



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

January 12, 2021

RECEIVED

JAN 13 2021

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PART 16 DOCKETS

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Re: Director's Determination for FAA Docket No. 16-18-01

Dear Messrs. Richards, Goldstein, and Torres:

Enclosed is a copy of the Final Agency Decision and Order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter, affirming the Director's Determination, FAA Docket No. 16-18-01.

I conclude that the Director's analysis and conclusions are supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and the FAA policy. The Complainants' Appeal does not have persuasive arguments sufficient to reverse any portion of the Director's Determination.

The reasons for upholding the Director's Determination are set forth in the enclosed Final Agency Decision and Order.

Sincerely,

**LORRAINE M HERSON-
JONES**

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HERSON-JONES
Date: 2021.01.12 11:49:08 -05'00'

Lorraine M. Herson-Jones
Manager, Office of Airport Compliance
and Management Analysis

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 12, 2021, I sent via electronic mail and via FedEx a true copy of the foregoing document addressed to:

FOR COMPLAINANT

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Copy to:

FAA Part 16 Airport Proceedings Docket (AGC-600)

FAA Office of Airport Management and Management Analysis (ACO-100)



Viola Cijntje
Office of Airport Compliance
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Star Marianas Air, Inc.,
Complainant,

v.

FAA Docket No. 16-18-01

RECEIVED

Commonwealth Ports Authority,
Respondent.

JAN 13 2021

FINAL AGENCY DECISION **PART 16 DOCKETS**

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on an Appeal filed by Star Marianas Air, Inc. (Star Marianas or Complainant). The Complainant challenges the findings of the Director's Determination (DD). [FAA Exhibit 2, Item 1].

On May 5, 2020, the Director of Airport Compliance and Management Analysis (Director) concluded that the Commonwealth Ports Authority (Respondent or Ports Authority/Authority) was not in violation of 49 U.S.C. § 47107(a) and its Federal obligations under Grant Assurance 1, *General Federal Requirements*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 23, *Exclusive Rights*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

On Appeal, Star Marianas argues that the Director erred in his findings and conclusions and asks that, "the Associate Administrator issue an order (1) requiring the Authority to provide airside access to Star Marianas at the Rota terminal, (2) requiring the Authority to provide Star Marianas with an annual accounting of its costs attributable to Star Marianas based on reasonable charges; (3) denying the Authority future federal AIP grants and suspending current grant fund payments for 6 months or until the violations alleged herein are rectified...; and (4) requiring Ports Authority, within 20 days of the Associate Administrator's order to submit a corrective action plan demonstrating how it intends to eliminate the violations." [FAA Exhibit 2, Item 2, p. 13].

The Ports Authority in its reply to the appeal asserts that the record clearly supports the Director's findings and that DD should be affirmed. [FAA Exhibit 2, Item 5, p. 12].

The Associate Administrator reexamined the record, including the DD; the administrative record; and the pleadings, and affirms the DD.

II. PARTIES TO THE COMPLAINT

A. Complainant

Star Marianas is a corporation incorporated in the Commonwealth of the Northern Mariana Islands (CNMI). It operates as an FAA certificated air carrier conducting scheduled and on-demand passenger and cargo operations between the islands of Tinian, Rota, Saipan, and Guam. [FAA Exhibit 1, Item 1, p. 2]. Star Marianas operates twelve aircraft – 7 single-engine and 5 multi-engine aircraft. [FAA Exhibit 1, Item 1, p. 2, and Item 19].

B. Respondent

The Authority is an autonomous, public CNMI Corporation. It is the owner, operator, and sponsor of the CNMI public airports, including Saipan International Airport, Rota International Airport, and Tinian International Airport [FAA Exhibit 2, Item 1, FAA Exhibit 1, Item 1, p. 2]. These airports were developed using FAA Airport Improvement Program (AIP) grants, authorized by the Airport and Airway Improvement Act of 1982, as amended, Title 49 U.S.C. § 47101, *et seq.* Since 1982, the Authority has accepted more than \$246,470,368. The most recent AIP grants were in 2019. [FAA Exhibit 2, Item 1, FAA Exhibit 1, Item 24, Item 25, and Item 26].

