else from AA, as to my message below. If you have anything further to say, I would enjoy learning your views. Note my contention that the applicable check-in requirement, as of the date of travel, was 30 minutes which you indicated the passenger complied with. Note also my request for any records indicating that the passenger was not at the gate at the required time, which the passenger disputes.

I see that <http://www.aa.com/i18n/customerService/customerCommitment/conditionsOfCarriage.jsp?anchorLocation=DirectURL&title=conditionsofcarriage> has changed since my message on March 3, now specifying a 45 minute check-in requirement. Please send me a copy of the Conditions of Carriage as they stood on March 3, and as they stood as of the passenger's travel on February 16.

Thanks,

Ben Edelman

[quotation of prior messages omitted]

Attachment 3e

From: Ben Edelman

Sent: Monday, May 16, 2016 5:20 PM

To: 'AACustomerRelations@aa.com' <AACustomerRelations@aa.com>

Subject: RE: Your Response From American Airlines

Ms. Land,

Recall our March discussion below and my outstanding request, now two months pending, for a copy of the Conditions of Carriage as they stood on March 3 and February 16. I have received no reply from you. Are you able to provide that information?

It seems to me that a passenger should be able to receive the COC and other contract terms that apply to their travel. But so far as I know, this information is not currently available on aa.com due to the substitution of a new version.

Thanks,

Ben Edelman

[quotation of prior messages omitted]

Certificate of Service

I hereby certify that I have, this 14th day of June, 2016 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Howard Kass	howard.kass@aa.com
Robert Silverberg, Esq.	rsilverberg@sbgdc.com
Blane Workie	blane.workie@dot.gov
Robert Gorman	robert.gorman@dot.gov
Kimberly Graber	kimberly.graber@dot.gov
Airline Info	info@airlineinfo.com

/s/

Benjamin Edelman