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Order 2000-8-12



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

Issued by the Department of Transportation
on the 11th Day of August, 2000

Served: August 11, 2000

Application of

CASINO AIRLINES, INC.

for an exemption pursuant to 49 U.S.C. 40109

Docket OST-00-7674 - 3

ORDER CONFIRMING ORAL GRANT OF EXEMPTION

By this order, we confirm our oral grant of July 21, 2000, of a 60-day exemption from Part 298 of our regulations to enable Casino Airlines, Inc., to continue to operate as the direct air carrier for a public charter program on behalf of Pacific Skyway, Inc.

Background

By Order 97-3-21, issued March 17, 1997, Casino was found fit to conduct scheduled passenger operations as a commuter air carrier. Casino operated scheduled passenger service until June 10, 1999, when its insurance was cancelled and it ceased all operations. As a result, we notified Casino on June 17, 1999, that, in accordance with section 204.7 of our rules (14 CFR 204.7), its commuter authority was suspended.¹ Due to the cancellation of its insurance, the suspension also applied to Casino's Part 298 air taxi authority.

On July 15, 1999, Casino filed evidence of insurance coverage and registered as an on-demand air carrier. It also filed a notice of intent to resume commuter operations and submitted some fitness information in support of its request. However, the information was not sufficient to enable us to make a determination that Casino remained fit to operate as a commuter air carrier. Casino has not

¹ Section 204.7 provides that, if a commuter air carrier ceases conducting the operations for which it was found fit, willing, and able, its authority to conduct those operations is automatically suspended as of the date that those operations ceased. It further provides that, once a carrier's commuter authority has been suspended, it may not recommence scheduled passenger operations nor advertise such service until its fitness to do so has been re-established by the Department. If a carrier wishes to resume such operations, it must file a notice of its intent to do so, accompanied by data supporting the carrier's continuing fitness as set forth in section 204.3 of our rules, at least 45 days before the date on which service is expected to resume.

yet filed the necessary information upon which to base a fitness determination. Thus, the carrier currently holds authority to provide passenger service as an on-demand air taxi operator only.

On May 10, 2000, our Office of Aviation Enforcement and Proceedings (AEP) informed Casino that it may be providing scheduled passenger service without the appropriate economic authority from the Department in violation of 14 CFR Part 298 and 49 U.S.C. 41101. In this regard, AEP noted that Casino was providing air transportation for a public charter program (PC-99-293) on behalf of Pacific Skyway, Inc., which was being operated on a regularly scheduled basis between Santa Maria, California, and Las Vegas, Nevada. At that time, Casino was providing 21 round trips a week between those points. AEP informed Casino that, in order to carry passengers on at least five round trips per week on at least one route between two or more points according to flight schedules that specify the times, days of the week, and places between which those flights are performed, it must be found fit as a commuter air carrier.² AEP noted that section 298.2(e) does not distinguish between regularly scheduled service operated pursuant to Part 380 and other scheduled service. Thus, holding out scheduled service without complying with the commuter fitness requirement would be a violation of Part 298 and 49 U.S.C. 41101.

Casino responded to the letter from AEP acknowledging that it was aware that it held only air taxi authority and that it was operating as the carrier for Pacific Skyway's Part 380 charter program as filed in PC-99-293. Casino emphasized that it did not publish or fly its own "schedule," but merely contracted its charter service to Pacific Skyway. Moreover, it pointed out that it implemented the public charter program with Pacific Skyway only after first consulting with members of the Department's staff, who did not object to the proposed service, and the charter prospectus filed by Pacific Skyway was itself approved.³ In subsequent conversations, AEP emphasized its position that Casino, as an air taxi, could not operate as the direct air carrier for Pacific Skyway's public charter program pursuant to its published schedule until it was found fit to provide service as a commuter air carrier. As a result, and in filing for renewal of its public charter program with Pacific Skyway, Casino reduced the number of flights to be operated per week to four.

After further conversations with the Department's staff, on July 21, 2000, Casino filed an application in Docket OST-00-7674 for an exemption from Part 298 to enable it to continue to operate public charter flights on behalf of Pacific Skyway of up to 19 flights per week between Santa Maria and Las Vegas pending receipt of commuter authority. The carrier indicated that not being able to operate the charter program at this level would impose a significant financial burden on it and would result in the loss of much-needed air service to the community of Santa Maria.⁴ Casino reiterated that, while it does not believe that it falls within the limitations of section 298.2(e) since it is not flying "its" own schedule, but rather is providing air transportation for Pacific Skyway's public charter program, it nonetheless recognizes the Department's position on this matter and, once notified, altered its public charter program to comply with the AEP interpretation as described above.

² See definition of commuter air carrier in 14 CFR 298.2(c).

³ Upon further review of the issue, it is clear that the operation should not have been permitted.

⁴ On July 14, 2000, we received a letter from the General Manager of the Santa Maria Public Airport District in support of Casino operations, stating that there were only two air carriers serving the community and the loss or severe cut back in service would be extremely detrimental since it would result in a substantial loss of competition and inconvenience to over 1,000 travelers per month who have availed themselves of Casino's and Pacific Skyway's service.

After review of Casino's arguments, we decided to grant it an exemption from the requirements of Part 298 to the extent necessary to enable it to operate up to 19 public charter flights a week between Santa Maria and Las Vegas for a period of 60 days. We orally advised the carrier of our action on July 21, which we confirm here. We found that it was in the public interest to take this action primarily because of the reliance by Casino on the Department's earlier actions in permitting the operation to begin, the length of time those operations had been in place, and the impact that a lengthy loss of this service would have on the community of Santa Maria. In granting this exemption, we required Casino to provide evidence of insurance coverage meeting the requirements of section 205.5(b) of our rules for commuter air carriers, and conditioned the exemption on Casino's filing a complete application for commuter authority within 30 days.

On August 4, Air-Serv., Inc., filed an answer to Casino's request for an exemption from Part 298. AirServ submits that Casino's request should be denied or held in abeyance pending issuance of a show cause order tentatively finding Casino fit. AirServ states that it, like Casino, is in the same position in that both Casino and AirServ are air taxis registered with the Department under Part 298 and both proposed to operate flights on behalf of a public charter operator. However, unlike Casino, AirServ states that it did not request or receive interim exemption authority.

AirServ's argument centers on ensuring a level playing field and, even though it has now been found fit and is no longer in the same position as Casino,⁵ we are cognizant of its concerns in this regard. However, for the reasons stated above, this situation is far different than that involving AirServ and the public interest in permitting the limited exemption we have granted outweighs AirServ's arguments in this case.

ACCORDINGLY, Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We confirm our oral action of July 21, 2000, granting the application of Casino Airlines, Inc., in Docket OST-00-7674 for an exemption from Part 298 as necessary to permit it to operate up to 19 weekly flights as the direct air carrier for Pacific Skyway, Inc.'s public charter program (PC-00-275) for a period of 60 days.
2. Casino Airlines, Inc., shall maintain in effect liability insurance coverage as required under 14 CFR section 205.5(b) for all of its aircraft.
3. Casino Airlines, Inc., shall file for a commuter fitness determination within 30 days of July 21, 2000.
4. We reserve the right to amend, modify, or revoke the exemption granted at any time without hearing.
5. We will serve a copy of this order on the persons listed in Attachment A.

⁵ By Order 2000-8-10 issued August 9, 2000, we found AirServ fit to operate as a certificated air carrier.

Persons entitled to petition the Department for review of this order under the Department's Regulations 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The action confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Acting Director
Office of Aviation Analysis

(SEAL)

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