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AVIATION

STAFF REPORT*

U.S. CIVIL AERONAUTICS BOARD

Effective October 1, the Board will make available to the public all IATA documents filed with the Board, unless the filing carriers have provided explicit reasons why any given document should be held confidential. In the past the Board has held most IATA documents confidential. It is anticipated that such material as minutes of meetings of IATA's legal, executive and cost committees will be made available. The Board indicated that to exercise properly its reviewing authority, it needs to have the informed views of all interested parties.

For the fourth time, the Civil Aeronautics Board has used its schedule filing authority to require a non-U.S. air carrier to file its schedules with the Board. The U. S. and the U. K. have held discussions on whether National Airlines has scheduled excess capacity on the Miami-London route and have been unable to reach agreement. The Board's action followed a British Government order to National to reduce its capacity. The U. S. claims the British action was in violation of the bilateral air agreement.

The CAB has established rules for assessing increases in air carrier rates and fares during the effectiveness of the price stabilization program. Publication of the rules followed receipt of a Price Commission certificate of compliance which authorized the Board to act on fare and rate proposals without Commission review. The new regulations became effective August 15. Under the rules (Part 299 of the Board's economic regulations), carriers must justify fare increases in accordance with Price Commission guidelines. Increases must be cost justified and not reflect inflationary expectations, achieve the minimum rate of return to attract capital and reflect major costs in accord with Price Commission limits.

*The assistance of Mr. S. H. Preece, Staff Vice President—Government Affairs, Pan American World Airways and D. A. Dowdell, Esq. in the preparation of this report is gratefully acknowledged.

The CAB's Bureau of Enforcement has requested all U. S. and foreign carriers serving the U. S. to report all known instances of discounting. Each carrier was asked to supply a list of its top 25 accounts, including names and addresses of the carrier's agents, consolidators, tour operators and commercial accounts. The Board believes that within this group will be found the parties most likely to be receiving discounts. The request was a follow-up to a letter sent in June by the CAB Chairman asking the airlines to stop illegal kickbacks and discounting. IATA carriers seeking to solve the discounting problems had sought help from the CAB and other U. S. government agencies in enforcing the regulations. The Board expects that many carriers, particularly those engaging in discounting as defensive measures, will want to cooperate with the Board's efforts to halt the illegal practices.

CHARTERS

Three bills are presently before the U.S. Senate which would eliminate many of the current restrictions on the charter operations of both scheduled and supplemental carriers. The measures would significantly reduce the cost of air transportation for the majority of the travelling public which flies between major cities. The elimination of the restrictions is opposed by the scheduled carriers which contend that while the large metropolitan areas could continue to enjoy scheduled service, small towns and even many large cities would have to arrange for greatly increased subsidies in order to maintain scheduled service if charter operations are expanded beyond their present point.

United Kingdom authorities have published two alternative proposals for new charter regulations which would replace existing affinity group charters. One alternative provides for booking three months in advance for round-trips only; the other provides for booking two months in advance for both one-way and round-trips. The Authority aims to introduce the new facility from April 1 next year. Meanwhile it is discussing the introduction of advance charters with other countries with a view to the possible introduction of similar arrangements by all of them at about the same time. The UK proposals will need to take account of the outcome of these international discussions. The advance charter will replace the existing affinity charter regulations which require passengers to have been members for at least six months of a club which was not formed for the purpose of travel. The Authority intends that the advance booking facility should be available for air travel on the North Atlantic as well as on certain other intercontinental routes. The proposals provide that a travel

organizer who books a minimum of forty passengers at least two or three months in advance will be able to reserve capacity with an airline. He will simply have to furnish the airline with a list of passengers, together with their addresses and passport numbers.

CONSUMER AFFAIRS

As a result of the establishment of a consumer complaint office by the CAB and the possibility of costly class action suits by passengers who have become increasingly aware of the possibility of legal recourse against the airlines, many United States air carriers have established their own department to deal with disgruntled passengers. The latest carrier to do so is Eastern Airlines which has established a Consumer Affairs Department consisting of 42 employees whose sole purpose is to handle passenger complaints.

LOCAL CARRIERS

Since 1944 when they were authorized by the CAB, small local airlines have required a total of almost \$1 billion in federal subsidy payments. Recently yearly subsidy payments have averaged about \$50 million. In a study published by the Brookings Institution, it is concluded that the inability of the short-haul carriers to ever make a profit is now evident and that the subsidies should be discontinued. However at present no workable alternative has been suggested which will assure regularly scheduled service to smaller cities if the subsidies are discontinued and the local service airlines are forced to either make a profit or go out of business.

HIJACKING

The U.S. government has ordered domestic airlines to screen all passengers and baggage on all flights. The presidents of all major U.S. air carriers responded by sending a joint message requesting a meeting with Secretary of Transportation Volpe.

The airlines maintain that they are willing to do all they can to prevent hijackings but that they will need federal financial assistance to implement the federal requirements. The airlines have requested that the federal government finance the installation of weapons detection systems at all airline boarding gates and augment the present force of 1,000 mar-

shals currently paid by the federal government to aid the airlines in preventing hijackings.

