



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Docket: OST-2002-12683

Served: August 16, 2002

NOTICE

In the Matter of the 2002 U.S.-Brazil All-Cargo Service Proceeding

SUMMARY

By this Notice, we have decided to deny the request of Amerijet International that Gemini Air Cargo and Evergreen Airlines International submit in this docket copies of any applications and supporting documents filed with the Air Transportation Stabilization Board seeking Federal loan guarantees.

DISCUSSION AND SUMMARY OF PLEADINGS

By Order 2002-6-20, the Department instituted the *2002 U.S.-Brazil All-Cargo Service Proceeding* to select a carrier for an authorization to be designated to serve the U.S.-Brazil all-cargo market and for allocation of four U.S.-Brazil all-cargo frequencies under the U.S.-Brazil aviation agreement. The instituting order established a procedural schedule for the submission of evidentiary material needed by the Department to make its selection(s), as follows: Applications by July 19, 2002; Direct Exhibits by August 2; Rebuttal Exhibits by August 16; and Briefs by August 30. Gemini Air Cargo, Evergreen International Airlines, and Amerijet International filed applications for the available authorization and an allocation of frequencies.

On August 6, 2002, Amerijet filed a motion requesting that the Department issue an order directing Gemini and Evergreen to produce copies of their respective applications reportedly filed with the Air Transportation Stabilization Board seeking Federal loan guarantees pursuant to the Air Transportation Safety and System Stabilization Act, together with copies of all other related or supportive documents. Evergreen and Gemini filed answers opposing Amerijet's request and Amerijet filed a reply.

In its motion, Amerijet states that neither Gemini nor Evergreen submitted any financial statements as part of their direct exhibits in the *2002 U.S.-Brazil All-Cargo Service Proceeding*. In support of its motion, Amerijet asserts that the Department and the applicants must have access to this information if the proceeding is to be conducted fairly and on the basis of a complete record. Amerijet maintains that the requested information is relevant because it relates to the fitness determination that the Department must make prior to issuing certificates pursuant to the award of new route authority. Moreover, Amerijet argues that it would be hard to imagine how

the Department could issue certificates to either applicant if the proposed operations are in any way dependent upon receipt of Federally subsidized loan guarantees.

Evergreen states that Amerijet's motion demonstrates a complete lack of understanding of the rationale for the establishment of the Air Transportation Stabilization Board (ATSB). The ATSB, according to Evergreen, is not a bankruptcy court, and the underlying purpose of the law that created the ATSB is to foster and develop airlines that have every intention of continuing safe and commercially viable operations. Evergreen argues that the fact that Evergreen is seeking loan guarantees does not bring into question the financial health of the company and, consequently, there is no basis for providing any of the ATSB filings that Amerijet has requested for the record of this proceeding. Evergreen notes that since the filing of its ATSB application, the Department has twice found the company fit to conduct its operations. In addition, Evergreen states that neither the Department nor the applicants in recent route cases have indicated a need for the type of financial review that Amerijet has requested here.

Gemini states that the information it has provided to the ATSB is confidential and relates solely to ATSB matters and ATSB requirements, distinct from the Department's regulatory jurisdiction. Gemini maintains that the Department regularly takes notice of Form 41 information filed by carriers to update fitness determinations in route proceedings such as the *2002 U.S.-Brazil All-Cargo Service Proceeding* at issue here. In addition, Gemini argues that Amerijet's motion seems to be designed to obstruct rather than facilitate the proceeding at hand, especially in light of the fact that Amerijet filed its motion long after petitions for reconsideration were due in this docket.

In its reply, Amerijet notes that both Evergreen and Gemini concede that there is no information in their applications or direct exhibits regarding their financial fitness. Amerijet also notes that neither Evergreen nor Gemini disputes that the production of such information would not constitute a significant burden. Amerijet argues that its request for information is timely because it could not have known what financial information Evergreen and Gemini would submit to the Department until the direct exhibits were filed in this case. It further argues that financial fitness and ability are always a relevant consideration in a certification proceeding and that the information presented to the ATSB is well suited for the purposes of determining fitness and ability. Amerijet maintains that such information could also shed light on an applicant's ability to inaugurate and maintain service as well as on possible structural changes that the applicant might be required to undertake. Finally, Amerijet argues that Evergreen's suggestion that earlier Department fitness findings make submission of ATSB filings unnecessary is without merit because Evergreen fails to explain whether the fitness findings were based upon financial information similar to that provided to the ATSB.¹

DECISION

¹Amerijet states that it did not mean to suggest in its motion that applicants before a bankruptcy court and the ATSB are in the same position. However, Amerijet contends that the two situations are not mutually exclusive either, as demonstrated by the case of U.S. Airways. Amerijet further indicates that its own reorganization was a public process, and that the materials produced by Amerijet are publicly available. In addition, Amerijet notes that its direct exhibits were not silent with respect to its reorganization or other pertinent financial information.

We have decided to deny Amerijet's request. The mere fact that Evergreen and Gemini have filed applications before the ATSB in no way in and of itself calls into question the financial fitness of either carrier. Nor was the material requested to be submitted under the Air Transportation Safety and System Stabilization Act intended to address the question of an air carrier's fitness to obtain or hold economic authority under Section 41101 of our Act. In these circumstances, we believe that the evidence we have already required to be submitted in this proceeding, along with data officially noticeable under rule 24(g) of the Department's regulations, will be adequate for us to make any fitness findings that may be necessary. Accordingly, we will not require that Gemini and Evergreen submit copies of any applications and supporting documents filed with the Air Transportation Stabilization Board seeking Federal loan guarantees.

We will serve this notice on Gemini Air Cargo, Inc.; Evergreen International Airlines, Inc.; and Amerijet International, Inc.

By:

Paul L. Gretch
Director, Office of International Aviation

(Seal)

Dated: August 16, 2002

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