III. SUMMARY OF THE DIRECTOR'S DETERMINATION

The Director found that Star Marianas provided evidence of alleged past inaccurate settlements from Fiscal Year (FY) 2009-2014 related to its anti-head tax claims under Grant Assurance 1. The Director found no violation since the FAA only considers current compliance with a sponsor's Federal obligations, and the Ports Authority had taken action to update its annual rates and charges in a timely manner. The Director found that Star Marianas alleged, but did not provide any substantive or persuasive evidence to support its allegations of any current Grant Assurance 22 violation. [FAA Exhibit 2, Item 1, pgs. 12-15].

The Director found that the Authority provides Star Marianas reasonable access to the airport under the existing federal requirements. The Director found that Star Marianas failed to show which carrier obtained an exclusive right under Grant Assurance 23 that Star Marianas alleged it was denied.

The Director also found that Star Marianas failed to provide any substantive detailed financial evidence to support its allegation under Grant Assurance 24 of an unreasonable amount of surplus funds to cover the capital and operating costs and unreasonable reserves for the airports system. Additionally, the record did not identify any misuse of airport revenue for non-airport purposes, and the allegations under Grant Assurance 25 were dismissed. [FAA Exhibit 2, Item 1, pgs. 15-18].

PROCEDURAL HISTORY

On February 2, 2018, Star Marianas filed an *Amended Complaint* against the Authority. [FAA Exhibit 2, Item 1, FAA Exhibit 1, Item 1]. On June 22, 2018, the Ports Authority filed an *Answer to the Amended Complaint*. [FAA Exhibit 2, Item 1, FAA Exhibit 1, Item 6]. On May 5, 2020, the Director issued the DD. [FAA Exhibit 2, Item 1]. On June 3, 2020, the Complainant appealed the DD. [FAA Exhibit 2, Item 2]. On August 10, 2020, the Authority filed a *Reply to Complainant's Appeal*. [FAA Exhibit 2, Item 5]. On August 31, 2020, Star Marianas filed a *Surreply and Motion for Leave to File Surreply Brief*. [FAA Exhibit 2, Item 6]. On September 8, 2020, the Authority filed an *Opposition to Complainant's Surreply and Motion for Leave to File Surreply Brief*. [FAA Exhibit 2, Item 7].

IV. APPEALING THE DIRECTOR'S DETERMINATION

A party adversely affected by the DD may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination [14 CFR § 16.33(c)]. The review is limited to an examination of the DD and the administrative record upon which such determination was based. The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause to do so. On appeal, the Associate Administrator will consider (1) whether the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence contained in the record; (2) whether the conclusions were made in accordance with law, precedent, and policy; (3) whether there are questions on appeal that are substantial; and (4) whether any prejudicial errors occurred. [14 CFR § 16.33(e) & (f)].

V. ISSUES ON APPEAL

Star Marianas argues that the Director erred by not considering issues other than whether the Ports Authority violated AHTA¹ when providing an analysis of Grant Assurance 1, *General Federal Requirements*. [FAA Exhibit 2, Item 2, p. 2]. Star Marianas claims the Director relied on descriptions and methodologies provided by Ports Authority that do not exist. In addition, Star Marianas continues to object to terms of the airline use agreement it signed with the Ports Authority and raises new issues on Appeal. [FAA Exhibit 2, Item 2, p. 12].

Star Marianas essentially asks the Associate Administrator to do two things: (1) require the Authority to provide airside access to Star Marianas at the Rota terminal, and (2) require the Authority to provide Star Marianas with an annual accounting of its costs attributable to Star Marianas based on reasonable charges.

Additionally, Star Marianas asks that the Associate Administrator to deny the Ports Authority future Federal AIP grants and suspend current grant fund payments for 6 months or until the violations alleged herein are rectified; and requiring the Authority to submit a corrective action plan demonstrating how it intends to eliminate the violations. [FAA Exhibit 2, Item 2, p. 13].

¹ AHTA means Anti Head Tax Act.

The Associate Administrator identified the following issues to be reviewed on Appeal:

Issue 1 - Whether Director erred by not considering allegations other than a potential violation of the Anti-Head Tax Act under Grant Assurance 1, *General Federal Requirements*.

Issue 2 - Whether the Director erred by not finding that the Ports Authority violated Grant Assurance 22, *Economic Nondiscrimination*.

