

Decision No. 82190**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WESTERN AIR LINES, INC.,
for authority to impose a surcharge to
defray the cost of providing armed
guards at terminal areas.

Application No. 54043
(Filed May 17, 1973)

Application of UNITED AIR LINES, INC.,
for authority to increase the Security
Charge for intrastate passenger fares.

Application No. 54046
(Filed May 22, 1973)

Application of Hughes Air Corp., d/b/a
HUGHES AIRWEST, for authority to add a
security charge to defray the cost of
providing armed guards at terminal
areas.

Application No. 54061
(Filed May 25, 1973)

Application of Air California for an
Ex Parte Order for authority to
increase the Security Charge for
passenger fares.

Application No. 54106
(Filed June 18, 1973)

Application of TRANS WORLD AIRLINES,
INC. for authority to add a Security
Charge to intrastate passenger fares.

Application No. 54107
(Filed June 18, 1973)

Application of Holiday Airlines Corp.,
dba Holiday Airlines, for an Ex Parte
Order to increase its Security Charge
to passenger fares.

Application No. 54247
(Filed August 17, 1973)

Application of PACIFIC SOUTHWEST
AIRLINES for an ex-parte order or
expedited authority to increase the
security surcharge.

Application No. 54273
(Filed August 28, 1973)

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Robert Paul Silverberg, Attorney at Law
(District of Columbia), for Trans World Air-
lines, Inc.; Philip D. Roberts, for Holiday
Airlines Corporation; and Brownell Merrell, Jr.,
Attorney at Law, for Pacific Southwest Airlines;
applicants.
Raymond W. Schneider, Attorney at Law, for County
of Humboldt, protestant.
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Sacramento, interested party.
Elmer Sjostrom, Attorney at Law, Richard Brozosky,
and A. L. Gielegem, for the Commission staff.

INTERIM OPINION

Applicants in the above-entitled cases seek interim relief to recover costs to be incurred by them in connection with providing armed guards at airports.

Because of the dangers associated with hijackings and other forms of terrorism against U. S. aircraft operating in air transportation, the Federal Aviation Administration (FAA) promulgated Part 107 of the Federal Aviation Regulations, which contains provisions for the presence of armed law enforcement personnel at U. S. airports. These regulations are directed at airport operators rather than the airlines; however, as will be discussed hereinafter, in most cases the airport operators are passing substantial amounts of these costs on to the air carriers.

Applicants' Operations

United Air Lines, Inc. (United), Western Air Lines, Inc. (Western), Trans World Airlines, Inc. (TWA), and Hughes Airwest (Airwest) are common carriers by air of passengers and property, operating between points located in various states of the United States, Canada, and Mexico. In California the carriers operate in intrastate as well as interstate commerce, providing local service between various California cities as well as service between these cities and points in other states. The carriers operate passenger ticket offices and passenger facilities within California.

Pacific Southwest Airlines (PSA), Air California (Air Cal), and Holiday Airlines (Holiday) are common carriers by air of passengers and property, operating between points located wholly within California, and operating passenger ticket offices and passenger terminal facilities within the State.

Relief Previously Granted

The Civil Aeronautics Board, in Docket 25315, authorized an increase in the interstate security charge to cover an additional cost of 25 cents for expenses in connection with armed guards (Order 73-5-12, adopted May 3, 1973). Thus at present, while a charge is being collected from interstate passengers in California, no corresponding charge is made for intrastate passengers.

The relief granted by the CAB was in the form of an order allowing certain tariffs to go into effect on an interim basis pending further investigation. The CAB order allows collection of such surcharge on a "per coupon" basis, i.e., for each segment of the trip 25 cents is added. The "per coupon" basis is also used interstate for collection of a 34-cent surcharge to defray costs connected with passenger screening.

This Commission in previous decisions^{1/} has awarded the various applicants interim relief regarding the 34-cent security charge to defray costs of screening of passengers.

Relief Requested

All the carriers request a 25-cent surcharge for armed guard service, except PSA which requests 12 cents based upon PSA's analysis of its own costs. The PSA application prays in the alternative (if the Commission should consider absolute uniformity among the carriers essential) a charge in the amount of 25 cents.

