

143367

Order 2001-11-6

Served: November 13, 2001



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

Issued by the Department of Transportation
on the 13th day of November, 2001

Applications of

BIZ JET SERVICES, INC.

for certificates of public convenience and necessity under 49
U.S.C. 41102 to engage in interstate and foreign charter air
transportation of persons, property and mail

**Dockets OST-01-9880 - 9
and
OST-01-9881**

ORDER GRANTING MOTION and DISMISSING OBJECTION

Summary

By this order, we (1) grant the motion of the Association of Flight Attendants (AFA) to file a late document and (2) dismiss its objection to Show Cause Order 2001-9-4.

Background

By applications filed on June 8, 2001, in Dockets OST-01-9880 and OST-01-9881, Biz Jet Services (Biz Jet) requested certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail. AFA¹ filed an objection asking that the Department require UAL, Inc., Biz Jet's parent, to resolve certain AFA concerns prior to issuing Biz Jet its requested certificates. Specifically, AFA contends that UAL's business jet operations must abide by the collective bargaining agreement between United and AFA, and that, absent a waiver from the union, Biz Jet must use flight attendants from United's System Seniority List in any operations it conducts. In a reply to AFA's objection, Biz Jet disagreed with AFA's contentions and argued that the disputed issues were more appropriately addressed through procedures provided through the Railway Labor Act (RLA). After reviewing AFA's objection, Biz Jet's reply and the other material of record, by Order 2001-9-4, served September 10, 2001, the Department tentatively found Biz Jet fit to conduct such services. In doing so, we stated that AFA's concerns were labor issues "more properly addressed using the

¹ AFA is the union that represents the flight attendants of United Air Lines, a related company.

resources and procedures available to it under the RLA and other established grievance resolution procedures."²

The show cause order provided interested parties 14 days, or until September 24, 2001, to object to the Department's tentative findings in that order. No objections were filed within the time allowed. Thus, on September 26, the Department issued Order 2001-9-19 making final the tentative findings contained in the show cause order.

On September 27, AFA filed an objection to the Department's show cause order.³ In its objection, AFA states that, subsequent to the issuance of the show cause order, it asked UAL, Biz Jet's parent, to arbitrate the dispute before the RLA-mandated system board of adjustment and that, thus far, UAL has given no indication that it will do so. Thus, AFA argues again that Biz Jet should not be granted its certificate authority until the matter is resolved and asks the Department to direct UAL to arbitrate the dispute before the United Flight Attendant System Board of Adjustment.

On October 9, Biz Jet filed an answer to AFA's objection,⁴ in which the carrier requests the Department to deny AFA's motion and objection. In its answer, Biz Jet notes that AFA's objection was filed after the final order was issued. Thus, Biz Jet says, the objection is moot and the final order should stand. Biz Jet further states that issuance of the final order by the Department does not prevent AFA from pursuing its alleged grievance in other forums.

Decision

The information before us indicates that AFA first attempted to file its objection on September 25, which was one day after the deadline for answers provided in Order 2001-9-4. Unaware of AFA's attempted filing, the Department's staff issued the final order on September 26 before AFA's second filing was received. We have, therefore, decided to grant AFA's motion and accept its filing.⁵

At the same time, we will dismiss its objection. AFA reiterates its concerns as to whether Biz Jet's operations will violate the terms of the collective bargaining agreement between United and AFA and asks the Department to intervene to compel UAL to take steps to resolve this matter. In Order 2001-9-4, we stated that we were "reluctant to allow our fitness and certification processes to be used as vehicles for resolving outstanding labor issues."⁶ AFA's objection raises no new facts that cause us to change our mind in this regard. We, therefore, will dismiss its objection.

² Order 2001-9-4, at 3.

³ AFA accompanied its objection with a motion for leave to file its objection late. AFA states it received our order on September 14 and mistakenly believed that it had 14 days from that date, or until September 28, to respond to the show cause order.

⁴ Biz Jet's answer was accompanied by a motion to file an otherwise unauthorized document.

⁵ We will also grant the motion accompanying Biz Jet's answer.

⁶ Order 2001-9-4, at 3.

ACCORDINGLY,

1. We grant the motion to file an untimely objection filed by the Association of Flight Attendants on September 27, 2001.
2. We grant the motion to file an otherwise authorized document filed by Biz Jet Services, Inc., on October 9, 2001.
3. We dismiss the objection to Show Cause Order 2001-9-4 filed by the Association of Flight Attendants on September 27, 2001.
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

READ C VAN DE WATER
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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

SERVICE LIST FOR BIZ JET SERVICES, INC.

MR. BRUCE RABINOVITZ
MR. DAVID HEFFERNAN
COUNSEL FOR BIZ JET SERVICES, INC.
WILMER CUTLER & PICKERING
2445 M STREET NW
WASHINGTON DC 20037-1420

MR. EDWARD J GILMARTIN
ASSOCIATE GENERAL COUNSEL
ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO
1275 K ST, NW
WASHINGTON DC 20005-4090

MR. RICHARD DUTTON
ASST. MANAGER CSET
FAA, AFS-900
45005 AVIATION DRIVE
DULLES, VIA 20166-7537

MS. JONI MOUNT
OFFICIAL AIRLINE GUIDE
2000 CLEARWATER DRIVE
OAK BROOK IL 60521

MR. DONALD BRIGHT, ACTG DIR
OFFICE OF AIRLINE INFO K-25
DEPARTMENT OF TRANSPORTATION
400 SEVENTH ST SW
WASHINGTON DC 20590

MR. PETER LYNCH, ASST CHIEF
COUNSEL FOR ENFORCEMENT AGC-300
FEDERAL AVIATION ADMINISTRATION
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591

MR. LEO BELMONTE
CERTIFICATE PROJECT MANAGER
FEDERAL AVIATION ADMINISTRATION
FLIGHT STANDARDS DISTRICT OFFICE
7181 AMIGO ST, STE 180
LAS VEGAS NV 89119

MR. STUART ORAN
PRESIDENT AND CEO
BIZ JET SERVICES, INC.
85 WEST ALGONQUIN RD
ARLINGTON HEIGHTS IL 60005

MR. MONROE BALTON, AWP-7
OFFICE OF THE REGIONAL COUNSEL
FAA, WESTERN-PACIFIC REGION HQ
15000 AVIATION BLVD
HAWTHORNE CA 90261

MR. DAVID GILLIOM, MANAGER
FLIGHT STANDARDS DIV, AWP-200
FAA, WESTERN-PACIFIC REGION HQ
15000 AVIATION BLVD
HAWTHORNE CA 90261

MR. ALLAN MUTEN
ASSISTANT TREASURER
AIRLINES REPORTING CORPORATION
1530 WILSON BLVD, STE 800
ARLINGTON, VA. 22209-2448

AMERICAN ASSOCIATION OF AIRPORT
EXECUTIVES
601 MADISON ST, STE 400
ALEXANDRIA, VA 22314-1756

MR. JIM ZAMMAR
DIRECTOR OF REVENUE ACCOUNTING
AIR TRANSPORT ASSOCIATION
1301 PENN AVE NW, STE 1100
WASHINGTON DC 20004

MR J. D. MEALOR, AIRLINE DATA COORINATOR
INNOVATA LLC
3915 OLD MUNDY MILL RD
OAKWOOD, GEORGIA 30566-3410