Issue 3 - Whether the Director erred in not finding that the Ports Authority violated Grant Assurance 23, *Exclusive Rights*, by failing to grant permission to enplane passengers from the Rota Terminal.

[FAA Exhibit 2, Item 2, pgs. 1, 7, and 10, respectively].

PRELIMINARY ISSUE

Star Marianas presented several new issues and allegations in its Appeal and Motion for Leave. The Associate Administrator is addressing this in detail below.

A. New Allegations by Star Marianas

Star Mariana states it “will point out that Ports Authority has taken no action to update its annual rates. The rates remain the same as they have always been.” Star Marianas also states, “The last audited statement Star Marianas could find was for FY 2017, signed on January 18, 2019...” Star Marianas submitted a copy of this audit. [FAA Exhibit 2, Item 2, p. 6]. Star Marianas also argues that draft documents prepared by consultants on rates and charges for airline negotiations were never implemented by the Ports [FAA Exhibit 2, Item 2, p. 4].

Star Marianas also states, “Since October 2018, Star Marianas has been operating out of a 40’ temporary storage container with no restrooms or water...Nevertheless, Ports Authority continues to charge Star Marianas both [Passenger Facility Charges (PFCs)] and [Airline Use Agreement (AUA)] rental charges at the same rate, without change, despite the deteriorating circumstance.” [FAA Exhibit 2, Item 2, pgs. 6-7].

B. Ports Authority Position on New Allegations

The Ports Authority argues that Star Marianas raises new allegations on Appeal. The allegations are: (1) The Ports Authority has not implemented the proposed rates and charges methodology discussed in the DD, and (2) the Ports Authority has not conducted year end settlements on rates and charges since FY 2016.

The Ports Authority argues that Star Marianas has made no attempt to comply with 14 CFR § 16.33(f) to support these new allegations and they must be rejected, stating:

Even if Star Marianas had complied with Section 16.33(f), the new allegations have no merit...the only reason the Ports Authority continues to use the rates and charges methodology in the AUA is because Star Marianas has repeatedly refused to sign a new operating agreement that incorporates the proposed rates and charges methodology.... By rejecting the proposed operating agreement and opting to continue operating under the AUA, Start Marianas has re-affirmed its voluntary acceptance of the terms of the AUA. [FAA Exhibit 2, Item 5, pgs. 7-8].

The Ports Authority also adds:

...with respect to year-end settlements, those are governed by the AUA, which allows the Ports Authority to extend the current annual airline rates and charges until it is recalculated for the next fiscal year, and then provides credit or refunds the airlines if it was overcharged. [DD, p. 13; FAA Ex. 1, Item 1, Ex. C. pp. 28-29]. Because of this, any issues about the timing of the year-end settlements are a contract dispute that cannot be adjudicated in a Part 16. [FAA Exhibit 2, Item 5, p. 8].

The Ports Authority states that Star Marianas has been operating out of a temporary storage container ever since the former commuter terminal at the Saipan International Airport was largely destroyed by Super Typhoon Yuta in October 2018. Typhoon Yuta caused substantial damage to the wiring in the former commuter terminal, making it unsafe for use. The Ports Authority states it has provided portable toilets at the temporary container site for Star Marianas and recently installed a sink. The Ports Authority additionally states it is working on a design for reconstruction of the former commuter terminal. [FAA Exhibit 2, Item 5, p. 9].

C. Associate Administrator's Analysis of New Issues on Appeal

The FAA's process for accepting a new issue or evidence in an appeal or reply to an appeal is stated in 14 CFR § 16.33(f) (1-3):

Any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause found as to why the new issue or evidence was not presented to the Director. Such a petition must:

- (1) Set forth the new matter;
- (2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) Contain a statement explaining why such a new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

The Ports Authority is correct in its analysis that Star Marianas has failed to meet the conditions of 14 CFR § 16.33 in order to submit new allegations on appeal.

Star Marianas is attempting to supplement the record on appeal with an audit signed in January 2019, but makes no statement to explain why this document was not submitted prior to the issuance of the DD. Star Marianas failed to provide good cause for the Associate Administrator to consider this new information and the related new rates and charges allegations on appeal. For these reasons, the audit exhibit and related rates and charges allegations comprising new evidence will not be considered in this appeal.

