



Order 97-8-28

Served: August 28, 1997

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

Issued by the Department of Transportation
on the 28th day of August, 1997

Application of :
 :
AIR JAMAICA LIMITED : DOCKET OST 96-1881
 :
for extension of exemption :

ORDER

Summary

By this order, we extend Air Jamaica Limited's request for exemption authority to conduct scheduled combination operations between New York, New York, and Atlanta, Georgia, on the one hand, and Barbados, on the other, via the intermediate points Antigua and Barbuda and St. Lucia, through December 1, 1997. This authority was last granted by Order 97-7-13 and is limited to operations conducted under wet lease by a duly authorized and properly supervised U.S. or foreign carrier.

Background

On October 18, 1996, Air Jamaica requested an exemption for two years to conduct the extrabilateral operations described above. Amerijet International, Inc., answered and stated that comity and reciprocity did not support grant of the request. Specifically, Amerijet stated that it was unable to secure facilities at Jamaican airports from the Airports Authority of Jamaica (AAJ) to self-handle its cargo, a bilateral right.

By Order 96-11-30, issued November 27, 1996, the Department granted the request for 90 days, for the reasons noted in that Order. By subsequent Department Orders, the exemption was extended, most recently by Order 97-7-13, through August 28, 1997.¹

In those Orders, we noted that intergovernmental and intercarrier efforts have been ongoing to resolve a variety of problems Amerijet has faced in attempting to commence its planned Jamaican services and, based on progress that had been made in resolving these concerns, we granted the noted extensions. In Order 97-7-13, our most recent extension of this authority, we stated that it was our expectation that all outstanding issues involving Amerijet's institution of service to Jamaica would be resolved in the near future. Based on that expectation, we extended this authority through August 28, 1997, but noted that we would closely monitor the matter.

By various pleadings submitted subsequent to issuance of Order 97-7-13, Amerijet stated that the Government of Jamaica (GOJ) continues to frustrate its attempts to exercise operating rights encompassed by the U.S.-Jamaica Air Transport Agreement, while Air Jamaica has enjoyed all of the benefits of the Agreement as well as extrabilateral rights. It stated that since Order 97-7-13 issued, Amerijet has redoubled its effort to come to closure with the GOJ but that these efforts have not resulted in success. Amerijet requested that the Department terminate Air Jamaica's authority here on August 23, 1997 (the then-current expiry date of authority held by Lineas Aereas Allegro (Allegro), a Mexican carrier, to wet lease aircraft to Air Jamaica) unless, before that time, the AAJ and Amerijet have signed a lease, Amerijet has been guaranteed customs coverage when its leased space is ready for occupancy, and all other obstacles interfering with Amerijet's institution of service to Jamaica have been removed. Amerijet stated that when U.S. Government efforts to resolve Amerijet's issues are insufficient to convince the GOJ to comply with its bilateral obligations, that sanctions of the type recommended by Amerijet must be imposed.

Air Jamaica has filed pleadings in response, stating that it is an innocent party insofar as Amerijet's problems with the GOJ are concerned; that Air Jamaica has made efforts to facilitate resolution of Amerijet's issues with the GOJ and that such efforts are continuing; and that any sanctions imposed on Air Jamaica would drastically disrupt the carrier's services and would result in financial losses. Air Jamaica stated that it should not be penalized because of perceived bilateral shortcomings by the GOJ and that the Department would establish an unfortunate precedent should it seek to resolve its dissatisfaction with the GOJ by ignoring the dispute resolution procedures set forth in the U.S.-Jamaica Air Transport Agreement.

On August 26, Amerijet filed a pleading in which it stated that it would not oppose a limited extension of this authority through December 1, 1997, if the GOJ agrees to terms presented

¹ On February 13, 1997, Air Jamaica requested renewal of the authority granted by Order 96-11-30 for two years. By Orders 97-2-22, 97-3-40, 97-4-25, 97-5-21 and 97-7-13, the Department found that it was in the public interest to grant Air Jamaica's request for limited periods, through August 28, and to defer on the remainder.

to it by Amerijet which would ensure the carrier's ability to conduct Jamaican operations by that date. Amerijet stated that if it is not in operation as a fully licensed scheduled all-cargo carrier at Jamaica by December 1, Air Jamaica's authority to serve the U.S. should be terminated.

By letter of August 27, 1997, Air Jamaica stated that recent actions taken by the GOJ demonstrate clearly that it is ready and willing to meet Amerijet's requirements and that the parties appear to be in agreement regarding the terms of an interim lease. Amerijet replied on August 28 and questioned Air Jamaica's optimism.

Decision

We find that it is in the public interest to extend Air Jamaica's request for extrabilateral authority to conduct operations in the Barbados-Atlanta/New York markets, via the intermediate points Antigua and Barbuda and St. Lucia, through the period ending December 1, 1997.

Since issuance of Order 97-7-13, there have been a number of positive developments which lead us to believe that the problems that Amerijet has experienced are close to final resolution. Specifically, we understand through diplomatic communications that the Government of Jamaica has made an absolute commitment to make needed Customs facilities available to Amerijet when Amerijet is ready to commence Jamaican operations. Further, while AAJ and Amerijet have not yet reached a formal agreement, there appears to be substantial accord on essential details of the terms of occupancy of the warehouse facility.

We view these developments as representing significant progress, warranting an extension of Air Jamaica's extrabilateral Barbados authority through December 1, 1997. While we fully expect the GOJ to meet its bilateral obligations with respect to Amerijet's services, we will continue to monitor closely Amerijet's progress, and are prepared to take appropriate action before that date should this progress not be sustained. Moreover, we will determine whether to extend this authority beyond December 1, 1997, based on our assessment of Amerijet's position at that time.

On that basis, we find that it is consistent with the public interest to extend the authority at issue here as described above, and that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We extend Air Jamaica Limited's exemption from the provisions of 49 U.S.C. section 41301 in order for it to conduct scheduled foreign air transportation of persons, property and mail between New York, New York, and Atlanta, Georgia, on the one hand, and Barbados, on the other, via the intermediate points Antigua and Barbuda and St. Lucia;

2. The authority shall be effective during the period August 29-December 1, 1997;
3. The authority granted above is limited to operations conducted under wet lease from a duly authorized and properly supervised U.S. or foreign carrier. Air Jamaica may not conduct the operations authorized here with its own aircraft and crew without further Department action;
4. To the extent not granted above, we defer action on Air Jamaica's request in this Docket;
5. The authority granted above is subject to the terms, limitations and conditions of Air Jamaica's foreign air carrier permit, as issued by Order 89-3-74;
6. We may amend, modify or revoke this authority at any time and without hearing; and
7. We will serve a copy of this order on Air Jamaica Limited, Amerijet International, Inc., the Ambassador of Jamaica in Washington, D.C., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation and
International Affairs

(SEAL)