

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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In the Matter of)
)
BRITISH AIRWAYS PLC and)
VIRGIN ATLANTIC AIRWAYS)
LIMITED, et al.,)
)
Complainants)
)
v.) Docket OST-2000-7285
)
THE PORT AUTHORITY OF NEW YORK)
AND NEW JERSEY and)
NEWARK INTERNATIONAL AIRPORT,)
)
Respondents)
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PETITION FOR LEAVE TO INTERVENE OF FINNAIR OYJ

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May 8, 2000

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Pursuant to the Scheduling Notice issued by the Department on April 26, 2000, and in accordance with 14 C.F.R. Part 302.15, Finnair Oyj ("Finnair") respectfully petitions the Department for leave to intervene and participate in this proceeding as a party.

In support thereof, Finnair asserts the following:

1. Finnair is a foreign flag carrier designated by the Government of Finland to provide air transportation between

Finland and the United States. Finnair has provided scheduled and charter foreign air transportation in the Finland-United States market for over thirty years. Although it has served other terminal points in the United States, it has consistently provided service to JFK International Airport, a facility operated by the Port Authority of New York and New Jersey ("Port Authority"), the respondent herein. Finnair does not now and has never provided scheduled service to the Newark International Airport.

2. Although Finnair is not a member of the Newark International Carriers Committee, organized by the carriers providing regularly scheduled service to and from Newark International Airport, it has been made aware of the controversy existing between the carriers serving Newark and representatives of the Port Authority involving an increase in the Federal Inspection Space Charge and the General Terminal Charge by the Port Authority.

3. Finnair has considered the complaint filed under 49 U.S.C. § 47129 by British Airways Plc and Virgin Atlantic Airways Limited which led to the institution of this proceeding. It has also examined other related complaints filed against the Port Authority by other foreign air carriers. While Finnair is not able to make any

representations with respect to the underlying facts which support these complaints, it is confident that the material allegations would not have been asserted by the complaining carriers unless those allegations were well founded. And, because answers to these complaints will not be filed until today, Finnair has not had the benefit of considering the Port Authority's position on the factual and legal matters asserted by the complainants.

4. Notwithstanding the foregoing, Finnair is convinced that the complaining carriers have clearly alleged facts and presented arguments more than adequate to demonstrate that a "significant dispute" about the reasonableness of these increases must exist within the meaning of 49 U.S.C. § 47129 and 14 C.F.R. § 302.611(a) between the carriers and the Port Authority. If, as the complainants assert, the Port Authority (a) announced a decision to raise fees, (b) after the increases were effective, (c) without engaging in prior consultations with the carriers, and (d) refused to provide any explanation or justification to the carriers to support the reasonableness of the increase in fees, a prima facie showing of a "significant dispute" has been made. 1/

1/ Complainants certainly cannot be faulted for failing to address cost issues which could only be addressed based

Moreover, if the truthfulness of these allegations is established, the complainants will have shown that the Port Authority violated the Policy Statement regarding airport rates and charges adopted by the Department and the FAA in 1995. 60 Fed. Reg. 6909, February 3, 1995.

5. While Finnair will not be affected directly by the Port Authority's decision here, it will be affected by whatever decision the Department makes with regard to the lawfulness of the Port Authority's action. The Government of the United States and Finland entered into an Open Skies bilateral agreement in 1995. Their agreement contains a provision on User Charges (Article 11) which is very similar to or identical with user charge provisions set forth in the agreements relied upon by the several complainants in this proceeding. For example, under the Finland-United States agreement, user charges "shall be just, reasonable, not unjustly discriminatory, and equitably apportioned...." User charges "may reflect, but shall not exceed, the full cost...of providing ...facilities and services...." Each of the bilateral parties are required to "encourage consultations"

on data the Port Authority has refused to release.

regarding fees among the parties in interest and "encourage the competent charging authorities...and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges...." And each government is to "encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made."

6. Because the User Charge article in the Finland-United States bilateral is so similar to articles set forth in the agreements relied upon by the complaining parties herein, Finnair will clearly be injured if the precedent is established that an airport operator in the United States may proceed with impunity as the Port Authority is alleged to have acted in this case.

7. Accordingly, Finnair has a clear and important interest to protect which may be affected by this proceeding, and there is no other means available to it to protect that interest. Finnair's participation in this proceeding will be conducive to the ends of justice, may reasonably be expected to assist in the development of a sound record, will not broaden the issues under consideration, will not unduly burden the parties or the Department, and will not result in any

procedural delays. Finnair will comply with any and all directives issued by the Department governing the conduct of this proceeding.

For all these reasons, therefore, Finnair respectfully requests that it be permitted to intervene and participate in this proceeding.

Respectfully submitted,

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Counsel for Finnair Oyj

May 8, 2000

CERTIFICATE OF SERVICE

I certify that I have, this 8th day of May, 2000, caused a copy of the foregoing to be served on the individuals identified on the attached service list by facsimile transmission.

John L. Richardson