The Associate Administrator finds good cause to consider new information on appeal related to Super Typhoon Yuta. Under this issue, Star Marianas argues that the Ports Authority continues to charge it both PFCs and AUA rental charges at the same rate despite deteriorating circumstances caused by the impact of Typhoon Yuta. [FAA Exhibit 2, Item 2, p. 7].

The Associate Administrator notes that Article 10, *Damage or Destruction of Leased Premises*, in the AUA agreed to by both parties, identifies the remedies available in the event of damages. The AUA identifies a number of damage scenarios depending on the type of leasehold (Preferential Use, Common Use, and Non-Exclusive, as described in Article 2 of the agreement). [FAA Exhibit 2, Item 1, FAA Exhibit 1, Item 1, Exhibit C].

It is incumbent upon both parties to determine the extent of the damage and the appropriate resolution under the terms of the AUA. As noted above, the Ports Authority is taking action to resolve the issues caused by Typhoon Yuta and has identified steps it has taken and will take. The Associate Administrator finds that the Ports Authority is acting in compliance with its grant assurances and dismisses the new allegations related to the temporary facilities.

Motion for Leave

Star Marianas filed a *Surreply* and *Motion to File a Surreply Brief* on August 31, 2020. Star Marianas asserts in its Surreply that, “new events and evidence have transpired between Star Marianas' filing of the Amended Complaint on February 2, 2018, and the Director's Determination filed on May 5, 2020.” In addition, Star Marianas asserts there were a “series of communications between Star Marianas and the Ports Authority from June 22, 2020, to August 13, 2020, regarding the Ports Authority's Fiscal Year 2021 Budget.” [FAA Exhibit 2, Item 6].

The Ports Authority submitted an *Opposition to Complainant's Surreply and Motion for Leave to File Surreply Brief* on September 8, 2020, and claims that the Associate Administrator should deny Star Marianas's Motion for leave to file its Surreply. The Ports Authority asserts that Star Marianas admits that the new allegations and evidence were either (1) available to file with their administrative appeal, or (2) offered in support of Star Marianas's misguided attempts to improperly use the Part 16 process to adjudicate contract disputes and gain leverage in contract negotiations.” [FAA Exhibit 2, Item 7].

Part 16 is an expedited procedure that provides only for an Appeal and a Reply. [See 14 CFR §16.33]. However, the Part 16 process does permit a party to seek application for an order or ruling not otherwise specifically provided for in this Part by motion per §16.19.

The appellate record consisting of the Appeal and the Reply to the Appeal is deemed complete in accordance with 14 CFR §16.33. The Associate Administrator finds no good cause justifying why new evidence that was available in advance of the DD was not presented to the Director. Other information submitted by Star Marianas that relates to conduct that postdates the filing of the appeal is outside the scope of review here. Accordingly, the *Motion for Leave to File a Surreply* is denied.

VI. ANALYSIS AND DISCUSSION

Issue 1 -Whether Director erred by not considering allegations other than a potential violation of the Anti-Head Tax Act under Grant Assurance 1, *General Federal Requirements*.

A. Star Marianas Position on Issue 1

Star Marianas claims on Appeal that it asserted in its Complaint that the Ports Authority “violated Grant Assurance 1, *General Federal Requirements*, by imposing unreasonable and excessive charges on a per passenger basis without a maximum limitation based on: fair market value; the Ports Authority’s operational costs; and the weight of Star Marianas landed aircraft.” Star Marianas further claims on appeal that it also alleged that the Ports Authority was imposing fees or head charges on individuals traveling in air commerce contrary to 49 U.S.C. § 40116(b). [FAA Exhibit 2, Item 2, pages 1-2].

On appeal, Star Marianas alleges that the Director only considered, within this section of the determination, the Complainant’s allegation that the Ports Authority violated AHTA. [FAA Exhibit 2, Item 2, p. 2].

Star Marianas also claims on appeal that the Director stated, “Star Marianas expanded from a cargo carrier to provide passenger services at Saipan in 2009. This is factually incorrect. Star Marianas was initially certificated as an on demand air carrier on April 1, 2009.” [FAA Exhibit 2, Item 2, p. 2].

