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CIVIL AERONAUTICS BOARD

WASHINGTON

Mr. John C. Pirie
Assistant General Counsel
Pan American Airways System
135 East 42nd Street
New York 17, New York

December 16, 1949

Dear Mr. Pirie:

This is in further reply to your letter of September 6, 1949, requesting the opinion of the Board on certain questions concerning the rights and limitations under a co-terminal point designation in a certificate of public convenience and necessity. Your specific questions are discussed below.

Question 1. Does a co-terminal authorization permit carriage of local revenue traffic between co-terminals? The fundamental objective of the Board in designating two or more points as co-terminals instead of describing one as a terminal point and the remainder as intermediate points was to reduce the number of nonstop notices and applications which would otherwise have to be filed by the carrier pursuant to the Board's nonstop regulations. For example, if Boston had been named as an intermediate point in Pan American's Atlantic certificate, it would have been necessary for Pan American to file nonstop application for flights scheduled to operate directly (nonstop) between New York and Newfoundland. Where points are named as co-terminals and a carrier proposes to inaugurate direct service between a co-terminal point and an intermediate point named in the certificate, all other co-terminal points may be disregarded in determining whether nonstop notice is required to be filed pursuant to the Board's regulations. However, in utilizing the co-terminal point designation in certificates establishing overseas and foreign routes it was not the Board's intention to permit the certificate holders to carry local revenue traffic between co-terminal points. So far as Pan American's own certificates are concerned, the Board's intention not to permit local service between co-terminal points is spelled out through the medium of confining the basic authorization to overseas and/or foreign air transportation or, in instances where the basic authorization refers merely to "air transportation" without specifying whether such transportation is interstate, overseas or foreign, by imposing specific restrictions prohibiting the transportation of local traffic between the co-terminal points.

Question 2. Can through passengers be accorded stopover privileges at co-terminals? Limiting consideration to certificates such as those held by Pan American which have as their primary purpose the authorization of air services between points in the United States on the one hand and overseas and foreign points on the other, it is the opinion of the Board that under such a certificate the carrier

has no right to accord a passenger originating at one co-terminal point in the United States a stopover privilege at another co-terminal in the United States before continuing his journey to an overseas or foreign designation. As you are aware, the certificates themselves do not contain any specific prohibition against the granting of stopover privileges nor do the various opinions issuing those certificates spell out such a prohibition. However, when consideration is given to the public convenience and necessity factors leading to the award of the routes, the nature of the authority granted, and the purposes underlying the designation of more than one point in the United States it becomes clear that there was no intention on the part of the Board to authorize stopovers in the United States by U. S. international carriers.

Question 3. If the answer to question 2 is negative, what constitutes a stopover? It is impossible to set forth a specific test by which it can be determined categorically in every case whether a carrier is affording a passenger a stopover privilege not authorized by its certificate. This is due to the fact that a determination of this question depends upon a number of variable factors which necessarily require a decision in each case on the particular facts there present.

It is simple, of course, to pick certain extreme situations which clearly do or do not involve stopovers. For example, if a passenger who is traveling from one co-terminal to a foreign destination via a second co-terminal is authorized to leave his plane and remain several days at the second co-terminal point for his personal convenience prior to continuing his journey on another plane, there is the grant of a stopover privilege. At the other extreme it is equally clear that if a plane enroute from one co-terminal to a foreign destination is grounded by mechanical difficulties or weather conditions at a second co-terminal point a passenger aboard that plane would not be considered as receiving a stopover privilege even though the time spent at the co-terminal point might be as long as or longer than the time spent in the first example. But between these two extremes difficult questions arise which cannot be answered with any certainty except upon a consideration of all the facts.

However, subject to the foregoing caveat it can be stated as a general rule that a passenger will be deemed to be receiving stopover privileges if the interval of time between the arrival of the passenger at a point and his departure from that point is fixed for the purpose of permitting the passenger to conduct his own affairs (business, pleasure or other) rather than for the purpose of assuring the earliest convenient departure from a transportation standpoint.

Turning to the specific questions which you raise subsidiary to the main question 3, it is the opinion of the Board that Pan American has no right to sell a local ticket for transportation between two

Mr. John C. Pirie - 3

co-terminal points, even though the passenger may continue beyond those points to an overseas or foreign destination. Also, a passenger enplaning at one co-terminal point must hold confirmed space to the first overseas or foreign point beyond the co-terminals.

On the other hand, there would seem to be no requirement that a passenger who originates at one co-terminal and transfers to another plane at a second co-terminal take the first available flight without regard to the desirability of that flight in reaching his ultimate destination. It should be pointed out, however, that a transfer might constitute a stopover if in fact the first flight were more desirable from a transportation standpoint or if it should appear that the carrier was arranging its flights without regard to traffic and other considerations so as to make such a stop possible.

Much the same situation pertains with respect to the question of whether a passenger who changes planes must leave the transfer point within any specified period of time. The length of the stop would be a consideration in reaching a conclusion but would not necessarily be a controlling factor.

Question 4. What refund, if any, may properly be made to a passenger originating at one co-terminal point who upon arriving at a second co-terminal decides to cancel his trip? At the present time there is on file as Rule 18(E) of Section 2 of Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. RR-1, C.A.B. No. RR-1 a provision governing refunds by Pan American. Although the Board has not determined the lawfulness of that rule, it is presumptively lawful until the Board determines otherwise. Accordingly, in the absence of Board action it would appear proper for Pan American to make refund in accordance with the provisions of that rule. It thus would be proper for Pan American to refund to a passenger moving from a co-terminal point within the continental United States to an overseas or foreign point, who cancels his journey at a second co-terminal point also in the United States, the amount it would refund if the passenger had traveled to the nearest point beyond the second co-terminal that would not result in a violation of Pan American's certificate. In other words, Pan American may refund the difference between the fare from the first co-terminal point to such farther point and the total fare paid, less any applicable charges. For example, if a passenger who purchases a ticket from New York to London cancels his trip after flying from New York to Boston, Pan American may refund the difference between the New York-Gander and the New York-London fares, less any applicable charges.

Sincerely yours,

Joseph J. O'Connell, Jr.
Chairman