



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

Issued by the Department of Transportation
on the seventeenth day of January, 2007

Caribair, SA

Violations of 49 U.S.C. §§ 41301 and 41712

Docket OST-2007-26781

Served January 17, 2007

CONSENT ORDER

This consent order concerns unauthorized holding out and operation of air transportation by Caribair, SA ("Caribair"), a foreign entity based in the Dominican Republic. The unauthorized holding out and operations by Caribair violate the economic licensing requirements of 49 U.S.C. § 41301 and constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712. This order directs Caribair to cease and desist from future violations and assesses compromise civil penalties of \$70,000.

Caribair is a provider of air transport services licensed in the Dominican Republic and based at Puerto Plata International Airport in Puerto Plata. In order to engage in air transportation to or from the United States, 49 U.S.C. § 41301 requires that a foreign entity hold a permit conferring economic authority from the Department.¹ Violations of section 41301 also constitute unfair and deceptive practices and unfair methods of competition prohibited by 49 U.S.C. § 41712.

An investigation by the office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) based on a referral from the Federal Aviation Administration (FAA) disclosed that Caribair conducted

¹ This authority is separate and distinct from the safety authority that such a carrier must obtain from the Federal Aviation Administration.

several charter passenger flights from Puerto Plata, Dominican Republic, to St. Croix, U.S. Virgin Islands and San Juan, Puerto Rico, during 2004 and 2005.²

This is not the first time that Caribair has conducted unauthorized commercial air service to and from the United States. In 1999 and 2002, the FAA brought enforcement actions that resulted in the assessment of civil penalties against the carrier. In both instances, the FAA found the carrier to be in violation of 14 CFR Part 129 which requires, among other things, that Caribair have operations specifications issued by the FAA Administrator, and maintenance programs approved by the Administrator in force before conducting operations to or from the United States (*See* 14 CFR 129.11(a) and 129.25(e)). Caribair paid a civil penalty to conclude the two FAA enforcement cases.

According to Departmental records, Caribair has never applied for or obtained economic authority from the Department. During the last six years when Caribair was operating commercial flights to and from the United States, Caribair lacked the authority under 49 U.S.C. § 41301 to carry passengers or cargo to or from the United States. Caribair's operations to and from the United States without appropriate authority from the Department violate 49 U.S.C. § 41301 and also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation and explanation, Caribair states that it never intended to violate any rule or statute of the Department of Transportation. The carrier explains that it attempted to conduct its business in an efficient but appropriate way, and to maintain its aircraft properly by regular, non-commercial visits to maintenance facilities in Florida. As soon as it learned from the Department of Transportation that it was not permitted to conduct the flights it was operating into United States airports, Caribair contends that it ceased any flights it knew to be violative, and negotiated in good faith with the Department to bring the conduct of its operations into full conformity with the Department's regulations.

The Enforcement Office has carefully considered the information provided by Caribair, SA, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Caribair have reached a settlement of this matter. Caribair, in order to avoid litigation, and without admitting or denying the alleged violations, consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, and to the

² Caribair never obtained any authority from the FAA for operations into and out of the Virgin Islands and Puerto Rico in connection with that agency's safety requirements. Significantly, due to safety concerns, all carriers of the Dominican Republic (a "Category Two" country) are prohibited from conducting commercial operations to or from the United States except by wet lease with a carrier holding U.S. authority.

assessment of \$70,000 in compromise of potential civil penalties. Of the assessed penalty amount, \$35,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$35,000 shall be suspended for one year, and then forgiven, so long as Caribair commits no further violations during that time period. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's licensing requirements by Caribair, SA, as well as by other companies engaged in similar air services.

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 this order as being in the public interest;
2. We find that Caribair, SA, violated 49 U.S.C. § 41301 by engaging in air transportation to and from the United States without economic authority from the Department;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Caribair, SA, also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. Caribair, SA, and all other entities owned or controlled by Caribair, SA, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41301 and 41712;
5. Caribair, SA, is assessed \$70,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$35,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$35,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Caribair, SA, violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provision, in which case the entire unpaid portion of the \$70,000 penalty shall become due and payable immediately;

6. Failure to pay the compromise assessment as ordered will subject Caribair, SA, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
7. Payment shall be made by wire transfer through 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 the instructions contained in the Attachment to this order.

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)

*An electronic version of this document is available
On the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*