In addition, Star Marianas states that contrary to the findings of the Director, “Ports Authority does not apply the compensatory method and instead continues to use the existing [Airline Use Agreement (AUA)], ARTICLE 7: CHARGES AND FEES. Also, the Director relies on descriptions and methodologies provided by Ports Authority that do not exist.” [FAA Exhibit 2, Item 2, p. 5].

B. Ports Authority Position on Issue 1

In its Reply to the Appeal, the Ports Authority states,

Star Marianas purports to appeal three issues in the DD: (1) whether the Ports Authority violated Grant Assurance 1, *General Federal Requirements*; (2) whether the Ports Authority violated Grant Assurance 22, *Economic Nondiscrimination*; and (3) whether the Ports Authority violated Grant Assurance 23, *Exclusive Rights*. The appeal itself, however, is incoherent and fails to meet the appellant's duty to direct the Associate Administrator to specific errors of applicable law and fact in the DD. Instead, Star Marianas repeats its prior, scattershot arguments while adding new, unsubstantiated allegations without making any effort to comply with the strict requirements of 14 CFR §

16.33(f) for the introduction of new issues or evidence. This failure to meet the threshold requirements for a pPart 16 appeal leaves the Associate Administrator with no choice but to deny the appeal. [FAA Exhibit 2, Item 5, pgs. 1-2].

The Ports Authority also argues,

“Star Marianas concedes that the method provided for in the AUA does not violate the AHTA. Instead, Star Marianas broadly argues that the Ports Authority is not complying with the requirements in Article 7 of the AUA, without explaining how the alleged failure to follow the AUA resulted in violations of the AHTA or the Ports Authority’s grant assurances...The Director’s Determination unequivocally affirmed the decision of the HON ADO that the per passenger charge assessed under the AUA does not violate the AHTA...Star Marianas fails to point to any specific error of law or fact that would warrant a different conclusion by the Associate Administrator.” [FAA Exhibit 2, Item 5, pgs. 4-5].

C. Associate Administrator’s Analysis of Issue 1

A review of the DD shows that the Director parceled out the various rates and charges allegations to specific issues to be analyzed under the applicable grant assurance. In so doing, the Director undertook an analysis of allegations of whether the Ports Authority violated the AHTA in his analysis under Grant Assurance 1. Relatedly, the Director examined issues related to unreasonable and excessive charges raised by Star Marianas as violations of Grant Assurance 1 under Grant Assurance 22.

The Associate Administrator notes that in an effort to properly allocate the issues to the correct Grant Assurances, the Director stated:

“...because Star Marianas made these same or similar allegations under other claims in their Amended Complaint the Director would only consider Complainant’s allegation that Ports Authority violated AHTA in this section. The Director will address all other repeated claims in more applicable sections in this determination. [FAA Exhibit 2, Item 1, p. 11].

Under this review, the Director first examined the rates and charges background and methodology to ascertain whether the charges were illegal under the AHTA. The record shows that the Ports Authority hired consultants who prepared a proposed methodology for the Ports Authority that showed that the rates and charges formula were primarily ‘compensatory.’ [FAA Exhibit 2, Item 1, pgs. 11-13].

As stated above, Star Marianas claimed the Ports Authority does not apply a compensatory method in rate setting under its AUA. If the Director inadvertently misstated the Ports Authority’s rate setting methodology under the AUA, it is harmless error since both compensatory and residual rate setting methodologies are acceptable. In addition, airport sponsors frequently adopt rate-setting systems that employ elements of both approaches under a hybrid methodology.

The Director correctly noted that, “Under 49 U.S.C. § 47129, the FAA may only determine whether a fee is reasonable or unreasonable. FAA may not set the level of the fee...”² [FAA Exhibit 2, Item 1, p. 13]. It is important to recognize that per 49 U.S.C. § 47129(e), complaints about the reasonableness of a fee set by agreement filed by a party to the agreement setting the disputed fee will not be considered by the Department of Transportation. Therefore, when considering such a dispute, FAA’s role is to determine whether the airport proprietor is in compliance with its grant obligations and statutory obligations relating to airport fees. [*Policy Regarding Airport Rates and Charges (Rates and Charges Policy)*, 78 Fed. Reg. 55330, 55332 (September 10, 2013)].

