

QA/30323

Order 98-1-3

Served: January 5, 1998



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

Issued by the Department of Transportation  
on the 2nd day of January, 1998

Application of

**FINE AIR SERVICES, INC.**  
**d/b/a FINE AIRLINES d/b/a FINE AIR**

for redetermination of fitness in order to  
resume operations

**Docket OST-97-2952 - 8**

**ORDER CONFIRMING ORAL GRANT OF EXEMPTIONS**

**Summary**

By this order, (1) we find that Fine Air Services, Inc. d/b/a Fine Airlines, d/b/a Fine Air (Fine) continues to be fit to provide its certificated operations; (2) we confirm our oral action of October 3, 1997, granting Fine an exemption from the requirements of section 201.5 of our rules (14 CFR 201.5) to the extent necessary to permit it to carry revenue cargo on certain demonstration flights required by the Federal Aviation Administration (FAA); and (3) we confirm our oral action of October 28, 1997, granting Fine an exemption from the provisions of section 204.7 of our rules (14 CFR 204.7) permitting it to resume operations. Consistent with current policy, we will require Fine to provide notice to the Department at least 45 days in advance of implementing any plans to expand its fleet beyond 20 aircraft.

**Background**

I:

Fine, which is based in Miami, Florida, was originally certificated by the Department in 1992 to conduct worldwide charter all-cargo operations and in 1993 was granted a certificate to provide foreign scheduled service between Miami and Santo Domingo, Dominican Republic.<sup>1</sup> By Order 94-4-32, April 22, 1994, we reissued Fine's

<sup>1</sup> See Order 92-11-45, November 25, 1992 and Order 93-7-36, July 26, 1993, which issued certificates to Fine Airlines, Inc.

6/10/98

certificates to remove certain limitations. All of these authorities were recently reissued when the company changed its name to Fine Air Services, Inc. d/b/a Fine Airlines, d/b/a Fine Air.<sup>2</sup> On August 7, 1997, one of Fine's DC-8 cargo aircraft destined to Santo Domingo crashed on takeoff from Miami International Airport. At the time of the crash, Fine operated a fleet of 15 all-cargo configured DC-8 aircraft.

Following the crash, the FAA conducted an inspection of the carrier and concluded that Fine was in violation of various Federal Aviation Regulations and DOT Hazardous Materials Regulations. Pursuant to an informal agreement with the FAA, on September 4, Fine voluntarily ceased all air carrier operations. As a result of the cessation, we informed Fine by letter dated September 5 that its DOT certificate authority was automatically suspended pursuant to section 204.7 pending a redetermination of the carrier's fitness by the Department.<sup>3</sup>

On September 12, Fine entered into a formal Consent Agreement with the FAA under which Fine agreed not to conduct any air carrier operations until the FAA determined that certain discrepancies in Fine's operations and procedures had been resolved. These deficiencies centered primarily on cargo handling, flight following, performance data, aircraft maintenance procedures and hazardous material handling procedures. The Consent Agreement contained a list of eight actions that had to be accomplished satisfactorily prior to Fine's being authorized by the FAA to resume flight operations under Part 121. Additional actions were to be accomplished by December 31, 1997.

On October 1, 1997, Fine filed an application (Docket OST-97-2952) with the Department requesting reinstatement of its economic authority so that it could resume operations as soon as possible after the FAA authorized it to do so. Fine also requested authority to carry revenue cargo on any demonstration flights it was requested to perform for the FAA prior to its actual resumption of operations.<sup>4</sup> Fine's application was accompanied by information that the Department requested relevant to making a fitness determination.<sup>5</sup> On October 3, Federal Express Corporation filed an answer to Fine's application, which it subsequently withdrew. No other answers were filed.

---

<sup>2</sup> See Order 97-7-30, July 29, 1997.

<sup>3</sup> Section 204.7 provides, among other things, that a carrier that ceases operations may not resume service until the Department has determined that it is fit to recommence operations. Carriers are required to file a notice with the Department, at least 45 days prior to the proposed resumption of service, with accompanying fitness information.

<sup>4</sup> After consulting with the FAA, we orally granted this portion of Fine's request on October 3, which we confirm here.

<sup>5</sup> The carrier also requested that the Department shorten the answer period so that answers would be due on October 2 rather than on October 15 and replies would be due on October 3. By notice dated October 1, we established that answers would be due on October 3 and responses would be due no later than noon on October 6.