The CAB, in Docket 25315, set a level of 25 cents for the interstate charge for security costs based upon a nationwide estimate compiled by the United States Department of Transportation of the total costs of providing local law enforcement officers at each passenger screening position (boarding gates and entrances to concourses). This estimate was approximately \$42 million. The CAB adjusted this \$42 million for commissions to \$42.7 million, and then divided this figure by the total number of enplanements for 1972. This led the Board to a conclusion that a 25 percent "per ticket coupon" charge for law enforcement officers would be justified.

Cost Evidence

Hearing as to interim relief was held in San Francisco on September 13, 1973. The carriers presented cost evidence based partly upon invoices and partly upon estimates. None of the carriers was able to state with certainty whether the CAB would arrive at a final charge of 25 cents for defraying the costs of armed guards, but all the carriers were of the opinion that such an amount was in the zone of reasonableness.

^{1/} Decision No. 81390 dated May 15, 1973 (United, Airwest, Air Cal, Western, and PSA); Decision No. 81697 dated July 31, 1973 (Holiday); and Decision No. 81752 dated August 14, 1973 (TWA). These decisions allow relief on a "per passenger" rather than a "per coupon" basis; that is, the charge is added for each one-way trip rather than for each segment thereof.

Holiday presented invoices from February 15, 1973 to July 31, 1973 covering its Los Angeles and San Jose operations. Passengers enplaned at those two airports were included for the same period of time. For that period the cost per passenger at Los Angeles was 25.5 cents and for San Jose was 18 cents. The San Jose charges include certain extra fees which were incurred in starting up the security guard program.

Holiday also flies to Tahoe, Burbank, and San Diego. No cost information was furnished for these airports.^{2/}

PSA furnished actual invoices for the period of February through June of 1973. This showed a total cost of \$270,268. The San Diego cost of \$39,961, included in the \$270,268 cost, was not billed to PSA as of the date of the hearing. Also, there have been no bills from Long Beach, and the figures for Fresno are estimates.

The exhibit and the testimony of PSA's witness indicate that a surcharge of 12 cents per passenger will cover future expenses, either on a per passenger or per coupon basis.

United's application contains estimates of charges based upon consultations with airport managements. The total for all the airports they serve except Stockton and Visalia amounts to \$1,081,000. This figure covers a one-year period from the filing of the application. By taking the figure in paragraph VII of the application of 1,130,822 enplanements at the five California terminals at which

^{2/} Costs for Oakland were originally furnished in the exhibit but upon further inspection it developed that the invoices were for passenger screening rather than armed guards. The Oakland figures were therefore deleted from the exhibit.

it boards the greatest number of passengers (San Francisco, Los Angeles, San Diego, Sacramento, and Fresno) and by using the estimates in paragraph VI for armed guard costs for those same airports, it is possible to develop an estimate of 20.2 cents per passenger for the first three months of 1973, for those airports only.

TWA serves Los Angeles, San Francisco, and Oakland. From the invoices and the enplanements furnished for Los Angeles, the costs per passenger from March through June of 1973 varied from approximately 7 cents to approximately 9.5 cents per passenger. For San Francisco, the only information furnished for full months is for March and April of 1973. The invoice costs for March are three days short of one month, and for April two days short. By averaging the costs per day and then adding three days to arrive at the costs for a full month, costs per passenger are 11.9 cents for March and 11.5 cents for April.

Western furnished various invoices from certain airports for scattered months, from which it is impossible to develop any system average or any meaningful monthly average of costs per passenger.

The same is true for Air Cal as far as developing any meaningful average is concerned. From the Sacramento invoices for March and April, the costs per passenger appear to be 36.6 cents. An internal memo concerning negotiations with Palm Springs indicates that the cost for that airport will be 29.6 cents per passenger. San Jose costs are indicated at 14 cents per passenger (the discrepancy between this and Holiday's estimate for San Jose is because the Air Cal development did not include the start-up costs of the armed guard program). Although certain other cost information was furnished, the bills are not for the same period as the enplanements.

