



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

Issued by the Department of Transportation
on the 9th day of August, 2004

Served: August 9, 2004

In the Matter of

AEROLINEAS ARGENTINAS, S.A.

under Section 41310(c)(2) International Air Transportation
Fair Competitive Practices Act, as amended

Docket OST-2003-15092

Order Denying Motion

Summary

By this Order, we deny the Motion of Aerolineas Argentinas, S.A. (Aerolineas) to suspend the payments of Aerolineas into an escrow account and deny the request to order the complainants in this case to submit additional documentation.

Background

By Order 2003-11-26, the Department required Aerolineas, among other things, to remit into a U.S. escrow account, on a per-flight basis, the difference between what it actually pays for services at Buenos Aires Ezeiza airport and the higher amounts it would be paying if it were not benefiting from discriminatorily favorable treatment *vis-à-vis* U.S. carriers. The airport's charges for U.S. carriers have been about three times higher than those paid by Aerolineas. The order requires Aerolineas to deposit weekly into a Department-approved escrow account, monies relating to airport charges for the week ending the preceding Sunday. By Order 2004-1-15, the Department approved Aerolineas' Escrow Agreement with North Fork Bank as modified and in that order directed Aerolineas and the North Fork Bank to submit required documentation and to comply with the agreement and the Department's directive. By Order 2004-6-1, the Department granted a May 5, 2004, Motion of Aerolineas to change the filing day for its escrow report to the Department from Monday to Wednesday of each week. These Department actions resulted from a complaint filed by four U.S. carriers serving Buenos Aires, American Airlines, United Air Lines, Federal Express Corporation, and United Parcel Service Co.

Motion and Responsive Pleadings

On June 17, 2004, Aerolineas filed a Motion to suspend the payments into the escrow account required by the Department. Aerolineas alleges that two or more of the four complaining carriers in Docket OST-2003-15092 have benefited from discounted payments that "may be in

the area of \$175,000 per month” for comparable services and that the Ezeiza airport is therefore discriminating in favor of the U.S. carriers and against Aerolineas.¹

Aerolineas requests the Department to order all four complaining airlines to submit affidavits to the Department with copies to all parties to the proceeding concerning whether or not they received reductions from the normal airport charges assessed against other airlines including Aerolineas at Ezeiza. Specifically, it wants American Airlines (American) ordered

to disclose all contracts concerning reductions in charges by producing copies of all documents which refer, relate, or reflect agreements with any entity concerning a reduction or discount from normal airport charges and the amount of that discount; [to make] an accounting of all monies paid and saved related to these discounts; and [to] provide further disclosure including answers to interrogatories, requests for other documents and depositions.²

Aerolineas would similarly require United Air Lines (United), Federal Express Corporation (FedEx), and United Parcel Service Co. (UPS) to provide similar disclosure. Aerolineas states that “until the complaining airlines in this proceeding give full disclosure of all special deals, the weekly payments of Aerolineas Argentinas should be suspended.”³

American, FedEx, United, and UPS filed answers to the Motion.⁴ American, FedEx and United oppose the Motion, arguing that the Motion is without merit; that the Motion should be denied; and that the escrow payment of Aerolineas should remain in place.

American states that it received incentives, totaling \$46,394, when Ezeiza was trying to attract new flights and upgrades in capacity to replace significant losses in international service, and that American understands that similar incentives were available to all carriers proposing to operate a new service or to upgrade existing services.⁵ American argues that these temporary incentive reductions constitute “just 1.0% of American’s projected annual payments to Aeropuertos 2000” and that such an amount “is de minimis [*sic*] in the context of the lengthy period when the co-complainants paid discriminatory charges at EZE at triple the rate without imposition of any countervailing measures against Aerolineas.”⁶ American states that it received no other discounts or reductions in airport charges from Aeropuertos 2000 during any period

¹ Motion at 1-2. In support of its Motion, Aerolineas attaches documentation from minutes of a meeting of the Executive Counsel of JURCA, an association of airlines operating in Argentina.

² Motion at 7-8.

³ Motion at 8.

⁴ UPS filed an untimely response but requested the Department to receive it as an unauthorized document. UPS should have styled its response as a Motion for Leave to File. In order to have a complete record, however, we will consider the document as a Motion for Leave to File and accept it as requested as an unauthorized document.