On October 28, the FAA informed us that Fine had satisfied all of the specified items under the Consent Agreement that would allow it to resume Part 121 operations. Based on the FAA's action and our review of the carrier's continuing fitness, as more fully discussed below, we orally granted Fine's request for an exemption from the provisions of section 204.7 to permit it to resume operations. By this order, we are confirming that oral action.

### **Fitness**

When conducting a redetermination of a carrier's fitness, the Department applies the same three-part test that it uses to determine the fitness of new applicants. The areas of inquiry that must be addressed are whether the carrier (1) will comply with the statute and regulations imposed by Federal and State agencies, (2) has the managerial ability to conduct the operations proposed, and (3) has access to financial resources sufficient to recommence operations without posing an undue risk to consumers.

In this case, because of the FAA findings and actions, our primary concern has been of Fine's compliance disposition and particularly the steps it has taken to resolve FAA's concerns. In response to the Consent Agreement, Fine completely revised its flight operations and maintenance manuals as they relate to cargo loading, weight and balance, and hazardous materials procedures, and its supervision over those areas. All Fine employees involved in cargo operations underwent FAA-approved training related to the newly adopted policies and **procedures**.<sup>6</sup> As a result of these and other changes that the carrier made, the FAA determined that Fine had met the specific requirements of the Consent Agreement and that, from its standpoint, Fine should be allowed to resume operations under its Part 121 certificate. Based on the FAA conclusions, and our review of Fine's compliance record, we also determined that Fine has demonstrated its willingness and ability to comply with applicable laws and regulations. In this regard, we noted that prior to the crash and the FAA's subsequent inspection of Fine's operations, the carrier had no other significant compliance disposition problems since its fitness was last examined in 1994.<sup>7</sup> Moreover, the FAA has informed us that Fine continues to work on satisfying the remaining items in the Consent Agreement.

The most recent review of the carrier's key personnel was undertaken in Order 94-4-32 at which time we made the carrier's certificate authority permanent. Although there have been changes in key personnel since that time, all new personnel have served in

---

<sup>6</sup> The training program included Fine's cargo handlers, hazardous materials specialists, flight crews, flight operations personnel and maintenance personnel responsible for cargo equipment. The employees based at Fine's foreign destinations were brought to Miami to receive this training.

<sup>7</sup> Fine states that it is aware of only one other violation by it since 1994 of an FAA regulation triggering enforcement action. In March 1997, Fine was assessed a civil penalty of \$30,000 for failing to properly document training that certain crew members had received. Fine said that, under the September 12 Consent Agreement, this penalty was waived.

their respective positions for a minimum of one year and their qualifications were also reviewed by the FAA to ascertain whether they met FAR requirements for their positions.’ Moreover, under the Consent Agreement, the FAA did not require Fine to make any changes in its key personnel. Thus, based on those considerations and our own review of each individual’s qualifications, we concluded that Fine had the necessary management and technical ability to continue to operate the airline.

Mr. Frank Fine continues to hold the position of Chairman of the Board. Mr. Fine’s son, Mr. Barry Fine, is President and Chief Executive Officer. Mr. John Zappia, who previously held the position of Vice President of Maintenance, now serves as Chief Operating Officer. The other officers and key personnel are Mr. Charles South, Director of Operations; Mr. Felix Villaverde, Chief Pilot; Mr. Horace Vick, Director of Safety; Mr. Thomas Ostendorp, Director of Maintenance; Mr. Richard McCallman, Director of Quality Control; and Mr. Orlando Machado, Chief Financial Officer.

Fine provided audited financial statements for 1995 and 1996 and unaudited financial statements for the first half of 1997. For the six months ended June 30, 1997, the carrier had sales of \$52 million and net income of \$6.4 million. As of August 31, 1997, Fine had a current assets to current liabilities ratio of 2.9: 1, operating capital of \$19 million and total stockholders’ equity of \$48 million. In addition, Fine has available to it a line-of-credit of over \$32 million. Thus, we concluded that Fine has sufficient financial resources to resume operations.

We also found that Fine continued to meet the citizenship requirements as defined in the Statute (49 U.S.C. 40102(a)( 15)). There have been no changes in ownership since the carrier was found fit by Order 93-6-22. All of the outstanding stock is held equally by Messrs. Frank and Barry Fine, both of whom are U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of Fine is not with U.S. citizens.

On the basis of the foregoing, we concluded that Fine continued to be fit to conduct its certificated operations and should be authorized to resume service. Thus, on October 28, we orally informed Fine that it could resume its cargo operations, and we confirm that action by this order.

