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

Order 96-l-19

SERVED JANUARY 19, 1996

Issued by the Department of Transportation
on the 19th day of January, 1996

SECOND LOS ANGELES INTERNATIONAL
AIRPORT RATES PROCEEDING

: Docket OST-95-474 -106
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ORDER ON RECONSIDERATION

We determined in this proceeding that the landing fees charged at Los Angeles International Airport (LAX) for the year ending June 30, 1996, were unreasonable because, among other things, those fees included a rental cost for the airfield and apron land based on the land's estimated fair market value. Order 95-12-33 (December 22, 1995). Our decision specified the amount of the refund due each of the airlines that had filed a complaint against the landing fees being charged for the current fiscal year. We calculated the amount of the refund due the passenger airlines as a result of the improper use of the land's fair market value as \$0.29 per thousand pounds landed weight, the amount set forth in the original complaint filed in this docket. Order 95-12-33 at 53.¹

The respondents, the City of Los Angeles, the City of Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners (collectively the City), have asked us to reconsider our decision and to make the refund amount due on the land valuation issue \$0.28 per thousand pounds weight.

The airline complainants do not object to the substance of the City's reconsideration request. We will therefore revise the amount of the refund amount as requested by the City.

¹ The landing fees paid by the cargo airlines reflect those carriers' share of the costs of the airfield, but cargo airlines, unlike passenger airlines, are not charged for the cost of the apron. The refund amount due under our order for the cargo airlines would be \$0.25 per thousand pounds landed weight, but the correct amount, according to the respondents, is \$0.24 per thousand pounds landed weight. For simplicity, this order's analysis uses the passenger airline refund amount.

Background

In our first case involving the reasonableness of the LAX landing fees charged by the City, the Los Angeles International Airport Rates Proceeding Order 95-6-36 (June 30, 1995), we determined that the LAX landing fees adopted by the City in 1993 were unreasonable insofar as those fees included a rental cost for the airfield and apron land based on the land's estimated fair market value rather than the land's historic cost. Our order directed the City not to include a charge in the LAX landing fees for the fair market value of the airfield and apron land. The City and the airline parties in our proceeding have sought judicial review of our decision. City of Los Angeles et al. v. the Department of Transportation et al., D.C. Cir. Nos. 95-1344 et al. (filed July 7, 1995). The City plans to challenge, among other things, our conclusion that it could not use the fair market value of the airfield and apron land in calculating the landing fees.

When the City adopted the new landing fees for its current fiscal year, which began on July 1, 1995, the City's fee calculation again used the land's fair market value rather than its historic cost. The Air Transport Association and fifty-nine airlines (the Complainants) filed a complaint against the new fees which asked us to determine the fees' reasonableness under 49 U.S.C. 47129. The Complainants objected to the new fees on several grounds, one of which was the City's continued use of the land's fair market value in calculating the landing fees. Their complaint estimated that the City's use of the fair market value caused the new fees to be too high by \$0.29 per thousand pounds landed weight. Complaint at 49.

Before we referred the complaint to an administrative law judge for hearing, however, a number of airlines had agreed on an escrow arrangement with the City whereby the airlines would pay the portion of the new fee representing the land's fair market value into an escrow account. The funds held in escrow would be distributed to the airlines if the courts affirm our decision that the City could not use the land's fair market value in calculating the landing fees. On the basis of the escrow arrangement, we stayed our final decision in the first LAX case, Order 95-6-36, pending judicial review, insofar as the order prohibited the City from using the fair market value of the land in fee calculations. Order 95-9-8 (September 8, 1995).

The escrow agreement between the City and the airlines implied that the new fees were higher by \$0.28 per thousand pounds landed weight than they would be otherwise due to the City's use of the fair market value.²

² The City submitted a copy of the escrow agreement in its Response to Secretary's Order No. 95-7-33 in the First LAX Case docket.

When we made our final decision in this case, we set the amount of the refund due for the ~~improper~~ use of the land's fair market value at \$0.29 per thousand pounds landed weight, since that was the amount set forth in the Complainants' complaint and initial evidence. Order 95-12-33 at 16, 53.

The Parties' Pleadings

The City asks us to correct the amount of refund due on the land valuation issue. The City alleges that the escrow agreement signed by the airlines set the amount of the fee created by the City's use of fair market value at \$0.28 per thousand pounds landed weight. The City further notes that the Complainants' expert witness later revised his testimony on the amount at issue on the land valuation issue by agreeing with the City that the amount was \$0.28 per thousand pounds landed weight, not \$0.29 per thousand pounds weight as set forth in his original testimony. Respondents' Motion at 2; Ex. ATA-A2 at 22. The City explains that the difference between the Complainants' original figure and the corrected figure represents the amount of the debt service for the airfield land, a cost not challenged by the Complainants. The City also asked us to revise the ordering paragraph governing the payment of the refund due on the land valuation issue, ordering paragraph 10 of Order 95-12-33, since the airlines' acceptance of the escrow agreement allegedly means that the City's only refund obligation on the land valuation issue will be to pay out the funds in the escrow account.

In their response the Complainants do not oppose the City's request to revise the amount of the refund due on the land valuation issue to \$0.28 per thousand pounds landed weight, but, as explained below, they object to the City's proposed revision of ordering paragraph 10 of Order 95-12-33, since the Complainants assert that the escrow account would not be the only source of refunds on the land valuation issue if the account's funds are insufficient to make full refund payments.

Our Decision

We will grant the City's request for reconsideration. As the City points out, the Complainants' revised testimony stated that the refund due as a result of the City's use of fair market value for the airfield and apron land should be \$0.28 per thousand pounds landed weight. The Complainants do not object to the City's request. To make this revision effective, we will modify ordering paragraph 7 of Order 95-12-33, which fixed the amount of the refund required by the City's improper use of the land's fair market value.

We agree with the Complainants, however, that the City's proposed change to ordering paragraph 10 of Order 95-12-33, the paragraph that states how the City must make the refund, would be unwise. As written, ordering paragraph 10 states that the City may satisfy its refund obligation on the land valuation issue from the funds held in the escrow account to the extent that those funds cover

the City's refund obligation. If the funds in the escrow account are not great enough to cover the City's obligation, the City must use other funds to pay the remaining amounts due. We doubt that the escrow account will be insufficient to satisfy the City's obligation, but we are unwilling to excuse the City from complying with the refund obligations imposed by statute if the account is not large enough to satisfy the City's obligation.

We have considered the City's answer to the Complainants' objections to the proposed revision of this ordering paragraph. The City claims that the escrow agreement states that the escrow account will be the sole source of any refunds due as a result of the City's use of fair market value for valuing the airfield and apron land. We find the City's claims unpersuasive -- the escrow agreement does not state that the escrow account will be the sole source of such refunds, nor does it even state that the airlines agree that the City's use of fair market value instead of historic cost for valuing the land increased the fees by \$0.28 per thousand pounds landed weight.

ACCORDINGLY:

1. We find that the amount of the refund required as a result of the findings made by ordering paragraph 2 of Order 95-12-33 shall be (a) insofar as airlines paid for the use of the airfield and the apron shall be \$0.28 per thousand pounds landed weight plus accrued interest and shall cover the fees paid for the period beginning July 1, 1995 to the date of the refund payment and (b) insofar as airlines paid only for the use of the airfield shall be \$0.24 per thousand pounds landed weight plus accrued interest and shall cover the fees paid for the period beginning July 1, 1995 to the date of the refund payment; and
2. We grant the respondents' January 17, 1996, motion for leave to file an unauthorized document.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

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