

1938

Rationalization of Air Transport

Edgar S. Gorrell

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Edgar S. Gorrell, *Rationalization of Air Transport*, 9 J. AIR L. & COM. 41 (1938)
<https://scholar.smu.edu/jalc/vol9/iss1/7>

This Symposium is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

RATIONALIZATION OF AIR TRANSPORT*

COLONEL EDGAR S. GORRELL†

In the course of the past ten years the technological problems of air transport have been solved, to a large degree. Many remain, but we are well on the way to meeting satisfactorily the basic technical questions presented by flight.

However, the growth and success of the air transport industry have presented a new set of problems—problems commercial in nature. These are not questions for the engineer. They are questions for the managing operator and the government. Air transportation is already of profound importance to the nation, but America cannot reap the full benefit of this vast new avenue of travel and shipment, limitless in its possibilities, until a sound and permanent pattern for the commercial progress of the industry has been marked out. To this end legislation is requisite, not make-shift and haphazard, but carefully devised, comprehensive, and permanent regulation that will protect the public and investors.

THE PRESENT SITUATION AND THE NEED FOR ITS IMPROVEMENT

As to the domestic lines, there is now practically no economic regulation. The sole regulation is that incident to the carriage of air mail, contained in the Air Mail Act of 1934, as amended. That act was adopted to safeguard the Government's interest in mail transportation. It was amended in important particulars the year after its adoption. Further amendments are now urgently proposed, and tinkering with it will be necessary every year at two for it is an *ad hoc* device, directed to specific, temporary problems. It was not offered and it is not defended as a permanent regulatory measure; nor does it pretend to meet the basic problems of the industry. It is a mail transportation measure, and that is all.

There are certain glaring deficiencies in this legislation which merit particular attention.

In the *first* place, the Air Mail Act does not touch the non-mail carriers. It leaves the door open wide for anyone who can

* Address presented at the Seventh Annual Convention of the National Association of State Aviation Officials, December 1-3, 1937.

† President, Air Transport Association of America.

meet the ordinary requirements of safety to fly passengers and express between any points whatsoever. At any moment, any one can rent a second-hand plane, call up airports in a couple of cities, arrange for space, and at once start flying at cut rates parallel to other lines between those terminals. Such a one could pay his pilots any price he pleased, although the air mail contractors would be compelled to pay fair wages prescribed through Government procedure. The result would be a rate war, deterioration in safety standards, and loss to the public and to labor and capital employed in the existing services.

In the *second* place, so far as existing mail contractors are concerned the Air Mail Act tends to freeze their operations as they now are. The Act provides that no person holding an air mail contract may extend passenger or express service off the line of its air mail route if that service is competitive "in any way" with passenger or express service in another mail route. Since mail routes now extend generally over the country there are few if any new lines which might not be thus competitive "in some way." In other words, while non-mail carriers are absolutely free to compete with the existing services, whatever the economic justification or lack of justification may be, and regardless of the kind or quality of the service operated, the existing air mail lines are unqualifiedly prohibited from operating a service competitive with that on any other air mail route, no matter what may be the public need. There is only one way in which another mail contractor can extend its services if there is the slightest possibility of competition between it and an existing mail line, and that is by having the Post Office Department advertise, and then becoming the successful bidder, for another air mail contract. Thus, for all mail contractors, further development is tied down and subordinated to air mail and post office appropriations.

Furthermore, what happens when the Post Office Department does decide to offer a new mail contract? It is let on competitive bidding, but the bid rates persist only for three years, after which time the contractor secures what amounts to a perpetual franchise at a rate of pay fixed by the Interstate Commerce Commission. This system stacks the cards heavily in favor of the line able to take losses for the three-year period. If it wants the new route badly enough, it can do as one contractor was forced to do recently, namely, put in a bid which amounted to about one cent a month for a daily round-trip schedule over a 337-mile route. This practice is not merely permitted but necessitated by the existing law.