Two new developments may aid the airlines in the detection of would-be hijackers. Norelco Corporation has built a system which combines a fluoroscope and a television camera. The device, which uses harmless short-pulse X-rays, is capable of giving a detailed picture of all the objects contained in a piece of luggage.

And in Albuquerque, New Mexico, dogs are now being used to screen passengers. Following the success of U.S. Customs in using dogs to detect narcotics, dogs have now been trained which are capable of detecting the faintest trace of gunpower. In a test conducted by the Air Line Pilots Association one such dog demonstrated that the animals can also be successfully used to disarm would-be hijackers.

The Board of Directors of the Air Transport Association of America supported two resolutions aimed at ending hijacking threats throughout the world:

1. Endorsement of International Civil Aviation Organization (ICAO) efforts to develop sanctions. ATA supports the resolution of the ICAO Council to initiate work on an international convention to bring joint action against countries which do not extradite or prosecute persons who commit criminal acts of aerial piracy, and

2. A call upon the U. S. government to exert all appropriate efforts to eliminate safe havens. The airlines propose to do this first by making it known that the U. S. itself will not be such a sanctuary and second by joining with other affected nations to bring the full weight of political pressure to bear against nations which become such sanctuaries in a given case.

The following is the status of the most important treaties relating to crimes against international civil aviation:

- I. *The Tokyo Convention of September 1963* (Convention on Offenses and Certain Other Acts Committed on Board Aircraft.)

Ratified by U. S. in September 1969, and became effective December 1969.

Although this Convention contains general provisions relating to any crimes committed aboard aircraft, the principal effect of this treaty is to establish the inviolability of a hijacked civil aircraft and its contents regardless of where that aircraft may be forced to land.

It provides that in the event of a hijacking the state of landing must permit the aircraft, passengers, crew, and cargo to proceed on their journey as soon as practicable.

The Tokyo Convention, as of June 28, 1972, has been ratified by 53 countries including the U. S.

II. *The Hague Convention of December 1970* (Convention for the Suppression of Unlawful Seizure of Aircraft; also called the "Hijacking Convention.")

The U. S. ratified this Convention in September 1971, and the Convention became effective in October 1971. The U. S. has implementing legislation (S. 2280) pending relating primarily to the various jurisdiction provisions of this Convention.

The principal provision of this Convention obligates every contracting state in which a hijacker is found either to extradite the alleged offender or to prosecute him. This is true even if the state in which the hijacker is found had no connection whatsoever with the hijacking; in other words, universal jurisdiction is established over the offense and the hijacker may be prosecuted wherever he is found. Every state is obligated to make the offense of hijacking punishable by severe penalties. The treaty facilitates extradition by automatically incorporating the offense of hijacking in all extradition treaties, permits states to consider this Convention as an extradition treaty between them, and provides that states which do not require extradition treaties shall recognize the offense as an extraditable offense between themselves. The Convention goes beyond the inviolability provisions of Tokyo by requiring the contracting states to take affirmative action to *facilitate* the continuation of the journey of the passengers and crew.

As of June 28, 1972, the Hague Convention had been ratified by 30 countries.

III. *The Montreal Convention of September 1971* (Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; also known as the "Other Acts" or "Sabotage" Convention.)

Although the United States signed this Convention in Montreal; it has not yet ratified it. The Convention is not in effect as an international treaty because of an insufficient number of ratifications by states,

Basically, this Convention applies the principles established in the Hague Convention to all other crimes committed aboard aircraft or against the safety of international civil aviation. Thus, this Convention applies to acts of violence against a person aboard an aircraft, damage or destruction of aircraft, placing devices or substances on an aircraft which may damage or destroy it, damage or destruction to air navigation facilities, and communication of false information which may endanger the safety of an aircraft in flight. In addition to the Hague-type duties and obligations contained in this Convention, all states are required to take all practicable measures to prevent the commission of these offenses.

As of June 28, 1972, the Montreal Convention had been ratified by Canada, Dominican Republic, Mali, South Africa and Trinidad and Tobago.

DEPARTURE TAXES

On April 14, 1972, the United States Supreme Court ruled that one dollar and two dollar local taxes on departing airline passengers were constitutional. Revenue from such taxes is to be used to finance airport improvements under the Airport and Airways Development Act enacted by Congress in 1970.

The 1970 Act authorized up to \$280 million a year in federal funds to be spent for new airport facilities if the money was matched on a 50-50 basis with local funds. Cities imposing the tax argued that the head taxes were needed in order to provide their share under the Act. Within two months of the Supreme Court decision upholding departure taxes, five cities had enacted such fees and at least twenty-two additional cities were considering imposition of such a tax.

The nation's airlines strongly oppose the imposition of these taxes and through the Air Transport Association are presenting their case to the United States Congress. The airlines argue that under the terms of the 1970 Act the federal tax on domestic flights was raised to 8% and that the imposition of an additional tax is unduly burdensome.

