

Posted: 10/27/2000
4:00 p.m.

Order 2000-10-31



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

Issued by the Department of Transportation
on the 27th day of October, 2000

SERVED: October 27, 2000

**NORTHWEST INTERNATIONAL
AIRWAYS LTD.**

**Violations of 49 U.S.C. §§ 41301, 41703, and
41712 and 14 CFR 212.4**

CONSENT ORDER

This order concerns certain passenger operations conducted by Northwest International Airways Ltd. d/b/a Northwest International Jet (NWIA), a Canadian air carrier, in violation of 49 U.S.C. §§ 41301, 41703 and 41712 and 14 CFR Part 212 of the Department's regulations and directs NWIA to cease and desist from further violations and assesses a compromise civil penalty of \$20,000.

Section 41301 requires that a foreign carrier hold permit authority from the Department, or appropriate exemption authority, in order to engage in foreign air transportation. Section 41703 prohibits foreign civil aircraft from transporting persons, property, or mail for compensation from one United States point to another United States point unless specifically authorized. Under 14 CFR 212.4, foreign air carriers must receive a statement of authorization prior to performing any Fifth Freedom flight, which is a flight "carrying traffic that originates and terminates in countries other than the country of the carrier's nationality, regardless of whether the flight operates via the home country." (14 CFR 212.2). Violations of these provisions also constitute unfair and deceptive practices and unfair methods of competition prohibited by 49 U.S.C. § 41712.

NWIA is currently registered with the Department as a Canadian air taxi operator under 14 CFR Part 294. It holds, and has held in the past, no other Department authority. As a foreign air carrier, any service NWIA desires to provide between points in the United States would constitute cabotage, which

the Department may authorize only under extremely limited circumstances. (See 49 U.S.C. 40109(g)). NWIA had no authority to conduct cabotage or Fifth Freedom operations, but it did so on a number of occasions. In doing so, it violated 49 U.S.C. §§ 41301, 41703, and 41712, and 14 CFR 212.4.

In mitigation, NWIA states that the violations found to have been committed by the carrier were solely attributable to the unauthorized conduct of its manager of corporate charter operations who contracted for the operation of the unauthorized flights at issue without the knowledge or consent of the owner and principal managing officer of the airline. According to NWIA, it took immediate action to terminate its relationship with the individual responsible for the unauthorized flights as soon as the unauthorized operations came to light. NWIA states that it has now employed a new director of Flight Operations, and has instituted procedures and taken remedial steps to avoid a repetition of the violations at issue in the future.

We view seriously the obligation of foreign air carriers to comply with our statutes and regulations governing their operations to and from the United States. After carefully considering all the facts in this case, including the mitigating circumstances described by NWIA, we continue to believe that enforcement action is necessary.

The Office of Aviation Enforcement and Proceedings and NWIA have reached a settlement of this matter. NWIA, while neither admitting nor denying any violations, consents to the issuance of this order, which includes a compromise civil penalty assessment of \$20,000, of which \$10,000 shall be paid as described below. The remaining \$10,000 shall be suspended for one year from the date of issuance of this order, and shall then be forgiven, unless NWIA fails to comply with this order's cease and desist provisions or payment provisions within that one-year period. In that case, the unpaid portion of the \$20,000 assessed penalty shall become due immediately. These settlement provisions will provide a strong deterrent to future violations by NWIA and other foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. Northwest International Airways Ltd. is found to have violated 49 U.S.C. § 41703 by its operation of unauthorized passenger flights from one United States point to another United States point and violated 14 CFR 212.4 by its

unauthorized operations of flights between a point in the United States and a point not in the United States or its homeland;

3. By engaging in the conduct set forth in paragraph 2 above, Northwest International Airways Ltd. has also violated 49 U.S.C. § 41301 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. Northwest International Airways Ltd. is ordered to cease and desist from further violations of 49 U.S.C. §§ 41301, 41703 and 41712 and 14 CFR 212.4 as described in paragraphs 2 and 3 above;
5. Northwest International Airways Ltd. is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Payment of \$10,000 of the assessed penalty is due within 15 days of the date of service of this order. The remaining \$10,000 shall be suspended for one year following service of this order, and then forgiven, unless NWIA fails to comply with this order's cease and desist provisions or payment provisions within that one-year period. In that case, the unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately and NWIA may be subject to further enforcement action. Failure to pay the penalty as ordered will subject Northwest International Airways Ltd. to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the United States Treasury. The wire transfer shall be executed in accordance with the instructions contained in Attachment 1.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

Rosalind A. Knapp
Deputy General Counsel

(SEAL)

Attachment

(1) To 021030004	(2) Type		
(3) From		(4) Ref.	(5) Amount
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

1. **Treasury Department Code—Provided**
 2. **Type Code—To be provided by sending bank.**
 3. **Sending Bank's Code—(ABA#)**
 4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
 5. **Amount—Include dollar sign and punctuation including cents digits.**
 6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
 - 7/8. **Entire line provided precisely as shown.**
 9. **Entire line provided precisely as shown.**
 10. **Enter name of air carrier or other payor (as shown on order).**
 11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."**
- NOTE:** Questions about these instructions should be directed to Yash Parekh, Office of Budget and Policy, Accounting Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Yash Parekh, when each payment is made.