A strong line is forced, by natural consideration of self-interest, to bid at a figure without regard to costs, knowing that by this method only it can preserve its territory or preempt new territory and that, after a maximum of three years of losses, it will get rates having no relation to its bid. The air lines' representative pointed out to the Committee on Interstate Commerce of the House of Representatives on April 8 of this year that precisely this kind of bidding would take place on the advertisements for new routes that were then in contemplation. That prediction was completely borne out by the events. At the bidding which closed on July 12th, America had the spectacle of one line being forced to bid eight one-hundredths of a cent a mile and another line being forced to bid one mill a mile for the same route, while a third line, bidding at a figure apparently having some relation to the costs of operating the route, bid thirty cents a plane-mile for the same operation. Truly, it is this system, supposed to open the field to all, which, in fact, may fairly be accused of tending toward monopoly, for it gives unfair advantage to the strong line, able to absorb ridiculous losses.

Again, the Air Mail Act contains no provision whatever for rate regulation for passenger and express service. Exorbitant rates or suicidal rates—either may freely be charged. The passenger has no protection against over-charges and discrimination. The air line has no protection against rate warfare. There is nothing to prevent the entire air carrier system from crashing to earth under the impact of cut-throat and destructive practices.

Finally, the Act is full of provisions the violation of which will result in steps by the Post Office Department to withdraw mail from a line. The nature of these provisions need not be detailed. It is enough to say that they raise serious legal questions, vitally affecting economy and efficiency of operation, and that opinions may differ as to their correct answer. They are perplexing questions which merit the most deliberate consideration by experienced tribunals, and the application of sound principles of transportation law. Yet the determination of one man, the Postmaster General, after an administrative hearing, is to all intents and purposes absolutely and finally determinative of these vital issues upon which so much depends.

To sum up: The existing situation as to the domestic lines is (1) entire absence of protection against institution of competitive services by other than mail contractors; (2) inflexible and ironclad provisions against the growth of air mail contractors; (3) the

award of mail contracts through competitive bidding for a maximum three-year period, the bid rate being supplanted at that time by a perpetual franchise with a rate fixed by the Interstate Commerce Commission, thus resulting necessarily in the bidding being a farce; (4) no protection whatsoever against destructive rate cutting on the one hand, or against the charging of extortionate rates to the public on the other; and (5) summary administrative determinations by one man of vital legal issues which profoundly affect economic and efficient operation.

As for the lines operating partly or wholly outside the continental United States, the situation is equally bad. Here again there is not the slightest protection against the organization of a shoe-string company to parallel the existing lines. So far as our Government is concerned, any American citizen can organize an air line tomorrow to fly from Chicago to Mexico City or from New York to Montreal, using such equipment and paying such wages as he pleases. Foreign air mail contracts are awarded for a maximum of ten years, but there is no provision similar to that which gives the domestic lines some assurance of continuity. Competitive bidding for routes which require the negotiation of permits with innumerable foreign countries and the investment of enormous sums in ground facilities which in this country are largely provided by Federal state or municipal bodies, is obviously impracticable.

The consequences of the existing lack of economic controls over the industry are serious.

As long as the present state of affairs continues, there will be no adequate new capital available to the industry. Few people realize that the air lines have been built up hitherto almost entirely as a result of capital furnished by a few individual or corporate patrons which have been willing to take long chances. Of the \$120,000,000 of private investment which has been made in American air transport, over sixty millions of dollars are gone. New sources of additional capital must be made available. Within the next twelve months the domestic lines should have at least fifteen million dollars and the foreign lines five million dollars of additional new capital. Many of the lines are already pinched for funds. This condition of financial starvation not only makes it impossible for these lines to take full advantage of possible technological improvements, but could lead to competition for traffic of such intensity that the accident ratio might accelerate instead of decline. Failure to correct the existing situation, and to do so promptly, means more than

loss to the capital remaining invested in the air transport industry, to the labor employed in it, and to this country's position in civil aviation. It may very well entail a large cost in human lives.

Consider for a moment the staggering rise in costs which the industry is sustaining this year. On the basis of figures gathered thus far, there is an indicated increase of \$6,000,000 (mainly not expended to secure increased volume) in the principal cost items of the domestic lines alone, without figuring the increase in a number of items of considerable importance. Of this sum, nearly half is attributable to increased labor costs, and only a small portion of the labor agreements under negotiation or contemplated have been put into effect.

During this year, the air lines have made an excellent record of increased traffic. Due to diligent efforts they will be able to add to their incomes by approximately \$4,000,000 over last year. Yet, with soaring prices and wages and with new taxes, they will find themselves about \$3,000,000 further in arrears. Thus are losses piled upon losses.

