Order 2000-9-25

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

Issued by the Department of Transportation
on the 25th day of September, 2000

SERVED: September 25, 2000

PT AIRFAST INDONESIA
Violations of 49 U.S.C. § 41301

CONSENT ORDER

PT Airfast Indonesia (Airfast), an air carrier of Indonesia, has conducted certain charter operations between Indonesia and Guam in violation of 49 U.S.C. § 41301, which requires foreign carriers to obtain proper permit authority from the Department or seek an exemption under 49 U.S.C.§ 40109 for such operations. This consent order directs Airfast to cease and desist from further violations and to pay a compromise civil penalty.

Airfast is licensed by the Government of the Republic of Indonesia to provide air services. The carrier does not hold any permit or exemption authority from the Department to operate to or from the United States.[1] Airfast, pursuant to a charter agreement with PT Freeport Indonesia for the benefit of its U.S. parent Freeport McMoRan Copper & Gold, Inc. (collectively, Freeport), operated flights transporting Freeport personnel, contractors, family members, food, and supplies between Guam and Timika, Indonesia, in violation of 49 U.S.C. § 41301.

In mitigation, Airfast states that it had no intention of evading any requirements of U.S. regulations, and that it has cooperated fully with the Department in this matter. It also states that the flights at issue were made as part of a joint venture with Freeport to support the Freeport business operations in remote locations around Timika, Indonesia. According to Airfast, the flights were operated on behalf of the Freeport joint venture in a manner essentially identical to private Freeport company aircraft, to carry corporate passengers and cargo solely for Freeport's internal business purposes and to support Freeport's business operations in Indonesia. Airfast observes that its joint venture operations for Freeport are almost entirely for air travel within Indonesia. When Airfast began a limited number of flights to Guam, it claims that it had no prior experience

[1] On July 7, 2000, Airfast filed an application for a permit pursuant to 49 U.S.C. § 41301 (Docket OST-00-7619) or in the alternative, an exemption from that requirement to conduct Guam-Indonesia flight operations. The carrier's application remains pending.

with the Department's economic regulations and that, because the flights were operated essentially as private Freeport aircraft, Airfast did not understand that the Department might consider them to be commercial flights subject to its economic regulations. For these reasons, Airfast states that it was not aware that the Department might require a permit or exemption for such flights. Airfast states that it promptly ceased any flights to or from Guam once it received notice that the Department believed a permit or exemption might be necessary.

The Department views violations of 49 U.S.C. § 41301 very seriously. The Enforcement Office has carefully considered all the facts in this case including the mitigating circumstances submitted by Airfast, and we continue to believe enforcement action is warranted. Accordingly, the Office of Aviation Enforcement and Proceedings and Airfast have reached a settlement of this matter. Airfast, while neither admitting nor denying the violations, consents to the issuance of this consent order, which directs the carrier to cease and desist from future violations of 49 U.S.C. § 41301 and includes a compromise civil penalty of $30,000, of which $15,000 shall be paid as described below. The remaining $15,000 shall be suspended for one year from the date of issuance of this order, and shall then be forgiven, unless Airfast fails to comply with this order's cease and desist provisions or payment provisions within that one-year period. In that case, the unpaid portion of the $30,000 assessed penalty shall become due immediately. This consent order will provide assurances that Airfast will comply with the Department's regulations in the future and will provide a strong deterrent to future violations by Airfast and other foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;

2. We find that PT Airfast Indonesia violated 49 U.S.C. § 41301 by operating round-trip flights between Timika, Indonesia, and Guam during 1999, without proper authority;

3. PT Airfast Indonesia, and all other entities owned or controlled by or under common ownership with PT Airfast Indonesia, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41301;

4. PT Airfast Indonesia is assessed $30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering Paragraph 2 of this order. Payment of $15,000 of the assessed penalty is due within 15 days of the date of service of this order. The remaining $15,000 shall be suspended for one year following service of this order, and then forgiven, unless PT Airfast Indonesia fails to comply with this order's cease and desist provisions or payment provisions within that one-year period. In that case,

the unpaid portion of the $30,000 assessed penalty shall become due and payable immediately and Airfast may be subject to further enforcement action. Failure to pay the compromise penalty as ordered will subject Airfast to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

5. Payment shall be made by wire transferthrough the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with instruction contained in Attachment 1.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

Rosalind A. Knapp
Deputy General Counsel

(SEAL)

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Attachment

(1) To 021030004	(2) Type		
(3) From		(4) Ref.	(5) Amount
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

1. Treasury Department Code—Provided
2. Type Code—To be provided by sending bank.
3. Sending Bank's Code—(ABA#)
4. Reference No.—Optional number, entered if sending bank desires to number transaction.
5. Amount—Include dollar sign and punctuation including cents digits.
6. Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.

7/8. Entire line provided precisely as shown.

9. Entire line provided precisely as shown.

10. Enter name of air carrier or other payor (as shown on order).

11. Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."

NOTE: Questions about these instructions should be directed to Yash Parekh, Office of Budget and Policy, Accounting Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Yash Parekh, when each payment is made.