

Statement of

R. R. Hart, President of Viking Airlines

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Opening First Meeting of Non-Scheduled Air Carrier Association

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The order adopted by the CAB on August 11, 1948, instituting an investigation into the activities and practices of Large Non-Certificated Irregular Air Carriers, carries implications and involves possible consequences which will cripple or destroy many, if not all of us.

Obviously these threats can and must be met by united thought and action on the part of every Large Non-Certificated Irregular Air Carrier. To these ends, I took it upon myself to launch an association which could serve as a rallying point for all of us who are ready to make a fight to protect our rightful interests against unfair and unwarranted attacks.

With the encouragement and cooperation of several other aviation associations, the Non-Scheduled Air Carrier Association was conceived and born. The purpose of this meeting is to expand and strengthen it and to perfect an organization and administrative structure forthwith so that it can function effectively.

We are all familiar, too familiar, with the taking of action and the issuance of regulations by the Civil Aeronautics Board which affect us and which in fact are directed at us without our side of the picture being presented in an effective way to the Board.

We all know that the Civil Aeronautics Act of 1938 was written by and for the scheduled airlines. Not one non-scheduled operator appeared at the hearings on this legislation and the entire legislative history of the Act is devoid of any mention of the non-scheduled air carrier.

The old CAA early in its existence issued a general exemption order of non-scheduled air carriers, more with the idea of preventing confusion in Alaska than with any idea that it actually had jurisdiction over such operations. It seems from the legislative history of the Act that Congress in using the term "common carrier" had in mind only a term which would cover all scheduled airlines rather than any intention to cover non-scheduled operators.

In this view I am joined by the Author of the Civil Aeronautics Act of 1938. In a letter written on August 30, 1946, to the then Chairman of the Civil Aeronautics Board, James M. Landis, Senator Pat McCarran said:

"In accordance with the invitation extended by the Board in its memorandum of May 17th, 1946, concerning the 'Proposed Amendment No. 3 of Section 292.1 of the Economic Regulations,' I am herewith submitting for your careful consideration my view of the legality of the proposed regulation.

"Being the principal author of the Civil Aeronautics Act of 1938, as well as its sponsor throughout its whole legislative history, I may be presumed to have a clear idea of the legislative intent of Congress in enacting the law.

"I wish to state unequivocally and unalterably that the Act never, at any time in its history, contemplated the economic regulation of non-scheduled or fixed base operators. No representatives of such persons appeared at any of the hearings either in favor of or in opposition to the bill nor were they requested to do so. Moreover, there is not to be found a single reference to such operators in the whole legislative history of the Act. The only mention of non-scheduled operations in the entire Act is in Section 416 (b) (2), and that provision was inserted solely to assist the small operators who continuously held themselves out as scheduled operators but because of financial or other difficulties were often unable to meet their scheduled commitments. It was in no sense intended to bring the non-scheduled operators within the purview of the statute. (83 Cong. Rec. 7079).

"Admittedly, all airmen and all aircraft are subject to the safety requirements but no parallel provision is made in the so-called "economic" sections of the Act. Rather, the Act applies its economic sections only to carriers engaged in air transportation, which term, by a series of definitions in the Act, means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail in interstate commerce. The use of the words "common carrier" in Section 1 (21) without further definition is sufficient demonstration that the economic regulations promulgated by the Board do not, and cannot, extend to private and contract carriers by aircraft as long as they are operating on a non-scheduled basis, regardless of whether or not such carriers engage in interstate, overseas or foreign commerce.

"It has often been charged that the Board is 'airline minded' and if this is true I wish to compliment the members sincerely because there is no doubt in my mind that the intent of the Act was to provide regulations of the airlines and the Board is to be congratulated for recognizing and accepting its proper sphere of activity. On the other hand, if the Board now seeks to enlarge its activity without legislative authority, I will condemn it and oppose any such assumption with all the force at my command."

