

Asia/Pacific Airport Coordinators Association (APACA)

Agenda Item 6

Force Majeour
(Airline's Strike)

5th APACA meeting
16 November, 2012
Toronto, Canada

Justified non-utilization of slots (WSG)

| | |
|-------|--|
| 7.8.1 | When calculating the 80% usage of a series of slots, slots not used will be considered as operated if the non-utilization is justified for any of the following reasons: |
| (a) | Interruption of the air services of the airline due to unforeseeable and unavoidable causes outside the airline's control, for example a closure of an airport or airspace or severe weather; or |
| (b) | Action intended to affect these services that prevents the airline from carrying out operations as planned, for example, industrial action or strikes. |
| 7.8.2 | Airlines should contact the coordinator as soon as possible after the flight cancellation or non-operation occurs to confirm that such flights will be treated as operated. |

Interpretations of Force Majeure (EUACA Recommended Practices)

| | |
|-----------------------------------|--|
| Grounding of an aircraft type | The grounding of an aircraft type (or engine type) by the manufacturers or by the relevant regulatory authority (e.g. Civil Aviation) for safety reasons. |
| Airport Closure | Total or partial closure (e.g. extreme weather conditions, action of 'mother nature', failure of ATC services, conflict or political reasons) or restructuring of an airport and/or airspace for a limited period or the closure of an airport for a particular type or group of aircraft, including reactionary cancellations, resulting in at least widespread disruption and the cancellation of a significant proportion of services in that period. |
| Serious disturbance of operations | Serious disturbances which affect a number of airports in the EU for a substantial part of the scheduling period for which, under the original text of Regulation 95/93 a special waiver of the use it or lose it rule would have been requested for example an epidemic outbreak (e.g. SARS), war or hostilities (e.g. Iraq) etc. |
| Strikes | Internal strikes within the company that are publicized (though not staff "working to rule") |
| | External strikes by critical services (e.g. ATC, fire services, fuel companies or fuel supplies, customs and immigration, catering companies, aircraft manufacturers etc.) that directly prevent that airline's operation. |
| Traffic Rights | The withdrawal or suspension of traffic rights as a result of bilateral disputes. |
| Withdrawal of permission | Temporary withdrawal of permission to operate by a State on the grounds of safety or security |

Interpretations of industrial action or strikes (1) (Worldwide)

| Economy | Comments |
|----------------|--|
| IATA | <p>It is common practice for industrial strikes by Airline staff that directly lead to operational cancellations to be considered “force majeure” by Coordinators and therefore classified as justified non-utilization of slots. For example I do not believe that BA lost any slots during the many months of Cabin Crew strikes at either end of the route(s) nor did Iberia during their recent ATC strike.</p> <p>The key to this is the positive and timely dialogue between the Airline and Coordinator so the airline can explain their situation and then release the slot to the pool to allow the Coordinator as much time as possible to reuse the slot.</p> |
| Australia | <p>In Australia we always considered strike action at an airport or in an airline as ‘outside’ the airline’s influence and granted an exemption. Relationships between airlines and unions are often outside an airline’s control if the laws at the time favor unions and the government favors unions. This is why Qantas, for example, had to close the airline down in October 2011 to get some governmental action against unions. We have always regarded any airline/union dispute as outside the airline’s control and will continue to do so.</p> |
| Chinese Taipei | <p>It’s an interesting question. I personally agree that Airline’s staff or crew strike should be airlines’ own problem. But the reason for airline strike is complicated and can not be solved easily or in a short time.</p> <p>Since “strikes” has been clearly included in the uncontrollable reason for 80/20 rule in WSG. We interpret strikes includes government, airport, and airline, etc, that is all strikes that influence operation of flights. It did happen several years ago. As I remembered it was KA, some flights were cancelled due to crew strike, and those were exempted from 80/20 calculation at that time.</p> |