Fine’s fleet at present consists of 15 aircraft, of which 10 had been returned to service at the time of the drafting of this order. The Department has **adopted** a policy, consistent with the recommendations of the FAA 90-Day Safety Review, September 16, 1996, of imposing conditions in fitness orders to facilitate appropriate monitoring of individual air carriers’ growth.’ In this instance, we will require Fine to provide at

---

<sup>8</sup> The Federal Aviation Regulations specify minimum qualifications for certain of the carrier’s key personnel.

<sup>9</sup> See, e.g. Orders 97-10-22, 97-11-34, and 97-12-18.

least **45-days** notice prior to its implementing any expansion of operations beyond 20 aircraft.

**ACCORDINGLY,**

- - -

1. We find that Fine Air Services, Inc., continues to be fit to provide its certificated operations.
2. We confirm our oral action of October 28, 1997, granting the application of Fine Air Services, Inc., in Docket OST-97-2952 for an exemption from the **45-day** advance notice requirements of section 204.7 of the Department's Aviation Economic Regulations to permit it to resume certificated operations immediately.
3. We confirm our oral action of October 3, 1997, granting the application of Fine Air Services, Inc., in Docket OST-97-2952 for an exemption from the requirements of section 201.5 of the Department's Aviation Economic Regulations to permit it to carry revenue cargo on its FAA required demonstration flights.
4. Should Fine Air Services, Inc., propose to operate more than 20 aircraft, we direct it to notify the Department (Attention: Chief, Air Carrier Fitness Division) in writing at least 45 days prior to the proposed operation and demonstrate its fitness to conduct such operations before their commencement.
5. We will serve a copy of this order on the persons listed in Attachment A.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

SERVICE LIST FOR FINE AIR SERVICES, INC.  
d/b/a FINE AIRLINES d/b/a FINE AIR

JEFFREY N **SHANE**  
DAVID WESTBROOK  
**WILMER** CUTLER & PICKERING  
2445MSTNW  
WASHINGTON DC 20037 1420

JFRANKFINE  
CHAIRMAN  
FINE AIRLINES **INC**  
2361 NW 67 AVE BLDG 700  
**MIAMI FL** 33152

FLIGHT STANDARDS DISTRICT OFFICE  
FEDERAL AVIATION ADMINISTRATION  
**PO** BOX 592015  
MIAMI FLORIDA 33 159

MR GEORGE THOMPSON  
REGIONAL COUNSEL **ASO** 7  
FEDERAL AVIATION ADMINISTRATION  
PO BOX 20636  
ATLANTA GEORGIA 30230

MANAGER **ASO** 200  
FLIGHT STANDARDS DIVISION  
FEDERAL AVIATION ADMINISTRATION  
PO BOX 20636  
ATLANTA GEORGIA 30230

MGR AIR TRANSPORTATION **DIV**  
OFFICE OF FLIGHT STDS AFS-200  
FEDERAL AVIATION ADMINISTRATION  
800 INDEPENDENCE AVE SW  
WASHINGTON DC 20591

RICHARD BIRNBACH AFS 500  
MGR FIELD PROGRAMS **DIV**  
FEDERAL AVIATION ADMINISTRATION  
BOX 20034 **DULLAS** INTL **ARPT**  
WASHINGTON DC 20041

JOHN H CASSADY  
DEP CHIEF COUNSEL AGC-2  
FEDERAL AVIATION ADMINISTRATION  
800 INDEPENDENCE **AVE** SW  
WASHINGTON DC 2059 1

MR RICHARD A. NELSON  
OFFICIAL **AIRLINE** GUIDE  
2000 CLEARWATER DRIVE  
OAK BROOK ILLINOIS 60521

AMERICAN ASSOCIATION OF AIRPORT  
EXECUTIVES  
4224 KING **STREET**  
ALEXANDRIA VIRGINIA 22302

TIM CARMODY  
**DIRECTOR** K-25  
DEPARTMENT OF TRANSPORTATION  
400 7TH STREET SW  
WASHINGTON DC 20590

JAMES **ZAMMAR**  
**DIRECTOR** OF REVENUE ACCOUNTING  
**AIR** TRANSPORT ASSOC STE 1100  
1301 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20004

ALLEN **MUTEN**  
ASSISTANT TREASURER  
AIRLINES REPORTING CORP  
1530 WILSON BLVD STE 800  
ARLINGTON VA **22209-2448**