We come then to the period after World War II and the current program of regulation which the CAB has worked out for application to us on an exemption basis, to which program Senator McCarran had reference. There is no doubt but what all safety provisions of the Civil Aeronautics Act of 1938 apply to us but the economic provisions of that Act fit us like a round peg in a square hole. These economic provisions were not designed for us and do not meet our problems.

The end result of CAB's varying and vacillating policies with respect to our business reached its highlight on August 6, 1948, when the CAB issued a press release that it was going to investigate our industry and on August 11, 1948, when it issued an Order to carry out this investigation. This Order, contrary to the ideals and principles of justice seared into the brain of every American, condemns us all in advance by stating a lot of charges and finally winding up with some statements about recommendations to the Attorney General on criminal and civil penalties for non-scheduled air carriers. I had thought that everyone was presumed to be innocent until proved guilty and that a public agency, paid for by taxes which all of us contribute, would deal in careful and even-handed justice rather than "scare" headlines seemingly designed to injure every member of our industry by condemnation in advance of hearing. How can the Board in advance of its investigation know that facts exist warranting recommendations on civil and criminal penalties? This Board Order indicates a pre-judging of the case it presupposes against us.

And this is not all, the Order of investigation indicates that the whole investigation is to be conducted "behind an iron curtain" with no public hearings. The Order also indicates that instead of calling us all in as a group as they have so recently called in the financially embarrassed scheduled airlines, we are to be treated to a star chamber proceedings and, clipped off one by one.

I do not know about the rest of you, but Viking is one of the largest non-scheduled operators and it has never been asked by the CAB to any "closed" or other conference to discuss ways and means of working out the problems which have arisen and continue to arise under the Board's regulation of our industry. It seems to me that in the interest of fairness we who are in the air transportation business, just as much as the scheduled air carriers, are entitled to fair treatment from the Civil Aeronautics Board and that such fair treatment includes an opportunity to have our views presented and considered when the CAB does something which affects us. How much better it would have been for the CAB to have called a meeting of large irregular air carriers and pointed out to those air carriers just what CAB wants to know about them and just where we have not complied with the CAB's ideas rather than say to the World it is going to investigate us "for the purpose of obtaining information upon which to base recommendations to the Attorney General of the United States for institution of appropriate civil and criminal actions".

We are all honest law-abiding citizens and taxpayers, and we have the right to be treated with respect and decency. If there has been any inadvertent violation of any law or regulation by any non-scheduled air carrier, I sincerely believe the CAB is a party to such violation because the air carrier could not understand just what the CAB wanted them to do. When an agency like CAB issues regulations so vague and indefinite as those affecting our industry, that is all the more reason for CAB to tell us in advance of their interpretations of any facts as constituting violations of these uncertain regulations.

Most of the people in our industry are young World War II veterans trying honestly and sincerely to make a living in the field of endeavor we know best through our war training in air transportation. I hope the CAB will give us a chance to make good rather than wipe us out in high-handed fashion. The Congress passed a law in 1946 called The Federal Administrative Procedure Act to stop high-handed tactics of Federal agencies by requiring notice of violations and an opportunity to comply with all lawful requirements in advance of the institution of enforcement proceedings. I cannot conceive that the CAB is above and beyond this law.

Lest you think I am bent entirely on criticism of the CAB, let me say that I would welcome an opportunity for cooperation with the Board in working out our mutual problems. I believe that the Board has been misled by receiving all of its information from our antagonists.

This condition must be remedied without delay, but it can be cured only if all Non-Scheduled Air Carriers unite in adopting immediate and long range objectives, chart a common pathway to such objectives and march shoulder to shoulder in reaching their goals. Partial, sectional and half-hearted measures, such as have been attempted frequently in the past, can no longer prevail. Only unity, courage and aggressiveness can result in safety and achievement.

I firmly believe that this new organization can and will accomplish such results and that it will prove of great help to us all. We have a right to make a living in the air transportation field, and I, for one, will fight with everything that is in me to see that right vindicated.