Interpretations of industrial action or strikes (2) (Worldwide)

| Economy | Comments |
|-----------|---|
| Hong Kong | <p>We did receive notice from AI about their flight cancellations due to the industrial actions of their cockpit crew. In general, flight cancellations that are not under the airline's control (including industrial actions of the airline's staff) will be treated as operated when determining the 80/20 U/L rule provided that they have informed us of this when submitting the slot cancellation requests so that we can maintain proper records in our system.</p> |
| Singapore | <p>We did not receive any requests from AI on this issue, as they are still continuing their services to SIN - only making changes to their schedules. However, should they send us this inquiry, we will seek guidance from CAAS as our regulator of slots.</p> |
| Malaysia | <p>There are two sides of the coin in looking at this issue. It really depends on where you are coming from. In Asia, we always blame airlines or any organization for strike. It is the culture. In the West, airline unions are strong and the laws take them very seriously.</p> <p>So, when we look into the 80/20 U/L rule, we should handle it with utmost good faith. What happens if a major prolonged crew strike drags on for many months due to strong action by employees (in the US scenario)?</p> <p>Our opinion is we should look into the root cause of the strike; if it is within the control of the airline, by all means, 80/20 U/L rule should be applied. If it is beyond their control, prerogative consideration should be taken.</p> |
| Thailand | <p>No waiver is applied from Air India. We treat industrial strike as force majeure. We use to grant Air France and BA strikes all the time. However, it is only short period of time for them.</p> |

Interpretations of industrial action or strikes (3) (Worldwide)

| Economy | Comments |
|---------|---|
| India | <p>In general Industrial action will be treated as beyond control of airline. Accordingly 80/20 rule will be applied provided airline has informed and discussed the issue with coordinator in time. However if the strike continues for long period, may be for months than a considered decision in consultation will be taken.</p> |
| Japan | <p>The application of U/L waiver is in the hand of JCAB in Japan. When JCAB received the petition from AI, their stance was that U/L waiver will not be granted at first. JCAB considers strikes of airport company, ATC and CIQ personnel are beyond the control of carriers. However, strikes of carriers are considered to be within the control of carriers as this is how the relationship between management and labor union is maintained. If the relationship is maintained good, strikes will never happen.</p> <p>After surveying worldwide how other organization treated AI's petition, JCAB has changed their rule accepting AI's request.</p> |

Interpretations of industrial action or strikes (4) (Worldwide)

| Economy | Comments |
|------------|--|
| U.S.A. FAA | <p>The Slot Orders for EWR, JFK, and LGA do not contain a specific provision related to strikes. The previous slot rules, the High Density Rule (currently applicable only to Reagan National Airport), explicitly permitted waivers for all strikes that affected a carrier's ability to operate at a slot-controlled airport. 14 C.F.R. 93.227. The Orders do contain a provision authorizing a slot usage waiver "for a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five or more consecutive days."</p> <p>Since the Orders were issued in 2007 and 2008, the FAA has not had to answer the question as to whether or what sort of strike would qualify for relief under the usage waiver position. In the U.S., a government strike or ATC strike (ATC services are provided by the federal government) are highly unlikely because they are prohibited under federal law. I think if we were faced with the question of an airport company strike, we would find the conditions beyond the control of the carrier and would grant a waiver if the strike disrupted operations for at least 5 days.</p> <p>Over the years, we have been asked by carriers potentially facing an airline strike, and this is the answer we generally give. For an airline strike, we likely would answer the question based on the argument presented by the carrier. I think a carrier could make an argument the strike is beyond its control because it had been negotiating in good faith. We also would evaluate the carrier's efforts to minimize underutilization of slots (e.g., transfers to regional partners or transfers to other carriers). I do not foresee the FAA would take a position that a strike is either solely an employer's fault or solely a union's fault because labor relations are complex matters. Because we have not faced this question, and because any determination is fact-specific, we do not have a clear answer to give you. A waiver for an airline strike could be possible (though maybe not certain) under the Orders if the justification presented by the carrier meets the required elements for a waiver. Our hope is to not face this question because strikes tend to be more disruptive than the limited issue of what happens to slots.</p> |