



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

Issued by the Department of Transportation
on the **29th day of May, 1996**

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Complaint of

AMERICAN AIRLINES, INC.

against

**AEROVIAS NACIONALES DE COLOMBIA S.A.
("AVIANCA"), AEROLINEAS CENTRALES DE
COLOMBIA ("ACES"), AND THE GOVERNMENT OF
COLOMBIA**

under 49 U.S.C. section 41310

Dockets OST-96-1315

ORDER

SUMMARY

By this order we approve American's complaint. We defer on the question of sanctions.

COMPLAINT

On April 26, 1996, American Airlines, Inc., filed a complaint under 49 U.S.C. section 41310 against Aerovias Nacionales de Colombia S.A. ("Avianca"), Aerolineas Centrales de Colombia ("ACES"), and the Government of Colombia.

American alleged that Colombia is in violation of its obligation under the Air Transport Agreement ("Agreement") between the United States and Colombia for its refusal to honor American's valid operating permit, issued by the Colombian aeronautical authorities on April 30, 1991 (Resolution No. 4521), authorizing American to operate, *inter alia*, nonstop service between New York and Bogota and beyond. American argues that it is properly designated for its proposed services under Route A.1 of the Agreement which authorizes services from U.S. territory to Barranquilla, Bogota, Cali, and Cartagena, and beyond Colombia to points in the Western Hemisphere; and that Article 3 of the Agreement specifically provides that:

Air service on a specified route may be inaugurated by an airline or airlines of one contracting party at any time that contracting party has designated such airline or airlines for that route and the other contracting party has given the appropriate operating permission. ¹

¹ American complaint at 2.

American stated that it plans to reinstitute nonstop service between New York (JFK) and Bogota with continuing service to Quito, Ecuador, on June 1, 1996;² that it notified the Colombian authorities of its intent to reinstitute such service on March 11, 1996; and that notwithstanding the provisions of the bilateral agreement and American's operating permit, the Colombian authorities, in a series of subsequent letters, have purported to require American to apply for, and receive, a wholly new operating permit, in order to operate this restored service. American stated that the Colombian Government has taken these actions over the objections of the United States Government.³

American maintained that in these circumstances immediate countermeasures by the United States are fully justified. American requested that the Department (1) require answers to the complaint by May 1, 1996, and (2) issue a show-cause order providing that, unless Colombia immediately agrees to honor American's existing operating permit authorizing nonstop service between New York (JFK) and Bogota, with continuing service to Quito, the U.S. authority held by Avianca to provide New York-Bogota nonstop service will be suspended.

Section 41310 provides that we shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint.

With these considerations in mind, we invited interested persons to file answers to the complaint.⁴

RESPONSIVE PLEADINGS

The Government of Colombia, Avianca, and ACES filed answers in opposition to the complaint. Continental Airlines filed an answer requesting that any action on the complaint be deferred. American and the Regional Business Partnership (Newark) filed replies.

The Government of Colombia states that American does not have a valid operating permit from Colombia because under Colombian law when a carrier suspends service for more than one year on a route specified in an operating permit, the permit is canceled. In view of this, Colombia argues that American's complaint is premature, since American has not reapplied for a permit for the New York-Bogota and beyond service, and, therefore, Colombia has not violated the bilateral agreement. Colombia further states that it seeks the cooperation of the United States in achieving a balance of airline participation under the Agreement, and is prepared to pursue further consultations with the United States that might produce options for a mutually satisfactory result. In this regard, Colombia states that the history of aviation relations between the two countries has been one of resolving differences through consultations, rather than through the use of administrative procedures such as section 41310. Avianca and ACES largely echo the arguments made by the Government of Colombia.

Continental argues that any action on American's complaint should be deferred until after Colombia acts on Continental's application for New York-Bogota-Quito service. Newark supports the efforts of Continental for approval by Colombia of Continental's Newark-Bogota-Quito service.

American replied that Colombia's arguments concerning American's permit are without merit and are interposed to mask Colombia's real goal, which is to prevent American from providing New

² American stated that it previously operated New York (JFK)-Bogota nonstop service under its 1991 Colombian operating permit from May 24, 1992, to January 31, 1993, without objection by the Colombian aeronautical authorities who were notified in December 1992 that this nonstop service would be suspended temporarily in January 1993.

³ In this regard, American cited statements made April 25, 1996, by the U.S. negotiators during U.S.-Colombia consultations in Washington, as well as an April 9 U.S. diplomatic note delivered to the Colombian Government in Bogota.

⁴ Order 96-5-1, May 1, 1996.

York-Bogota-Quito services. American repeats its request for immediate action to suspend Avianca's operating authority to serve the New York-Bogota market.

DIPLOMATIC CONTACTS

By letter dated May 13, 1996, the Colombian Director General of Civil Aviation informed the U.S. Government that Colombia has granted Continental authority to operate in the New York-Bogota-Quito market and has granted American International Airways authority to operate cargo service in the Miami-Colombia market, but further stated that the grant of more authorizations, given the imbalance that exists against Colombian companies in the U.S.-Colombia market, would not be in accordance with the provisions of Article 9 and 10 of the Agreement. This letter effectively confirmed statements made by Colombian negotiators during U.S.-Colombia aviation consultations in Washington on April 23-25, 1996.

DECISION

We have decided to approve American's complaint.

We conclude that the refusal of Colombia to authorize American to serve the New-York-Bogota and beyond market constitutes a violation of the express provisions of the United States-Colombia Air Transport Agreement, which entitle the United States to designate additional carriers on this route and which obligate Colombia to authorize such designated carrier to serve the route with a minimum of procedural delay.

We find the arguments raised by the Colombian Government, and the Colombian carriers, regarding American's need to reapply for a permit irrelevant given that the various Colombian diplomatic communications indicate that such an application would not be granted.

Against this background, we find that the failure of Colombia to approve American's operating authority for New York-Bogota and beyond service constitutes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market inconsistent with the U.S.-Colombia Air Transport Agreement.

While we are approving American's complaint, we are deferring for now on the question of sanctions. It is our hope that the Colombia government will not continue in its position of refusing to authorize American's New York-Bogota-beyond service, and that it will thereby remove the basis for our finding of a bilateral violation. Saying this, we must add however that should further consultations with Colombia to resolve this matter not produce a timely and satisfactory resolution, we would intend to take proportionate action against Colombian carriers in their operations to the United States.

ACCORDINGLY,

1. We approve the complaint of American Airlines, Inc., in Docket OST-96-1315;
2. We defer action on the relief requested by American Airlines, Inc., in Docket OST-96-1315 to the extent that it asks us to issue a show-cause order proposing to suspend authority for Aerovias Nacionales de Colombia, S.A. ("Avianca") to operate New York-Bogota services;
3. We may amend, modify or revoke this order at any time without a hearing;
4. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; the Regional Business Partnership (Newark); Aerovias Nacionales de Colombia S.A.; Aerolineas Centrales de Colombia; the Ambassador of Colombia in Washington; the United States Department of State (Office of Aviation

Negotiations, the United States Department of Commerce (Office of Service Industries; the Office of the United States Trade Representative.

By:

CHARLES A. HUNNICUTT
Assistant secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*