Airwest has the most complex situation because it serves a total of 28 airports within this State, of widely varying sizes and passenger volumes. Airwest has developed a two-month average of 33.0 cents for the cost of armed guard security. This is based on passenger enplanements and either invoices or estimates based upon discussions with various airport operators. Airwest's average cost is high compared to the other carriers because the costs per passenger at small airports with few passengers boarding are higher. The Airwest witness said that the highest cost was an estimate of \$11.41 at the Lake Tahoe airport. He stated that even if the Commission grants the full 25 cents that the various applicants have asked for, Airwest will still lose money because of the armed guard costs.

Holiday, PSA, TWA, Airwest, and Air Cal enplane intrastate passengers from Oakland. That particular airport is charging the airlines 12 cents per passenger rather than a fee based upon apportionment among the carriers of actual costs on a month-to-month basis.

In San Diego there is no indication that the airport intends to start charging any of the carriers a fee for armed guard security costs at this time.

Method of Collecting the Surcharge

All of the carriers urge the Commission to adopt a statewide uniform charge of 25 cents (except, as stated, that PSA requests 12 cents as its own uniform charge unless the Commission feels that absolute uniformity is necessary). All the carriers pointed out that there would be severe ticketing problems if there were a separate charge for each airport based upon the costs of that airport. Airwest in particular points out the difficulty it would have collecting large surcharges at the very small airports.

Discussion

The carriers in this proceeding have been saddled with a rapidly developing situation and the fact that the cost picture is not clear is understandable. In many cases airports have simply been invoicing the carriers and the carriers have been attempting to negotiate contracts with such airports. The outcome of these negotiations is not known at this time. It is obvious, however, that due to the threat of hijackings and associated problems airports and other public authorities have been forced to spend substantial sums to protect passengers, and that more and more of these costs are going to be passed on to the carriers.

On the other hand, it can be seen that actual cost information is scattered. Carriers had to rely on estimates based upon general information furnished by the airports in many cases. The carriers rely primarily upon the U. S. Department of Transportation's nationwide estimate of 25 cents per passenger which was presented to the CAB.

The staff presented no evidence but recommended that the applications be denied on the ground that the carriers failed to present a prima facie case for interim relief.

Under the circumstances, while the Commission believes that interim relief is in order, it should be in an amount not in excess of the developed cost picture of the most efficient carrier (except for Hughes Airwest, discussed hereinafter). PSA was able to develop reasonably complete interim estimates of its costs at 12 cents per enplaned passenger. Its operation is the most efficient since it serves high volume airports with a low enplanement cost per passenger. It is a fair inference that no other carrier enplaning intrastate traffic will realize costs of less than 12 cents per enplaned passenger.

While, admittedly, uniformity with interstate charges allowed by the CAB would be highly desirable from a convenience standpoint, arguments in favor of convenience and uniformity cannot be stretched to award interim relief in excess of that necessary to reimburse the most efficient carrier for its expenses, when the cost picture presented by the remaining carriers is, to say the least, incomplete and no financial emergency is shown. Maximum fares, historically, have been set at the upper limit of the zone of reasonableness. (Pacific Southwest Airlines (1969) 69 CPUC 739, 750.) With the cost information available at the interim hearing, it is not possible to find, except for Hughes Airwest, that the zone of reasonableness for interim relief is above 12 cents. Interim relief is generally considered an extraordinary remedy. (Citizens Utilities Company (1971) 72 CPUC 181.) More solid information as to costs is necessary to grant the carriers the full relief requested in this matter.

Hughes Airwest's operations differ significantly from the carriers in that, as stated previously, it serves 28 airports in California of varying sizes. Airwest developed detailed enplanements for two months and either invoices or estimates based on discussions with airport officials for the same period. It is reasonable to infer from Airwest's evidence that the full 25 cents requested may not reimburse Airwest for its security guard expenditures. It is therefore reasonable to grant Airwest interim relief of 25 cents per passenger.

While the Commission thus believes that interim relief is warranted, it is obvious that because cost information is incomplete and based partly on general information and estimates, the public should be protected from possible overcharge. Accounting instructions should be imposed to require carriers to make a separate and distinct recording of surcharge revenues collected and costs pertaining thereto, and also the carriers should be required either not to close such accounts to income in the normal course of business, or to hold differences between such accounts in abeyance as a deferred charge or credit to be disposed of as the Commission may direct.

