

Order 98-5-24

Served: May 22, 1998



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 18th day of May, 1998

Notice of

CUSTOM AIR TRANSPORT, INC.

of intent to resume operations pursuant to 14 CFR 204.7

Docket OST-98-3795

Application of

CUSTOM AIR TRANSPORT, INC.

for a waiver of the 45-day advance filing requirements of
14 CFR 204.7

Docket OST-98-3794

ORDER GRANTING WAIVER AND CONFIRMING ORAL ACTION

Summary

By this order, we confirm our oral actions of April 30, 1998, finding that Custom Air Transport, Inc., continues to be fit, willing, and able to engage in the all-cargo air transportation for which it holds certificate authority, and granting the carrier a waiver of the 45-day advance notice provision of section 204.7 of our rules to the extent necessary to permit it to resume operations immediately.

Background

Custom, located in Ft. Lauderdale, Florida, provides charter cargo air service with two B-727-200 aircraft. It holds a certificate under section 41102 of Title 49 of the United States Code ("the Statute") authorizing it to engage in interstate scheduled air transportation of property and mail as

issued by Order 95-11-16 on November 8, 1995.¹ By Orders 97-10-1 (served October 2, 1997) and 97-10-22 (served October 29, 1997), we found Custom fit and issued to it certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail. However, the latter two certificates have not yet been made effective.

Custom states that, on March 27 and 31, 1998, its newly assigned FAA operations and maintenance inspectors advised the carrier that certain changes needed to be made to its manuals and that its check airmen authorizations needed to be revalidated. Custom points out that its manuals and check airmen had previously been approved by its former FAA inspectors. The carrier explains that, in order to accomplish the changes now required by the FAA, Custom voluntarily ceased operations on April 8. We notified the carrier that, in light of its cessation of operations, its certificate authority was automatically suspended pending a redetermination of its fitness to resume certificated operations, as stipulated by section 204.7.

On April 28, Custom filed a notice in Docket OST-98-3795 of its intent to resume operations. Simultaneously, it filed in Docket OST-98-3794 an application for a waiver of the 45-day advance filing requirements of section 204.7, along with information in support of its continuing fitness.² The carrier stated that it had been notified by the FAA that the required changes had been made to the FAA's satisfaction and that Custom could reinstitute its operations once any fitness issues had been resolved with the Department. Custom requested that we act expeditiously on its application so that it could reinstate cargo operations as soon as possible.

After reviewing the information filed by Custom and other data available to us, we are persuaded that the carrier continues to be fit. Therefore, upon being assured by the FAA on April 28 that the manual changes and check airmen reauthorizations had been accomplished to the FAA's satisfaction, we orally granted Custom's request to resume operations on April 30. That action is confirmed by this order.

FITNESS

We last examined Custom's fitness in October 1997 in connection with its application for passenger charter authority. However, based on information we have evaluated with respect to its current application, it appears that Custom has undergone additional changes, particularly in the areas of management and compliance.

Ownership and Management

¹ Section 41109(a)(5) of the Statute provides that air carriers holding certificate authority to engage in scheduled cargo air transportation may also engage in worldwide charter cargo air transportation.

² Section 204.7 requires a carrier that has ceased all operations for which a fitness finding is required to file a notice of intent to resume such operations, along with updated fitness information, at least 45 days before the intended startup to allow the Department sufficient time to make a fitness finding.

Custom continues to be wholly owned by Mr. and Mrs. Richard Wellman. Mr. Wellman has retained the position of Chairman of the Board; however, a new President and Chief Executive Officer was selected in April 1998 -- Mr. William M. Hartman. Mr. Hartman's education and 15-year career have been in the fields of accounting, taxation, finance, and business administration. He served as Chief Financial Officer of International Airline Support Group, Inc., a publicly held supplier of aircraft, parts and other types of support to air carriers, and Jansko, Inc., an office furniture manufacturer. He was also employed as Vice President of Finance and Administration with Turbo Power, Inc., an FAA-licensed aircraft engine overhaul facility. Before accepting his current position with Custom, Mr. Hartman was a financial and managerial advisor to the president of Custom Air Support Holdings, Inc., an aircraft parts and support services provider owned by the Wellmans.