⁵ For a three-month period American states that it received a temporary incentive (i.e. from November 2, 2003 to January 31, 2004) from Aeropuertos 2000, the company that operates most of the Argentine airports including Ezeiza, for American’s new services between Dallas/Fort Worth and Buenos Aires. The total of that incentive was \$18,300. American also states that as another incentive from Aeropuertos 2000, it received a 15% discount (totaling \$28,094) for various periods between December 1, 2003 and February 23, 2004, on the difference in tons for Miami-Buenos Aires and Buenos Aires-Montevideo flights that American upgraded from B-767-300 aircraft to B-777 aircraft; and that these incentives were reflected in credit memos issued American from Aeropuertos 2000.

⁶American Answer at 5-6.

since the discriminatory regime for airport charges took effect April 10, 2000. American notes that its discounts ended about one month after the escrow requirement became effective and that Aerolineas' obligation to make escrow payments did not cover the period of more than 20 months before February 2004 when the U.S. carriers had to pay discriminatory airport charges.

FedEx "categorically denies that since April 10, 2002 it has received any discount whatsoever from the posted pricing for airport charges at Buenos Aires Ezeiza Airport."⁷ It states, however, that it understands the policy of Aerolineas 2000 is to offer all carriers the possibility of a 15 percent discount on charges with respect to new services and/or increased capacity for a limited introductory time. Since FedEx has not introduced new services or additional capacity, it states it has not benefited from that incentive.

United denies that it has received any discount or special arrangement at Ezeiza, attaching as proof a Declaration from United's Manager-Administration in Buenos Aires, Argentina. United argues that Aerolineas falsely claims Aerolineas is not receiving any discounts for services at Ezeiza, when Aerolineas pays only 1/3 of the amount paid by U.S. carriers for services at Ezeiza. United further argues that Aerolineas' "discount is much larger than Aerolineas even alleges to have been accorded to U.S. carriers" and that Aerolineas has not offered "any explanation as to how it calculated what appears to be a grossly inflated sum."⁸ Moreover, United notes that Aerolineas has enjoyed a discriminatory 2/3 reduction in fees since November 2002 for all of its services at Ezeiza and that the repayment required by the Department only took effect January 2004, giving Aerolineas 20 months to enjoy preferential fee payments for all Ezeiza services.

UPS advises the Department that it does not receive, and has not received, any discounts on landing fees at Ezeiza in the period relevant to this proceeding.

Decision

After careful consideration of all matters raised, we have decided to deny the Motion of Aerolineas Argentinas and its request to impose filing requirements on U.S. carriers.

In response to Aerolineas' Motion, the U.S. carriers serving Argentina have stated they have received no discounts in the amounts alleged by Aerolineas, and we find that the record in this proceeding supports the position of the U.S. carriers. Indeed, contrary to assertions by Aerolineas, it is apparent in the record before us that Aeropuertos 2000 offered an incentive to all airlines beginning new services or upgrading their existing services with larger aircraft for a temporary time only.⁹ While American acknowledges that it took advantage of this incentive, the incentive was available to any other airline meeting the conditions of the incentive. American's acceptance of this incentive in no way alters the fact that all U S airlines serving Argentina, including American, have been discriminated against in terms of airport fees at Ezeiza airport by a three to one ratio per flight. As noted by the U.S. carriers, Aerolineas has not demonstrated how it arrived at the \$175,000 alleged monthly discount to U.S. carriers.

⁷ Fed Ex Answer at 2.

⁸ United Answer at 1-2, 4.

⁹ The March 3, 2004, minutes of the JURCA executive council, submitted by Aerolineas, confirm that the discounted fees were available to any airline that began new service or increased existing service.

In view of these circumstances, we will not require the U.S. carriers to produce the additional documentation requested by Aerolineas, and we are denying its Motion for suspension of payments into the escrow account.

ACCORDINGLY,

1. We deny the Motion of Aerolineas Argentinas for suspension of payments into the escrow account as ordered by Order 2003-11-26;

2. We deny the request of Aerolineas Argentinas to impose filing requirements upon U.S. carriers in this proceeding; and

3. We will serve this order on American Airlines, Inc.; Federal Express Corporation; United Air Lines, Inc.; United Parcel Service Co.; Aerolineas Argentinas, S.A.; the Air Transport Association; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (South America), Office of the U.S. Trade Representative; the U.S. Department of Commerce (Office of Service Industries); and the Ambassador of Argentina in Washington, DC.

By:

KARAN K. BHATIA
Assistant Secretary
for Aviation and International Affairs

(SEAL)

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