

POSTED: September 17, 1997

Order 97-9-19

Served: September 23, 1997



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

Issued by the Department of Transportation
on the 17th day of September, 1997

Complaint of

UNITED AIR LINES, INC.

against

**THE GOVERNMENT OF THE
RUSSIAN FEDERATION**

under 49 U.S.C. section 41310

Docket OST-97-2888

ORDER

On September 9, 1997, United Air Lines, Inc., filed a complaint under 49 U.S.C. section 41310 against the Government of The Russian Federation (Russia). United alleges that Russia is in violation of the 1993 Air Transport Agreement between the United States and the Russian Federation because Russia forced United to terminate its U.S.-Moscow-Frankfurt code-sharing services with Lufthansa German Airlines (Lufthansa), and that such action places unjustifiable and unreasonable restrictions on United requiring retaliatory action by the Department.

In support of its complaint, United states that the 1993 Air Transport Agreement between the United States and the Russian Federation in Annex I, Section VI authorizes U.S. carriers to serve Russia under third-country code-sharing arrangements, and that consistent with those provisions, in July 1994 Russia approved United's code-share operations with Lufthansa for services between the United States and Moscow via Frankfurt.¹ United states, however, that in March 1995, Russia refused to approve United's U.S.-Moscow Summer 1995 code-share schedule and ordered United to terminate its code-sharing services with Lufthansa on the basis that such operations were not permitted under a recent agreement between Germany and Russia.

¹ All of the Annexes in the agreement expired by their terms on May 31, 1997, but both governments have continued to authorize each other's carriers to provide services consistent with their terms, pending conclusion of an agreement to renew or amend that Annex.

United further states that Russia has continued to prohibit United's code-share services despite objections by the United States in April 1995 U.S.-Russia aviation negotiations, and despite German Government statements that the Germany-Russia agreement does not address third-country code sharing and that Germany would allow Russian carriers to code share with U.S. carriers on U.S.-Russia services via Germany on the basis of reciprocity with Russia. Finally, United notes that Russia has permitted similar code-share operations between Northwest Airlines and KLM and between Delta Air Lines and Swissair, and argues that the Department should not permit Russia to decide which code-share services can be operated.

Based on the above, United urges the Department to impose proportional sanctions against the Russian carrier Aeroflot, specifically, that Aeroflot be prohibited from operating its nine weekly flights between Russia and Chicago, San Francisco, and Washington/Dulles "until such time as Russia remedies its violations of the agreement."² United states that its flights to Frankfurt from each of these cities would connect to Lufthansa's Moscow flights and would provide competition to Aeroflot's services at these U.S. hubs. It also states that at the time it was forced to discontinue its code-share services, United and Lufthansa operated a total of 14 weekly code-share flights to Russia from Frankfurt.³

Section 41310 provides that we shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite any interested persons to answer United's complaint in Docket OST-97-2888. Answers may be filed no later than 14 days after the date of service of this order. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than 7 calendar days thereafter.⁴

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

² Complaint at 12.

³ *Id.*

⁴ We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

ACCORDINGLY,

1. We invite interested persons to file answers to the complaint of United Air Lines, Inc., in Docket OST-97-2888, no later than 14 days after the service date of this order.⁵ If answers are filed, replies to those answers should be filed no later than 7 calendar days thereafter. Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 3, below;
2. If timely and properly supported answers are filed, we will give consideration to the matters and issues raised by the answers before we take further action; and
3. We will serve this order on Alaska Airlines, Inc.; American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; United Air Lines, Inc.; Aeroflot Russian International Airlines; Transaero Airlines, Volga-Dnepr J.S. Cargo Airlines; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative; Office of the United States Trade Representative; the U.S. Department of Commerce (Office of Service Industries); the Ambassador of the Russian Federation in Washington, D.C.; and the Air Transport Association.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

⁵ The original submission is to be unbound and without tabs on 8½" X 11" white paper using dark ink (not green).