



U.S. Department of
Transportation
Office of the Secretary
of Transportation

Assistant General Counsel
for International Law

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

August 11, 2009

Ms. Anita M. Mosner
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Washington, DC 20006

Dear Ms. Mosner:

This letter concerns the operation by Air Canada of certain season-long charter programs for professional sports teams, where the programs include transportation of the teams both between Canada and the United States, and between points within the United States.

In response to your request for an interpretation of the cabotage provision in 49 U.S.C. 41703(c), we previously wrote to you that a foreign air carrier may conduct operations to and from the United States that include stopovers at one or more U.S. points, and that such operations "would not constitute prohibited cabotage under the provisions of 49 U.S.C. 41703(c), *provided that no local traffic of any kind is carried between U.S. points, i.e., that Air Canada carries no one on the flights that it has not carried, or will not carry, into or out of the United States under the contract.*" (Emphasis added.) (Letter dated October 6, 2008.) Thus, if Air Canada were to carry on one of its sports team charter flights a passenger solely between U.S. points, without providing transborder transportation to that passenger, the operation would not be consistent with this Department interpretation. Air Canada understood the importance of that essential condition, and agreed to it.

Air Canada recently conducted sports team charter programs on behalf of the Boston Bruins and the Milwaukee Bucks. In response to a request by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Air Canada provided documentation showing the passengers it carried, and their routings, for the two teams. According to that office, these data show that there were instances where individuals were in fact carried between U.S. points during the season by Air Canada who were not transported by the carrier to or from Canada, contrary to the agreed condition in the interpretation.

In light of the apparent findings showing carriage of non-transborder traffic by Air Canada and the inherently variable nature of a sports team's personnel during a season, there appears to be no practical means to ensure that there would not be carriage of U.S. domestic-only traffic during any season-long contract. Therefore, we do not see any way in which Air Canada can continue to market and operate season-long charter contracts in

the future for sports teams in a manner consistent with the essential condition to the interpretation and within the provisions of 49 U.S.C. 41703(c). Given these considerations, we counsel Air Canada against accepting any future such business. Also, Air Canada should take steps to cancel any such current contracts.

The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings is continuing its separate investigation into potential violations of 49 U.S.C. 41703(c) and will take enforcement action if appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald H. Horn", with a long horizontal flourish extending to the right.

Donald H. Horn
Assistant General Counsel
for International Law