The Director noted that a properly formulated rates and charges methodology does not constitute an illegal head tax. “Based on the descriptions of the methodologies provided by the Ports Authority, the Director finds that Star Marianas has not provided persuasive evidence showing how the Ports Authority rates and charges assessed for each cost center and common use area was, or currently is, a violation of the AHTA.” [FAA Exhibit 2, Item 1, p. 13].

On appeal, Star Marianas has reiterated information available in its amended complaint and the Director’s findings. Essentially, Star Marianas is restating its position as identified in its amended complaint without clearly identifying how the Director erred in his findings. [FAA Exhibit 2, Item 2, pgs. 1-6].

Nonetheless, the Associate Administrator appreciates Star Marianas clarifying that it was initially certificated as an on demand air carrier on April 1, 2009, and not a cargo carrier. Any statement by the Director that confused Star Marianas’s initial status is harmless and does not rise to the level of a reversible error.

The Associate Administrator finds that after a review of the record that the conclusions in the DD were made in accordance with law, precedent, and policy. The Director did not err in his analysis of the AHTA and the rate setting methodology used by the Ports Authority. Moreover, the Associate Administrator finds that the Director correctly identified and analyzed the allegations of a violation of the AHTA under Grant Assurance 1, and concluded there was no violation. On appeal, Star Marianas has not identified how the Director erred in this conclusion, but simply objects to the conclusion.

² Section 47129 authorizes the Department of Transportation to review the reasonableness of airport fees charged to air carriers, upon a complaint or request for determination and a finding of a significant dispute, and directs the publication of policies or guidelines for determining reasonable fees and development of expedited hearing procedures to resolve airport fee disputes. The Department’s procedures applicable to a proceeding concerning airport fees are contained in Subpart F, Title 14 CFR §§ 302.601-302.609

Issue 2 - Whether the Director erred by not finding that the Ports Authority violated Grant Assurance 22, *Economic Non-discrimination*.

A. Star Marianas Position on Issue 2

On appeal, Star Marianas argues that the Ports Authority charges are beyond what is permitted in the AUA and Airport Rules and Regulations and that these charges were imposed after it started passenger services. Star Marianas argues that the Ports Authority's retroactive charges are unreasonable because Star Marianas cannot recoup the additional costs from the passengers when Ports Authority delayed its calculations for the prior years, in violation of the AUA. Additionally, Star Marianas claims that the Ports Authority's non-compliance with Section 7.05 does not allow Star Marianas to ensure that Ports Authority fees are based on Ports Authority's operational expenses. Further, on appeal, Star Marianas asserts it is not able to be competitive with other air carriers, and thus, the Ports Authority is economically discriminating against Star Marianas. [FAA Exhibit 2, Item 2, pgs. 7-8].

B. Ports Authority Position on Issue 2

In its reply to the appeal, the Ports Authority claims it made the airport available to Star Marianas on fair and reasonable terms and without unjust economic discrimination in accordance with Grant Assurance 22. [FAA Exhibit 2, Item 5, p. 5].

Specifically the Ports Authority stated,

Star Marianas's Appeal merely restates the allegations made in their amended complaint that were rejected by the Director and fails to demonstrate that the Director's findings were unsupported or in error. Fundamentally, Star Marianas's rates and charges allegations present a contract dispute over the interpretation of various sections of the AUA. Those allegations must be rejected because contract disputes cannot be adjudicated in a Part 16." [FAA Exhibit 2, Item 5, p. 6].

The Ports Authority also states that:

At its root, Star Marianas's complaint has always been and remains a dispute over the interpretation of the AUA. These include allegations the Ports Authority is not complying with the requirements of Article 7 of the AUA, that the Ports Authority's rates and charges are unreasonably high, that the Ports Authority is unreasonably imposing retroactive charges, that the Ports Authority's imposition of fees is not related to operating costs, and that the landing fees are unreasonable. This litany of allegations related to the AUA are a contract dispute that cannot be adjudicated through a Part 16 and must be rejected by the Associate Administrator as the basis for a Part 16 appeal. [FAA Exhibit 2, Item 5, pgs. 6-7].

