



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

Issued by the Department of Transportation on August 25, 2004

NOTICE OF ACTION TAKEN – DOCKET OST 2004-17891

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: AIRWORK HOLDINGS LIMITED t/a AIRWORK FLIGHT OPERATIONS LIMITED

Date Filed: May 17, 2004, as supplemented July 27, 2004. 1/

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to engage in charter foreign air transportation of persons, property and mail between New Zealand and the United States and other charter operations under 14 CFR Part 212.

Statement of Authorization under 14 CFR Part 212 to permit the applicant to wet-lease Boeing 737 equipment, to Palau Rock Island Air, Inc., for the operation of the Palauan carrier's scheduled combination services, as follows: between the Republic of Palau, on the one hand, via intermediate points in the Federated States of Micronesia, to and/or from Guam and the Commonwealth of the Northern Mariana Islands, on the other hand, and beyond to points in the Federated States of Micronesia.

If renewal, date and citation of last action: New authority.

Applicant representative: John R. Mietus, Jr., 202-861-6466 DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: August 25, 2004

Effective dates of authority granted: The exemption is effective August 25, 2004, through August 25, 2005. The statement of authorization is effective August 25, 2004, through August 10, 2005, which is coextensive with the underlying authority that Palau Rock Island Air currently holds for the conduct of the wet-lease operations at issue in this case.

Basis for approval: Reciprocity with New Zealand and the Republic of Palau.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached).

Special conditions/Remarks: Airwork Holdings Limited is a carrier of New Zealand that proposes to initiate its U.S. operations by wet lease of equipment and crews to the Palauan carrier, Palau Rock Island Air. We found, based on the record in this case, that the applicant is properly licensed by its homeland government, and operationally and financially qualified, to undertake its proposed operations (as conditioned). The record indicates that a majority (55.5%) of Airwork Holdings Limited's stock is held by the company's managing director, who is a citizen of New Zealand. The remaining 44.5% is held by a New Zealand company, which is owned by a Canadian holding company for the benefit of certain

1/ Together with its application, Airwork Holdings Limited filed a motion for confidential treatment of certain of its financial submissions (balance sheets, income statements, and forecast of operations). In our view the applicant has demonstrated good cause for favorable action on its motion, and we grant it.

Canadian citizens. Further, the applicant states that it has a total of nine directors, officers and key management personnel, all of whom are New Zealand citizens. Despite the presence of certain non-New Zealand interests, we found, given the highly limited nature of the operations contemplated, that there was nothing in the applicant's ownership and control that would be inimical to U.S. aviation policy or interests. Therefore, we concluded that waiver, to the extent necessary, of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland was warranted. Finally, the FAA advised us that it knows of no reason to withhold this authority.

Under the above described exemption authority Airwork Holdings Limited is authorized to conduct charter operations between New Zealand and the United States. Other charters to and from the United States, however, are subject to prior approval under the provisions of 14 CFR Part 212.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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

FOREIGN CARRIER EXEMPTION CONDITIONS

ATTACHMENT

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- 1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- 2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- 3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- 4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- 5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- 6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- 7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- 8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- 9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- 10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- 11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

05/2004