And while the argument was unsuccessful in the Supreme Court it is faring better in Congress. On August 10, 1972 the Senate by a vote of 83-2 approved a ban on airline passenger head taxes, while at the same time significantly increasing the role of the federal government in financing airport facilities. If approved by the House, the Senate proposal

will alter the terms of the 1970 Airport and Airways Development Act to provide for federal funding of 75% of the cost of new terminal facilities instead of the original 50-50 basis.

AVIATION CONFERENCES

The Ninth Inter-American Aviation Law Conference and the V Meeting of the Latin American Association of Air and Space Law were held in University City, Republic of Panamá, July 21-25, 1972. The joint meeting was co-sponsored by the School of Law of the University of Miami, the Latin American Association of Air and Space Law, and the University of Panamá. The subjects covered: Tourism, Aviation Insurance, Recent Aviation Case Law, Space Law - International Conventions, and the Latin American Air Code. A novel feature of the Conference was a round table with law students from the University of Panamá during which a lively exchange took place between the students and a selected panel from the participants in the Conference. The next cycle of joint conferences between the two parent organizations is scheduled to take place in San José, Costa Rica in mid-March, 1973. The University of Costa Rica will be the third co-sponsor.

The VI Meeting of the Iberoamerican Institute of Air and Space Law is scheduled for Santiago, Chile from 26-30 September, 1972. The subjects listed on the agenda include: International Legal Status of the Aircraft Commander; Labor Law in the Airline Industry; Legal Regime of Telecommunications Satellites; and Recent Legal Developments in Aviation Law. The meeting will also host the General Assembly of the Iberoamerican Institute of Air and Space Law which is being joined by the University of Chile, the Chilean Institute of Air Law and LAN-Chile in the sponsorship of the event.

SPACE LAW CENTER

The Argentinian press has announced the establishment of the *Centro de Estudios de Derecho Espacial* (Space Law Study Center) under the directorship of Dr. Eduardo Basualdo Moine, professor of Navigation Law at the University of Buenos Aires. Besides a General Secretariat and an Administrative Department, the Center will have the following departments: Study and Research; Documents and Publications; Intramural Liaison; International Law; United Nations and International

Institute of Space Law; Aviation Law and Legal Control of Atomic Energy.

RECENT U.S. CASE LAW

Note: Citations refer to CCH Aviation Law Reporter.

Herman v. Trans World Airlines, Inc. 12 Avi. 17, 304 (1972)

The New York Supreme Court for Kings County held that the mental suffering endured by a passenger who was held captive for seven days in a hijacked aircraft constitutes a compensable injury under Article 17 of the Warsaw Convention.

General Airline and Film Corp. v. American Express Co. 12 Avi. 17, 393 (1972)

In this case goods being shipped by air were lost through the joint negligence of both the consignee's agent and the air carrier when an impostor accepted delivery of the goods. Article 21 of the Warsaw Convention provides "If the carrier proves that the damage was caused or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability. Since the doctrine of comparative negligence is currently used only in Admiralty cases in the United States the court ruled that the wording of Article 21 resulted in a total bar of the consignee's action against the airline.

United States v. Harper 12 Avi. 17, 284 (1971)

The United States District Court in Massachusetts dismissed the government's action for a mandatory injunction to force an airman to surrender his airman certificate. The court ruled that §609 of the Federal Aviation Act of 1958 (49 U.S.C. §1429) which authorizes the permanent revocation of a certificate without giving the airman involved a hearing constitutes an unconstitutional deprivation of due process of law guaranteed by the Fifth Amendment to the U.S. Constitution.

Benjamin v. Delta Air Lines, Inc. 12 Avi. 17, 286 (1971)

The United States District Court for the Northern District of Illinois ruled that even though the defendant airline had no ticket office, em-

ployees, or flights within the state, the sale of passenger tickets for the airline through interline arrangements and by travel agents within the state constituted sufficient contact to subject the airline to personal jurisdiction in the state's courts.

Lockheed Air Terminal Inc. v. The City of Burbank 12 Avi. 17, 297 (1972)

The United States Court of Appeals for the Ninth Circuit ruled that a local ordinance which prohibited the take-off of jet aircraft during certain hours of the night was invalid since it conflicted with the exclusive control of the navigable air space possessed by the federal government.

Nestle v. City of Santa Monica 12 Avi. 17, 356 (1972)

In an action for inverse condemnation brought against the city for its operation of an airport the California Supreme Court ruled that, where the noise level was not such as to cause a diminution in the value of nearby property, the landowner could not recover on the theory of inverse condemnation. However, the court went on to say that under California law an action for nuisance or negligence on the part of a public entity could be maintained.

In Re Port of Seattle 12 Avi. 17, 310 (1972)

The Washington Supreme Court held that even though subsequently leased to private enterprise, land may be taken by the city under the power of eminent domain where the condemned land is used for the air cargo facilities of an airport. The court reasoned that the use of the land by the airport constituted enough of a public purpose to justify condemnation.