It is imperative that a large degree of rationalization of operations take place if the present flight and technical personnel is to remain upon the pay-rolls, if just wages are to be paid and if the planes are to stay in the air. This can come about only through appropriate governmental controls, coupled with cooperative and far sighted action by the lines. Yet, at the present time, the law makes no provision for any such necessary steps; on the contrary, economic anarchy is imposed upon the industry.

We are, therefore, faced with a crisis in air transport. It is a crisis deepening with each day's continuance of the present legislative situation. The lines are desperately in need of sound financing on a business basis; they must be able to command the funds of the ordinary modest and cautious investor. The lines are critically in need of rational means for eliminating waste and promoting economies under sound governmental supervision; they must emerge from anarchy into an ordered regime. Yet, because of the legislation under which they operate, they have no security, they are subject to violent and enervating warfare, they are forced to unbusinesslike and imprudent measures to keep alive, their development is fettered, and some of their most pressing problems are determined, finally and irrevocably, by a summary administrative process that finds no parallel in any other industry.

The present situation cannot continue. The belief that we are not confronted with an emergency and that matters can go along

as they are for another four or five years is one which, if adhered to, will have tragic consequences. *Something must be done, and done quickly—now, by this Congress.*

SUMMARY

Few subjects have received as extensive study and investigation by agencies of government in recent years as have aeronautics. This has been particularly true of the air transport industry. Knowledge respecting its needs and prospects is thorough. Reports regarding it, including reports of Congressional Committees, are full and comprehensive. What is now needed is action.

The following propositions of facts are evident:

(1) The air transport industry is a vital transportation medium with incalculable promise to the future of commerce and to the efficiency of the nation in time of emergency.

(2) The industry has reached the point where uncontrolled expansion is no longer desirable. Principal trunk lines have been marked out.

(3) The economics of foreign and domestic air transport are intimately associated and demand integrated government control.

(4) Existing regulatory legislation of the economic phases of the industry is admittedly temporary, tentative and fragmentary, making it virtually impossible to carry out healthy, long range planning on the part either of management or of government. No one knows what to expect.

(5) There are disturbing signs of rate wars and other destructive and wasteful devices, such as inadequate bidding for air mail contracts, which place a premium on economic power and reckless management, to the injury of the smaller lines, the employees of the companies and the public.

(6) The industry, as a whole, and particularly the smaller lines, are in critical need of reliable sources of capital among the investing public. To date, they have had to depend too greatly upon generous patrons and upon air mail pay, a situation that cannot continue. Generous patrons are no longer to be found; air mail pay per pound-mile flown is steadily decreasing. Furthermore, dependence on either of these sources is intolerable from the public point of view, for it subordinates sound management to the whims of a financial angel and to the exigencies of politics.

CONCLUSION

The following legislative steps are urgently required:

(1) *Regulation of the key economic problems of the industry should be vested in a non-political, competent, permanent agency of government.*

(2) *Regulation should revolve around certificates of convenience and necessity. This has the virtue of ease of government control and is a familiar and tested method. Through certificates, unsound and unjustifiable ventures can be prevented and piratical practices outlawed. Competition can be preserved and the smaller lines protected.*

(3) *Rates for domestic travel should be regulated to secure reasonable returns and no more, and to promote uniformity. The foreign lines which are necessarily subject to the laws of other countries and also have unregulated foreign-flag competitors, cannot practically be regulated to such a complete extent for the time being, but should be required to abide by their published tariffs.*

(4) *Cooperative action among the air lines to eliminate waste, to promote inter-line travel, and to avoid oppressive measures should be permitted under the direction of the regulatory body.*

(5) *New financing should be carried out only subject to the approval of the regulatory body.*

(6) *Consolidations, mergers and interlocking interests should be permitted only as specifically approved by the regulatory body.*

These steps, I am confident, will assure an orderly and sound growth, inspire public confidence, attract the highest type of management and will constitute a steady advance toward coordination of transportation facilities which the President has properly set as the goal of regulation. *They are steps based upon experience and dictated by necessity.* Delay in taking them may prove disastrous.

The air transport industry is ready for a buoyant growth, which will contribute to stimulate our whole national economy and play its part in arresting the present downward trend of business.

Let Congress act now, before it is too late, and provide the way for this vitally necessary industry to stand upon its own feet, with private capital, and confidently face the future.