



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

Issued by the Department of Transportation on October 24, 2000
NOTICE OF ACTION TAKEN -- DOCKET OST-2000-6800

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Tropical International Airways, Ltd.**
supplemented

Date Filed: January 18, 2000, as

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between St. Kitts and Nevis, West Indies, and 10 U.S. terminal points, via 17 intermediate points (the requested points are listed in the Appendix). The applicant would conduct these services only by wet leasing aircraft from a duly authorized and properly supervised U.S. or foreign air carrier. Specifically, Tropical proposes to wet lease aircraft from American Trans Air (ATA), a U.S. certificated air carrier.¹

If renewal, date and citation of last action: New authority

Applicant representative: Steven Richards (954) 359-1696

Responsive pleadings: None filed

DISPOSITION

Action: Approved in part (services between St. Kitts and Nevis, West Indies and New York, N.Y., via Barbados)

Remainder dismissed (see remarks below)

Action date: October 24, 2000

Effective dates of authority granted: October 24, 2000-October 24, 2001

Basis for approval (bilateral agreement/reciprocity): Reciprocity with St. Kitts & Nevis

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: As noted above Tropical requested authority to serve 10 U.S. points from St. Kitts, via 17 intermediate points. However, Tropical provided no specific service plan for these points. On October 11, 2000, ATA filed an undocketed request with the Department under 14 CFR Part 212 seeking Department authority to wet lease aircraft to Tropical. ATA's request was limited to providing aircraft and crews to Tropical for service in a single market, specifically, between St. Kitts & Nevis and New York, N.Y., via Barbados. In light of Tropical's statements that it will operate services via wet lease only, and that the wet lease carrier will be ATA, and taking into account the limited authority in fact requested by ATA, we limited the exemption authority we granted Tropical to services between St. Kitts & Nevis and New York, N.Y., via Barbados, and dismissed the remainder of Tropical's request. Tropical may request exemption authority to serve additional markets provided such requests include a corresponding request from an aircraft wet lessor.

¹ On September 27, 2000, Tropical filed a copy of its wet-lease agreement with ATA in this Docket. The wet lease agreement provided that ATA would provide L-1011 aircraft and crews to Tropical for Tropical's use for scheduled combination services in a single market, New York, N.Y.-St. Kitts & Nevis, via Barbados.

Based on the record in this case, we found that Tropical is financially and operationally qualified to perform the services authorized above. However, we are unable to find that Tropical is substantially owned and effectively controlled by citizens of St. Kitts and Nevis. Tropical states that it is owned by nine individuals (five from the United States; two from Barbados and two from Trinidad).² In spite of the fact that we are unable to find that Tropical is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements. The carrier is properly licensed by the Government of St. Kitts & Nevis to perform the proposed services, and there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests. By memorandum dated March 16, 2000, the FAA advised us that it knew of no reason why we should act unfavorably on Tropical's application provided that the proposed services are conducted pursuant to a wet lease arrangement with a duly authorized and properly supervised U.S. or foreign air carrier. On October 24, 2000, we concurrently approved ATA's request to wet lease aircraft to Tropical.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) the action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

² The nine owners of Tropical and their citizenship are as follow: Colin Mayers and Phillip Simmons (Barbados), Joseph and Anthony Rahael (Trinidad); James Kilgo, Irving Oestreich, Rose Richards, Steven Richards, and George Rahael (United States). One of Tropical's seven directors is a citizen of St. Kitts. The remaining six directors are from the United States, Trinidad and Barbados. The stock ownership of Tropical is divided as follows: U.S. citizens 31% and citizens of Trinidad and Barbados 69%.

10 U.S. Terminal points

Atlanta
Boston
Chicago
Dallas-Ft. Worth
Fort Lauderdale
Los Angeles
New York
Orlando
St. Croix
Washington, D.C.

17 Intermediate Points

Antigua
Bahamas
Barbados
Bermuda
Dominica
Dominican Republic
Grenada
Guadeloupe
Guyana
Haiti
Martinique
St. Lucia
St. Martin
St. Vincent
Trinidad
Turks & Caicos
Venezuela

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

