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Order 2002-2-12

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 February, 2002

Served February 14, 2002

Aero Continente, S.A.

Violations of 49 U.S.C. § 41301 and 49 U.S.C. § 41712

CONSENT ORDER

This order concerns unauthorized service by Aero Continente, S.A. (Aero Continente), a Peruvian air carrier, between Lima, Peru, and Miami in violation of 49 U.S.C. § 41301 and § 41712. Under 49 U.S.C. § 41301, foreign air carriers, such as Aero Continente, must obtain permit authority from the Department pursuant to 49 U.S.C. § 41302 or an appropriate exemption prior to commencing service to the U.S. While the carrier received exemption authority for its Lima-Miami service in 1998, its exemption required that all its service to the U.S. be operated pursuant to wet lease contracts. On a number of flights in July and August 2001, however, Aero Continente, in violation of this requirement, provided a portion of the service with its own aircraft and crew.

Prior to July 2001 Aero Continente conducted numerous flights between Lima and Miami in a manner consistent with its exemption authority using, in most cases, the services of Aero Continente Chile as the wet lessor. A suspension of the Chilean carrier's authority in July 2001, however, abruptly terminated this wet lease service. In an attempt to provide substitute transportation, Aero Continente, the Peruvian carrier, arranged for Falcon Air Express and Miami Air International, both U.S. carriers, to provide service between Panama and Miami. Upon arrival at Panama City, pursuant to the interim service plan adopted by Aero Continente, passengers were transferred from the flights operated by the U.S. carriers to an Aero Continente flight for the continuation of the service to Lima. These joint services continued between mid-July and early August 2001, consisting of 17 round trip flights.

Aero Continente, by engaging in these joint operations with U.S. carriers, violated the terms of the wet lease condition attached to its exemption authority. The intent of the condition was that any service conducted by Aero Continente between the U.S. and Lima must be provided in its entirety by a properly certificated wet lessor which would be exclusively responsible for the operational control of the crews and aircraft. Under its exemption, Aero Continente's role was to be limited to sales and administrative functions. Moreover, the service provided by Aero Continente, which was connecting service instead of the direct service held out to consumers, violated 49 U.S.C. § 41712 which prohibits unfair and deceptive practices in the sale of air transportation.

In mitigation, Aero Continente states that the violations were inadvertent and resulted from the urgent need to arrange substitute transportation immediately following the suspension of service by its former wet lessor. The carrier claims that the Federal Aviation Administration was informed of the joint service and that, when advised to do so by the Department, it promptly ceased these operations.

The Enforcement Office believes that Aero Continente's recent violations of its permit authority require formal enforcement measures. In order to avoid litigation, Aero Continente has agreed to the issuance of this order to cease and desist, to the payment of compromise civil penalties, and to the findings made below. By this order, Aero Continente is assessed $20,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301. Of this total penalty amount, $10,000 shall be paid within 21 days of the service date of this order. The remaining $10,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Aero Continente, S.A., violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the $20,000 penalty shall become due and payable immediately, and the vendor may be subject to further enforcement action. The Enforcement Office believes that the assessment of this civil penalty is warranted in light of the violations in question and that this order will provide an incentive to Aero Continente and all other foreign air carriers to comply fully with the requirements of 49 U.S.C. § 41301 and § 41712, including conditions which the Department may attach to permit and exemption awards.

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 in the public interest;

2. We find that Aero Continente, S.A., has violated 49 U.S.C. § 41301 by engaging in scheduled air service between Lima, Peru, and Miami, Florida, without appropriate permit or exemption authority;

3. We find that Aero Continente, S.A., has violated 49 U.S.C. § 41712 by providing scheduled air service between Lima, Peru, and Miami, Florida, which involved a connection and a change of aircraft, rather than via the direct service that it held out to consumers;

4. We order Aero Continente, S.A., to cease and desist from further violations of 49 U.S.C. § 41301;

5. Aero Continente, S.A., is assessed $20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of that penalty amount, $10,000 shall be paid within 21 days of the service date of this order. The remaining $10,000 shall be suspended for one year following service of this order, and then forgiven, unless Aero Continente, S.A., violates this order's cease and desist provisions within the one-year suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the $20,000 penalty shall become due and payable immediately, and Aero Continente may be subject to further enforcement action; 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 U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Aero Continente, S.A., to the assessment of interest, penalty and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service 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)

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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 Financial Management, Accounting Services Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Parekh when each payment is made.

(Revised November 1995)