Mrs. Lynda Wellman has retired from her former positions as Custom's Secretary and Treasurer, and has been replaced by Mr. Guy T. Lindley, who has been employed as a financial advisor with Custom since the company was first certificated. Other individuals who continue with the carrier and were members of Custom's management team at the time of its last fitness review are Mr. George J. Mittelstaedt, General Manager; Mr. Thomas O. Duckworth, Director of Operations; Mr. Charles B. Howard, Director of Safety; Mr. Stephen E. Caison, Chief Pilot; and Mr. William J. Hoffman, Chief Inspector and Director of Quality Control. The qualifications of these individuals were discussed in Order 97-8-29.

Mr. Darryl J. Hickey joined Custom in January 1998 as Director of Maintenance. During his 13-year aviation career, Mr. Hickey has worked as an aircraft mechanic for Cam Air International Airlines, as lead inspector for TPI International Airlines, as chief inspector for Sabretech, Inc., as maintenance representative for Kitty Hawk Aircargo, Inc., and as quality control inspector for Miami Air International, Inc. He graduated with an aviation maintenance technology degree from Embry-Riddle Aeronautical University and holds an Airframe and Powerplant Mechanic Certificate, with inspection authorizations, from the FAA.

After reviewing the biographical and qualifications statements of Mr. Hartman, Mr. Lindley, and Mr. Hickey, we conclude that they are qualified to hold their respective positions with Custom. In addition, the FAA has advised us that it has evaluated Mr. Hickey's qualifications and has determined that he meets the requirements for his position as prescribed in Part 121 of the Federal Aviation Regulations.

Financial Condition

As noted in Order 97-8-29, Custom earned a profit of \$115,441 for 1996, its first full year of certificated operations. For 1997, however, Custom reported an operating and net loss of \$342,220. The losses have continued into the first quarter of 1998, with the total net loss for the first two months of the year amounting to \$301,814. The carrier's year-end 1997 balance sheet showed current assets of \$1,487,640, current liabilities of \$2,201,519 (yielding a current ratio of 0.67:1), and a stockholders' deficit of \$216,164, which is comprised almost entirely of negative retained earnings.

Although Custom's financial condition is relatively weak at present, we note that its owners have supplemented the carrier's earnings with their own funds when necessary, as evidenced by \$1,023,208 in shareholder loans on the carrier's year-end 1997 balance sheet, and we expect that the Wellmans will continue to provide whatever financial support the carrier may need.

Under these circumstances, we conclude that Custom will continue to have access to resources sufficient to cover its operating costs so as not to pose a risk to consumers and their funds.

Compliance Disposition

As noted above, Custom suspended its operations voluntarily on April 8 in order to make certain changes in its manuals and have its check airman authorizations revalidated. The carrier provided a copy of a letter to it from its FAA Principal Operations Inspector, dated April 27, in which the inspector complimented Custom on its "prompt proactive approach" to resolving the problems identified. In addition, the FAA has advised us that the required work was satisfactorily completed without the necessity for any enforcement action against Custom.

We have researched Custom's FAA enforcement and safety records which indicate that the carrier has not been the subject of any enforcement actions involving civil penalties or certificate actions and that it has not experienced any accidents or incidents. In addition, our airline consumer protection records contain no reference to any complaints about Custom's operations, and the Department's Office of Airline Information has confirmed that Custom has filed its Form 41 reports in a timely and accurate manner.

On the basis of this review, we conclude that Custom continues to have a proper regard for the laws, rules, and regulations governing its service to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

Citizenship

We find that Custom remains a citizen of the United States as defined in section 40102(a)(15) of the Statute. It continues to be wholly owned by Mr. Richard Wellman and Mrs. Lynda Wellman, who are U.S. citizens, and all of its key employees are U.S. citizens. Further, there is nothing in the record that would lead us to conclude that Custom is controlled by citizens of any other country.

WAIVER

Based on the above, we find that Custom has demonstrated that it continues to be fit, willing, and able to engage in the section 41102 cargo operations for which it holds a certificate, and that it is in the public interest to grant its request for a waiver of the 45-day advance notice requirements of section 204.7 to enable it to resume its operations immediately. We orally notified Custom of these decisions on April 30, 1998, which we confirm in this order.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12(b)(1):

1. We confirm our oral actions of April 30, 1998, finding that Custom Air Transport, Inc., is fit, willing, and able to resume conducting cargo air transportation under its certificate of public convenience and necessity, and granting the application of Custom Air Transport, Inc., in Docket OST-98-3794, for a waiver of the 45-day advance notice requirement of section 204.7 of the Department's regulations to permit it to resume its certificated operations immediately.
2. We will serve a copy of this order on all persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The actions confirmed in this order were effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>*

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