



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 21st day of May, 1997

Served: May 21, 1997

Applications of

EL AL ISRAEL AIRLINES, LTD.

for renewal of exemptions under
49 U.S.C. section 40109

Dockets **OST-95-472 (47986)**
OST-97-2547 (48826)

ORDER TO SHOW CAUSE

Summary

By this order we tentatively find that it is in the public interest to deny the requests of El Al Israel Airlines (El Al) to renew its exemptions to conduct scheduled foreign air transportation of persons, property and mail between Israel, on the one hand, and Washington/Baltimore, Dallas/Fort Worth and Orlando, on the other hand.

Background

Air services between the United States and Israel are governed by a 1950 Air Transport Agreement, as amended, which authorizes service by Israel between Israel and New York and four additional U.S. points to be selected by Israel. The four additional points so chosen were Boston, Chicago, Los Angeles and Miami. Under the Agreement, U.S. carriers are authorized to provide service from the United States via intermediate points to Tel Aviv and beyond.

El Al holds a foreign air carrier permit, last issued by Order 86-3-58, to conduct services via various intermediate points to New York, Boston, Chicago, Los Angeles and Miami, and beyond to Mexico City, South America and Asia, subject to certain restrictions. All of this authority is within the U.S.-Israel Agreement.

The carrier also holds certain authority outside the Agreement, as follows: On February 14, 1992, we granted El Al a temporary exemption to conduct scheduled combination service between Israel and Washington/Baltimore and Dallas/Fort Worth. On June 11, 1993, we granted a temporary exemption to conduct scheduled combination service between Israel and Orlando.¹ El Al proposed to conduct all of these operations under a wet-lease arrangement with North American Airlines, Inc. In granting this extrabilateral authority, we found that comity and reciprocity with Israel supported grant of the requested exemptions.²

Applications

By applications filed June 1 and 10, 1994, El Al requested renewal of its Washington/Baltimore, Dallas/Fort Worth, and Orlando exemptions.³ In support of its requests, El Al stated that the comity and reciprocity with Israel that supported grant of the initial authority continue to apply.

United Air Lines, Inc., and Northwest Airlines, Inc., filed answers in opposition. They state that reciprocity on the part of Israel is inadequate to support the grant of extrabilateral authority to a carrier of Israel, citing the Government of Israel's refusal to authorize extrabilateral third-country code-sharing services by U.S. carriers. El Al filed responsive pleadings, stating that the issues raised in opposition have already been disposed of in other proceedings, most notably, the Department's denial of Northwest's IATFCPA complaint against El Al and the Government of Israel (Order 94-4-7), and are not relevant to the Department's evaluation of applications at issue here. The State of Maryland and the Dallas/Fort Worth parties filed answers in support of El Al's application in Docket OST-95-472 (47986).

Subsequent Developments

On March 26, 1997, we authorized Tower Air, Inc., to provide service over the New York-Athens-Tel Aviv route.⁴ This route, including Fifth Freedom rights on the Athens-Tel Aviv segment, had previously been served for many years by Trans World Airlines, Inc. (TWA). The U.S. Government designated Tower for the route and Tower duly sought a license from the Israeli aeronautical authorities. However, on April 20, 1997, Israel's Ministry of Transport (MOT) formally denied Tower's request to provide Fifth Freedom service between Tel Aviv and Athens. The MOT cited as the reason for its disapproval unspecified problems involving the Israel-Greece Air Transport Agreement, as well as the provisions of the U.S.-Israel Agreement

¹ See Order 92-9-55 in Docket OST-95-472 (47986), and Order 95-1-48 in Docket OST-97-2547 (48826). The exemptions remained in effect beyond their prescribed expiration dates based on 5 U.S.C. 558(c). See footnote 3, *infra*, and accompanying text.

² We also exercised our discretion to grant North American Airlines the necessary statements of authorization to perform the wet-lease services.

³ See Dockets OST-95-472 (47986) and OST-97-2547 (48826). As to each application, El Al invoked the automatic extension provisions of federal law (5 U.S.C. 558(c) as implemented by 14 CFR Part 377) to maintain its expired authority.

⁴ See Notice of Action Taken dated March 26, 1997 in Docket OST-97-2120.

concerning the principle of fair and equal opportunity to compete and the requirement to take into consideration the interests of the designated airline of the other party.

On May 6, 1997, representatives of our Embassy in Tel Aviv met with the Director of Israel's Civil Aviation Authority to express the United States' deep concern over this matter, stating that the authority sought by Tower is a clear bilateral right; that any problems involving the Israel-Greece bilateral relationship are not relevant to Tower's request; and that the U.S.-Israel Agreement does not provide for *a priori* review of proposed services. Our Embassy advised the Director that Israel's failure to approve Tower's application would represent a serious breach of obligations in the U.S.-Israel aviation relationship, and could lead to our review of aspects of El Al's service to the United States.

The Government of Israel has not acted to rescind its April 20 denial and approve Tower's request.

Tentative Findings and Proposed Action

We tentatively find that the public interest requires that we deny El Al's requests to renew its exemptions to serve Washington/Baltimore, Dallas/Fort Worth, and Orlando. This action will have the effect of terminating the authority held by El Al to conduct the services at issue here.

Our tentative decision is based on the recent action by the Government of Israel withholding bilateral rights from a U.S. carrier, specifically, the MOT's April 20 denial of Tower's request to provide Fifth Freedom service between Athens and Tel Aviv. As noted above, the service proposed by Tower is clearly a bilateral right provided in the U.S.-Israel Air Transport Agreement, which authorizes U.S. carriers to operate services "via intermediate points to Tel Aviv and beyond." Furthermore, not only are the U.S. bilateral rights here clear on their face, but they are borne out by the Israeli Government's own longstanding practice of authorizing TWA's Fifth Freedom operations over the route. We do not consider any of the reasons cited by the MOT for its disapproval as a valid cause to abrogate U.S. carrier rights which are plainly set forth in the U.S.-Israel Agreement.

Against this background, we tentatively conclude that the circumstances supporting the positive findings that led to our earlier grants to El Al of extrabilateral exemption authority to serve Washington/Baltimore, Dallas/Fort Worth, and Orlando are no longer present, that the public interest no longer warrants permitting El Al to continue to hold this valuable authority, and that this authority should therefore be terminated by our denial of El Al's exemption renewal applications in Dockets OST-95-472 (47986) and OST-97-2547 (48826).⁵

⁵ In light of the basis for our tentative decision we need not reach the issues raised by United and Northwest in their answers to the El Al applications.

ACCORDINGLY,

1. We direct all interested persons to show cause why the tentative decision set forth above should not be made final;
2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions shall, no later than seven (7) calendar days after the date of service of this order, file with the Department and serve on the parties who have filed pleadings in Dockets OST-95-472 (47986) and OST-97-2547 (48826), a statement of objections specifying the part or parts of the tentative findings and conclusions objected to. If objections are filed, answers to objections are due no later than three (3) calendar days thereafter;⁶
3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department may enter an order which will make final our tentative findings and conclusions set forth in this order; and
5. We will serve a copy of this order on El Al Israel Airlines, Ltd., Tower Air, Inc., United Air Lines, Inc., Northwest Airlines, Inc., North American Airlines, Inc., the Ambassador of Israel in Washington, D.C., and the Department of State.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

⁶ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.