



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

Issued by the Department of Transportation
On the Twenty-Second day of October, 2013

Jet Airways (India) Ltd.

**Violations of 14 CFR Part 244
and 49 U.S.C. § 41708**

Docket OST-2013-0004

Served: October 22, 2013

CONSENT ORDER

This consent order results from the failure of Jet Airways (India) Ltd. (Jet Airways) to provide accurate tarmac delay information to the Department of Transportation (Department) in violation of 14 CFR Part 244 and 49 U.S.C. § 41708. This order directs Jet Airways to cease and desist from future similar violations of Part 244 and section 41708, and assesses the carrier \$10,000 in civil penalties.

Applicable Law

Reporting Tarmac Delay Data

Section 244.3 of the Department's regulations requires certain foreign air carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information for each month in which at least one tarmac delay of three hours or more occurred. The data are filed with a certification of their accuracy.¹ The data are then published and made available to the public in a useable format in the Department's monthly Air Travel Consumer Report (ATCR), which, among other things,

¹ See *Part 244 – Reporting of Tarmac Delay Data (Revised)*, (August 10, 2011), available at http://www.bts.gov/programs/airline_information/accounting_and_reporting_directives/number_303a.html.

lists all regularly scheduled international flights with tarmac delays of four hours or more.² The ATCR data in question are used for a number of purposes, including by the traveling public to choose among transportation options, by the Department as a basis to conduct enforcement investigations, and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative, therefore, that ATCR data be accurate. Violations of section 244.3 also constitute violations of 49 U.S.C. § 41708.

Facts

Jet Airways is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)³ that operates scheduled service into Newark Liberty International Airport (EWR), a large hub airport, using at least one aircraft having a designed seating capacity of 30 or more passenger seats. On October 29, 2011, as a result of a winter weather event, Jet Airways flight 228, traveling from Brussels Airport (BRU) in Belgium to Newark Liberty International Airport (EWR), diverted to Bradley International Airport (BDL).⁴ BDL is not a regular diversion airport for Jet Airways and, consequently, the carrier did not have a coordinated contingency plan with BDL when it decided to divert there on October 29, 2011.⁵ An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that after being diverted to BDL, 217 passengers were delayed on the tarmac for five hours and fourteen minutes on flight 228.

Additionally, in its original certified October 2011 BTS Form 244 filing, Jet Airways reported a tarmac delay of four hours and forty minutes. After the Enforcement Office initiated an investigation of the circumstances surrounding the lengthy tarmac delay, Jet Airways re-examined its data and concluded that it had made an erroneous report to the Department and that the actual length of the delay was five hours and fourteen minutes. Jet Airways then filed a corrected BTS Form 244; however, the corrected data was filed only after the ATCR had been published and released to consumers. Jet Airways' failure

² See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

³ 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

⁴ The October 29, 2011, weather event caused additional critical navigation equipment outages at JFK and Newark Airports (some equipment was already inoperable because of needed maintenance) and significant Air Traffic Control (ATC) problems, prompting 29 flights operated by numerous carriers to divert to BDL within a short period of time, ultimately overwhelming that airport's resources. Additionally, heavy accumulating snowfall caused numerous power failures and difficulty maneuvering ground service equipment to diverted aircraft at that airport, causing massive ground service difficulties and delays. Finally, limitations with respect to Customs and Border Protection (CBP) facilities at BDL also exacerbated the difficulties with respect to international flights.

⁵ Jet Airways reported that its regular diversion airports for EWR are JFK International Airport (JFK), Boston Logan International Airport (BOS), Philadelphia International Airport (PHL), Washington Dulles International Airport (IAD), and Toronto Pearson International Airport (YTZ).

to submit accurate data in accordance with 14 CFR 244.3 wasted valuable Department resources, since it was only after the Enforcement Office initiated its investigation and Jet Airways re-examined its data that the inaccuracy was discovered. Additionally, the Department had to expend further resources to reissue the ATCR with Jet Airways' corrected data.

Mitigation

In mitigation, Jet Airways states that it takes its reporting violations very seriously, and understands the importance of ensuring the accuracy of data reported to agencies. The Form 244 filing requirement, however, first went into effect in August 2011. Jet Airways states that it had no prior experience in determining how a tarmac delay should be calculated. According to Jet Airways, the thirty four minute error in the report that it initially submitted was an honest mistake based on a misunderstanding of the Part 244 reporting criteria, rather than an attempt to mislead the Department or obscure the facts. Jet Airways states that it filed its initial report on a timely basis in accordance with the requirements of Part 244 and, upon discovering that the tarmac delay data were apparently calculated incorrectly, Jet Airways voluntarily and promptly submitted a corrected report, thereby demonstrating its positive compliance disposition.

Decision

The Enforcement Office has considered carefully the information provided by Jet Airways and believes that most of the circumstances on October 29 that ultimately led to the tarmac delay experienced by flight 228 at BDL were far beyond of the control of any single carrier. As such, it has decided to exercise its discretion and not pursue enforcement action against Jet Airways for its failure to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit a flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. Additionally, because Jet Airways had not previously considered BDL to be one of its regular diversion airports and had not used that airport for diversions in the past, the Enforcement Office is not pursuing enforcement action against the carrier for having failed to coordinate its tarmac delay contingency plan with BDL. However, the Enforcement Office does believe that enforcement action is warranted with regard to Jet Airways' misreporting of information to the Department. The Enforcement Office and Jet Airways have reached a settlement of this matter in order to avoid litigation. By this order, the Department finds that Jet Airways violated 49 U.S.C. § 41708 and Part 244 by failing to provide accurate on-time performance information to the Department.

In order to avoid litigation, Jet Airways has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Jet Airways to cease and desist from future similar violations of 14 CFR Part 244 and section 41708 and assessing \$10,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. We believe that this assessment is appropriate and serves the public interest.

This order is issued under the authority contained in 49 CFR Part 1.

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 Jet Airways (India) Ltd., violated 14 CFR Part 244 by filing a report with the Department that contained inaccurate data;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Jet Airways (India) Ltd., has violated 49 U.S.C. § 41708;
4. Jet Airways (India) Ltd., and all other entities owned or controlled by Jet Airways (India) Ltd., its successors and assignees are ordered to cease and desist from further violations of 14 CFR Part 244 and 49 U.S.C. § 41708;
5. We assess Jet Airways (India) Ltd., a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$5,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, Jet Airways (India) Ltd., violates this order's cease and desist or payment provisions, in which case Jet Airways (India) Ltd., may become subject to additional enforcement action for any violation of the order; and
6. We order Jet Airways (India) Ltd., to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Jet Airways (India) Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with 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:

SAMEUL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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