It also seems highly advisable, at least as an interim matter, to avoid, as far as is possible, proliferation of fares which would result from various surcharges at various airports, and which would cause considerable confusion in ticketing and interlining passengers.

The Commission will therefore grant interim relief in the amount of 12 cents per enplaned passenger, except for Hughes Airwest, so that the method of collecting the surcharge for armed guard security costs will be the same as that method currently used, intrastate, in collecting the 34-cent security charge for screening costs.

Hughes Airwest, based upon its particular cost analysis, will be awarded a 25-cent interim armed guard security charge.

The issue of whether the Commission should adopt the CAB approach of allowing the airlines to collect these surcharges on a "per coupon" rather than "per passenger" basis is deferred until the final decision in these matters. The Commission was not presented at the interim hearing with any compelling evidence which would cause it to modify its view, expressed in Decision No. 81390, that charges should be on a per passenger basis.

Concurrently, the Commission will modify its orders in the cases concerning the screening costs so that the same accounting provisions will be required for both costs.

Findings

1. Part 107 of the Federal Aviation Regulations, and the amendments thereto, require that operators of airports covered by Part 107 provide for the presence of armed law enforcement personnel prior to and throughout the screening of passengers prior to boarding.

2. Airport operators covered by Part 107 are, in most instances, passing the costs of furnishing armed guards on to the air carriers using such airports.

3. The CAB, in Order 73-5-12 in Docket 25315, allowed certain tariffs to become effective which added a cost of 25 cents per ticket coupon to interstate air fares for the purpose of covering the costs of armed guards. The 25-cent level was based upon a nationwide estimate prepared by the U. S. Department of Transportation in December of 1972.

4. The requirement that armed guards be furnished for the protection of air passengers is of benefit to California intrastate air passengers, and applicants should be granted interim relief because the airport operators are passing substantial amounts of such costs on to the air carriers.

5. The applicants herein, except Hughes Airwest, should be authorized to charge, on a per passenger basis, 12 cents to defray the cost of reimbursing airport operators for providing armed guards at airports.

6. Hughes Airwest should be authorized a 25-cent per passenger surcharge to defray the cost of reimbursing airport operators for providing armed guards at airports.

7. Because at this point cost information is based primarily upon estimates, applicants shall keep a record of the passengers enplaned and an accounting of the surcharge revenue collected, plus related incremental costs for each airport served in California, and make such data available to the Commission on request.

8. To prevent an undue burden upon either the carriers or the passengers, each of the carriers shall be required to account for surcharges collected separately from other revenues, and account for all new and incremental costs pertaining to the functions for which the surcharge is collected in a separate set of accounts. Any differences between such revenues collected and related costs incurred shall not be closed to income account but shall be deferred for consideration and disposition by the Commission.

INTERIM ORDER

IT IS ORDERED that:

1. United Air Lines, Inc., Western Air Lines, Inc., Air California, Pacific Southwest Airlines, Holiday Resources Inc. dba Holiday Airlines, and Trans World Airlines, Inc. are authorized an interim increase in the amount collected from each passenger they transport within California by an amount not exceeding 12 cents, pending further order of the Commission.

2. Hughes Air Corp. dba Hughes Airwest is authorized an interim increase in the amount collected from each passenger it transports within California not to exceed 25 cents, pending further order of the Commission.

3. The tariff filings as a result of this order shall be made effective not earlier than five days after the effective date of this order, on not less than five days' notice to the Commission and the public.

4. The authority granted herein shall expire unless exercised within sixty days after the effective date of this order.

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5. Each of the above-mentioned carriers shall keep a record of the passengers enplaned and an accounting of the surcharge revenue collected and related costs for each of the airports served in California and shall make such information available to the Commission on request.

6. The accounting for all surcharge revenues and all costs pertaining to the functions for which the surcharge is collected shall be in a separate set of accounts. Any differences between such revenues collected and related costs incurred shall not be closed to income account, but shall be deferred for consideration and disposition by the Commission.

7. The surcharge authorized by this order shall be used solely for the purpose of defraying the costs of providing armed guards at airports, from and after the effective date of this order.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 4th
day of DECEMBER, 1973.

Samuel L. Stanger
President
William J. Hughes
William J. Hughes
William J. Hughes
William J. Hughes
Commissioners