



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

Issued by the Department of Transportation
on the 5th day of July, 1996

SERVED July 5, 1996

Complaint of
NORTHWEST AIRLINES, INC.

against

THE GOVERNMENT OF JAPAN

under 49 U.S.C. section 41310

Docket OST-96-1500

ORDER SEEKING COMMENTS

On July 3, 1996, Northwest Airlines, Inc. (Northwest), filed a complaint under 49 U.S.C. section 41310 (formerly section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 (IATFPCA), as amended) against the Government of Japan (Japan). Northwest states that Japan has refused to authorize its proposed Seattle-Osaka-Jakarta service in violation of the U.S.-Japan Air Transport Agreement.

In support of its complaint, Northwest states that it is one of the carriers designated under the 1952 U.S.-Japan aviation agreement which entitles Northwest to operate without restriction from the United States to Tokyo, Osaka and Naha, Japan and beyond Japan to "points of Northwest's choosing;"¹ that such services include the right to carry fifth-freedom traffic and that its schedules are subject only to ex post facto review. Northwest further states that consistent with the provisions of the bilateral aviation agreement, it made the requisite schedule filings in a timely manner with Japanese authorities and Japan accepted the application for consideration and review. Notwithstanding its bilateral entitlements, and its compliance with all Japanese filing procedures, Northwest states that on June 28, at the conclusion of the second round of intergovernmental consultations on this matter, Northwest was notified that it could not operate the service and that a permit would not be granted. Northwest argues that Japan's action seriously injures Northwest by limiting its ability to serve Asia and by precluding altogether Northwest's participation in the U.S.-Indonesia market; and that Japan's clear violation of the bilateral agreement warrants remedial action under the statute.

In this regard, Northwest requests that the Department immediately require Japan Air Lines to cancel its twice weekly service in the Japan-Los Angeles-Brazil market which is operated with local traffic rights between Los Angeles and Sao Paulo, as well as its proposed once weekly flight between Hiroshima and Honolulu whether operated on a scheduled or a charter basis. Because Northwest had proposed to institute its service July 1, and Japan's actions have required

¹ Complaint of Northwest at 2.

cancellation of several flights, Northwest requests that the Department take prompt and immediate action on its complaint. Specifically, Northwest requests that we require answers to its complaint by noon on July 5, issue a show-cause order by close of business on July 5 tentatively finding Japan in violation of the agreement and proposing sanctions, and issue a final order no later than July 8.

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. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite any interested persons to answer Northwest's complaint in Docket OST-96-1500. Answers may be filed no later than July 11, 1996. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than July 15, 1996.² Although Northwest had requested a more expedited procedural schedule, we believe that the procedural schedule established properly balances the need for providing all interested parties with an adequate period of time to comment while still ensuring expedited consideration of Northwest's complaint. Given the compressed procedural schedule, all comments and replies should be served by facsimile or by hand. A hard copy, however, should be delivered to the Department's Docket Section, C-55, Room PL-401.

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

ACCORDINGLY,

1. We invite interested persons to file answers to the complaint of Northwest Airlines, Inc., in Docket OST-96-1500 no later than July 11, 1996.³ If answers are filed, replies to those answers should be filed no later than July 15, 1996. Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 3, below;
2. If timely and properly supported answers are filed, we will give consideration to the matters and issues raised by the answers before we take further action; and
3. We will serve this order on Northwest Airlines, Inc.; American Airlines, Inc.; Continental Micronesia, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Trans World Airlines; United Air Lines, Inc.; United Parcel Service, Inc.; Japan Air Lines Company, Ltd.; All Nippon Airways Co., Ltd.; Japan Air System Company, Ltd.; Japan Air Charter Co., Ltd.; Japan Asia Airways Co., Ltd.; Japan Universal System Transport Co., Ltd.; Nippon Cargo Airlines Company, Ltd.; World Air Network Co., Ltd.; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Asia), the Office of the United States Trade Representative;

² We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

³ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green).

the United States Department of Commerce (Office of Service Industries); the Ambassador of Japan in Washington, D.C.; and the Air Transport Association.

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>.*