

Posted: 5/14/99

4:45 p.m.

Order 99-5-7



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

Issued by the Department of Transportation
on the **14th day of May, 1999**

Served: May 18, 1999

Complaint of

NORTHWEST AIRLINES, INC.

Against

**THE COUNCIL OF THE EUROPEAN
UNION AND THE GOVERNMENTS OF
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

Docket OST-99-5011

ORDER

On January 15, 1999, Northwest Airlines, Inc. (Northwest) filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States). Northwest states that the EU is in the final stages of enacting a regulation that would restrict the use of hushkitted aircraft, and that, if enacted, the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements. Northwest urges the Department to take action to redress the economic harm caused by the EU regulation, which it argues constitutes an "unjustifiable or unreasonable...practice against an air carrier" and "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market," warranting action under the statute.¹

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through

¹ We summarized the complaint more fully in Order 99-1-10.

negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited (filed jointly); Lufthansa German Airlines; the Cargo Airline Association; Société Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services, Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Aircargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.; Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.²

By Orders 99-3-10 and 99-4-15, the Department extended the deadline for action on Northwest's complaint through May 15, 1999, citing a number of consultations between the United States and the European Union. These consultations were followed by an EU decision to postpone for one year any application of the hushkit regulation, which was adopted on April 29, 1999.

On May 14, 1999, Northwest agreed to a temporary, limited waiver of the statutory deadline, specifically, through February 1, 2000. Northwest said that it understands that U.S.-EU negotiations are continuing and that consultations at the International Civil Aviation Organization (ICAO) are just beginning. Northwest states that consultations regarding the hushkit issue should be allowed more time than is provided for under the statute because the complexity of the technical issues may take some time to resolve. Northwest reserves the right to withdraw its consent to the limited waiver if, in the course of negotiations, it becomes evident that the EU is unwilling to consent to restoring the integrity of the ICAO certification process. In these circumstances, Northwest states that it is prepared to agree to a temporary, limited waiver of the statutory deadline.

After careful consideration of Northwest's submission and other relevant factors, we believe that the public interest is best served by granting Northwest's waiver and deferring the deadline for action on the complaint through February 1, 2000.³

ACCORDINGLY,

1. We grant the request of Northwest Airlines, Inc. for a waiver of the statutory deadline in order to defer through February 1, 2000, the period for taking action on its complaint in Docket OST-99-5011;

² The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

³ Under the Department's regulations, answers to Northwest's request would not be due until seven business days after its filing, *i.e.* May 25, 1999. As that would be after expiration of the current deadline, May 15, 1999, we have decided to act on Northwest's request without awaiting expiration of the period for answers. Should any additional answers be filed, we will address them in a subsequent order.

2. We grant the motion of the Cargo Airline Association to file an otherwise unauthorized document; and

3. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, France, and the United Kingdom in Washington D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Office of the United States Trade Representative); and the U.S. Department of Commerce (Office of Service Industries).

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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