The Ports Authority notes that Director found "Star Marianas made allegations in its amended complaint but it did not provide the Director with any substantive or persuasive evidence to support its allegations of any current Grant Assurance 22 violation. Part 16 provides that the

burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act.” [FAA Exhibit 2, Item 1, p. 15].

C. Associate Administrator’s Analysis of Issue 2

As with Issue 1, Star Marianas has not put forth cogent arguments indicating where and how the Director erred in his analysis of the allegations under Grant Assurance 22. The Associate Administrator agrees with the Ports Authority that the gravamen of this complaint is Star Marianas’s objections to the terms of its airline use agreement.

The Ports Authority is correct that contract disputes cannot be adjudicated in a Part 16. The FAA does not arbitrate or mediate negotiations through a formal Part 16 complaint process. Nor does the FAA enforce contract terms between parties to an agreement. Rather, the FAA enforces contracts between an airport sponsor and the Federal government. [See AmAv v. Maryland Aviation Administration, FAA Docket No. 16-05-12, (March 20, 2006) (Director’s Determination).]

Unreasonable and unjustly discriminatory terms in a contract might be reviewable under a Part 16, but that has not been demonstrated here. These issues are clearly a contract dispute with Star Marianas and the Ports Authority over an agreement signed by both parties.

Star Marinas is essentially rearguing the issues identified and examined in the Determination. The fact that the Ports Authority has a methodology that Star Marinas does not agree with does not mean it violates Grant Assurance 22. Star Marianas is a signatory to an agreement with the Ports Authority and must take its objections of the lease terms and the rates and charges directly to the Ports Authority for resolution in the absence of evidence that the Ports Authority is acting in violation of its Grant Assurances. A Part 16 proceeding is not intended to provide a mechanism for adjudicating the respective rights of the parties to a fee dispute. See *Rates and Charges Policy*, at page 55332.

The Associate Administrator finds no evidence presented on Appeal sufficient to overturn or remand the DD. The Director’s findings are affirmed.

Issue 3 - Whether the Director erred in not finding that the Ports Authority violated Grant Assurance 23, *Exclusive Rights*, by failing to grant permission to enplane passengers from the Rota Terminal.

A. Star Marianas Position on Issue 3

On appeal, Star Marianas continues to object to enplaning its passengers and cargo at the west end in the Rota Terminal. Star Marianas reiterates its claim that the Ports Authority granted special rights or privileges to other air carriers and has denied this same right to Star Marianas. Star Marianas states, “two (2) years after the cessation of TSA, Star Marianas, now the only carrier serving Rota, is still required to board through the arrival area at the Rota Terminal.” [FAA Exhibit 2, Item 2, pgs. 11-12].

B. Ports Authority Position on Issue 3

In its Reply to the Appeal, the Ports Authority asserts it has not granted an exclusive right. The Ports Authority asserts that Star Marianas continues to fail to show what exclusive right has been conferred on another airline that Star Marianas has been denied. [FAA Exhibit 2, Item 5, pgs. 9-10].

The Ports Authority identified several efforts it claims it made to accommodate Star Marianas in the terminal:

The Ports Authority spent thousands of dollars on the office renovation, the location of which provides counter-to-ramp access at the Benjamin T. Manglona Airport on Rota. The renovations have been completed for two years and Star Marianas has not moved in despite repeated communications from the Ports Authority's Rota Airports Manager that the office is ready..."

The Ports Authority recommended that Star Marianas move into the already existing former Freedom Air office, which was available and had access to the airside already. In December 2019, Star Marianas indicated that it was ready to make the move. Since December 2019, the Ports Authority has contacted Star Marianas on several occasions to discuss the move and received the response that Star Marianas would first contact their service provider and then provide updates to the Ports Authority.

The Rota Airport Manager spoke to Star Marianas's Frankie Muna as recently as June 3, 2020, and again, on July 29, 2020, to Jose Cruz to inform Star Marianas that the office space is ready and that Star Marianas needs to contact their internet service provider, if it is seeking internet access at that new office space..." [FAA Exhibit 2, Item 5, pgs. 11-12].

The Ports Authority claims it "has made, and continues to make, reasonable efforts to accommodate Star Marinas' request for terminal space with direct access to the ramp..." [FAA Exhibit 2, Item 5, p. 12].

C. Associate Administrator's Analysis of Issue 3

In the Determination, the Director reviewed the allegation that the Ports Authority provided exclusive airside access to other airlines at the Rota Terminal while requiring Star Marinas to enplane cargo and passengers though the main terminal building. [FAA Exhibit 2, Item 1, p. 15]. The Director found that "Star Marianas failed to show which carrier had obtained an exclusive right that Star Marianas itself was denied." [FAA Exhibit 2, Item 1, p. 16].

Star Marianas has not identified another similarly situated user that has been granted an exclusive right. There is no evidence presented by Star Marianas that the Ports Authority is denying access to the terminal or granting an exclusive right. In fact, it is apparent the Authority is seeking to accommodate Star Marianas with direct counter to ramp access, but Star Marianas has not accepted the accommodation to date. The Associate Administrator is not persuaded that Star Marianas is being denied access to the airport in violation of Grant Assurance 23, Exclusive

Rights, or that Star Marianas has been denied an aeronautical opportunity offered to another entity. The DD is affirmed.

VII. FINDINGS AND CONCLUSION

The Associate Administrator's role in this appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination. The Associate Administrator finds no error by the Director in the Director's Determination.

Specifically, upon appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative; and substantial evidence, (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy; (c) are the questions on appeal substantial; and (d) have any prejudicial errors occurred. [14 CFR § 16.33(e)].

In arriving at a final decision in this appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the appeal, and papers submitted by the parties, and applicable law and policy. Based on this reexamination, the Associate Administrator for Airports finds that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence and is consistent with applicable law, precedent, and the FAA policy. The appeal does not advance persuasive arguments sufficient to reverse any portion of the Director's Determination.

The Director's Determination is affirmed. This decision constitutes a final decision of the Associate Administrator pursuant to 14 CFR § 16.33.

ORDER

ACCORDINGLY, it is hereby **ORDERED** that (1) the Director's Determination is Affirmed, and (2) the Appeal is dismissed pursuant to 14 CFR § 16.33.

All other Motions not specifically granted herein are **DENIED**

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the Final Decision and Order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed no later than 60 days after a Final Decision and Order has been served on the party. [14 CFR Part 16 § 16.247(a)].



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DEON K SHAFFER
Date: 2021.01.10
13:38:14 -05'00'

D. Kirk Shaffer
Associate Administrator
for Airports

Date

FAA EXHIBIT 2
FINAL AGENCY DECISION INDEX OF ADMINISTRATIVE RECORD
FAA Docket 16-18-01

Item 1 – Director’s Determination, dated May 5, 2020.

Item 2 – Notice of Appeal and Brief of Star Marianas, Inc., dated June 3, 2020.

Item 3 – Unopposed Motion of the Commonwealth Ports Authority for an Extension of Time to file a response to Notice of Appeal, dated June 10, 2020.

Item 4 - Order Extending Time for the Commonwealth Ports Authority to file its response to the Notice of Appeal, dated July 7, 2020.

Item 5 – Commonwealth Ports Authority’s Reply to Complainant’s Appeal, dated August 10, 2020.

Item 6 – Star Marianas, Inc.’s Surreply and Motion for Leave to File Surreply Brief, dated August 31, 2020.

Item 7 – Commonwealth Ports Authority’s Opposition to Complainant’s Surreply and Motion for Leave to File Surreply Brief, dated September 8, 2020.

Item 8 - Order Extending Time for the Final Agency Decision to December 20, 2020, dated November 9, 2020.

Walenga, Pat (FAA)

From: Cijntje, Viola E-CTR (FAA)
Sent: Wednesday, January 13, 2021 10:18 AM
To: rrichards@rgattorneys.com;
jgoldstein@rgattorneys.com; rttlaw@pticom.com
Cc: Willis, Kevin (FAA); Herson-Jones, Lorraine (FAA); 9-
AWA-AGC-Part-16 (FAA)
Subject: Final Agency Decision for FAA Docket No. 16-18-01
Attachments: 16-18-01 FAD cover letter and proof of service- 1.12.21
signed.pdf; 16-18-01 FAD - FINAL (003) Executed.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please see attached Final Agency Decision for FAA Docket No. 16-18-01.

Thank you.

Respectfully,

Viola Cijntje
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