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itself to be sued to final judgment in the said case, its action of interpleader was filed inexcusably late, for which reason it is barred by laches or unreasonable delay.

ACCORDINGLY, the order of May 28, 1964, dismissing the complaint, is affirmed, at appellant's costs.

Teehankee, Makasiar, Antonio, Esguerra, Muñoz Palma, Aquino and *Concepcion Jr., JJ.,* concur.

Barredo and *Martin, JJ.,* took no part.

Fernando J., is on official leave.

Order dismissing the complaint affirmed.

[No. L-22573. March 31, 1976]

FIRST DIVISION

JAMES H. FLEMING, petitioner *vs.* CIVIL AERONAUTICS BOARD and PHILIPPINE AIR LINES, INC. (PAL), respondents.

PETITION FOR REVIEW of a resolution of the Civil Aeronautics Board.

SYNOPSIS

The petitioner who was the operator of the Fleming Airways System Transport (FAST) sought to nullify the resolution of the respondent Civil Aeronautics Board (CAB) granting a provisional authority to the Philippine Air Lines (PAL) to operate air services with the use of Douglas

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multi-engine aircraft adopting the rates and fares being charged by said petitioner.

The Supreme Court gave due course to the petition after which it gave PAL the authority to continue with its questioned operation during the pendency of the appeal. The case was submitted for decision after the parties had filed their respective memoranda and briefs. Four years later, the PAL moved to dismiss the petition on the ground that the case had become moot and academic as both parties had stopped their operations in question. Petitioner failed to comment on the motion to dismiss as required by the court and to show further interest in the case.

The case was dismissed.

SYLLABUS
of the Ruling of the Court

1. PETITION FOR REVIEW; DISMISSAL; FAILURE TO COMMENT ON MOTION TO DISMISS, A GROUND. Where petitioner has failed for a sufficient time of over six years to comment on or object to the motion to dismiss, and there has been no indication of any interest on his part, the petition may be dismissed.
2. ID.; ID.; ADDITIONAL GROUNDS IN INSTANT CASE. — Considering that petitioner has failed to show grave abuse of discretion on the part of the Civil Aeronautics Board in the issuance of the questioned provisional authority which was in effect upheld by the Court's non-stay resolution, and that both parties have long ceased to operate the questioned air services and rendered moot the issue between them, the case should be dismissed.

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APPERANCES OF COUNSEL

Diaz & Bueno for petitioner.

Solicitor General Arturo A. Alafriz, Assisstant Solictor General Antonio G. Ibarra and *Solicitor Hector C. Fule* for respondent Civil Aeronautic Board.

Ponce Enrile, Siguion Reyna, Montecillo and *Belo* for respondent Philippine Air Lines Inc.

D E C I S I O N

TEEHANKEE, *J.*:

In his petition for review by certiorari filed on March 13, 1964 by petitioner James H. Fleming, operator of the Fleming Airways System Transport (FAST), he sought to nullify the resolution of respondent Civil Aeronautics Board (CAB) issued in its Case No. EP-300 dated February 13, 1964 granting a provisional authority to its co-respondent Philippine Air Lines (PAL) to operate air services with the use of Douglas multi-engine aircraft (DC-4) adopting the rates and fares being charged by said petitioner and the order of March 5, 1964 denying petitioner's motion for reconsideration.

Respondent PAL moved on March 23, 1964 for dismissal of the appeal on the ground of lack of merit and that the question orders were interlocutory. After the Court gave due course to the petition on March 25, 1964, respondent PAL filed an "Urgent Motion for Authority to Continue Operating Under the CAB Orders Sought to be Reviewed Herein" since under Rule 43, section 10, the giving of due course would stay the appealed CAB ruling unless otherwise directed by the Court.

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In its resolution of April 27, 1964, the Court granted PAL's urgent motion for authority to operate during the pendency of the appeal, ruling that –

> "*** *** *** it (appears) from the pleadings and annexes thereto attached that petitioner James H. Fleming, operating under the business name of Fleming Air System Transport or FAST, has not been authorized to render domestic or international air service (CAB Case No. EP-461), for although the same Board granted him (James H. Fleming) a certificate of public convenience to maintain and operate for five years non-scheduled air service in certain places in the Philippines, yet such resolution is not final, because the PAL has moved for a reconsideration thereof and the motion is still pending action by the Civil Aeronautics Board (CAB Case No. EP-113); and that the line Manila-Bacolod-Cebu-Davao where the PAL is authorized to operate or render air service temporarily or for six months from actual operation by the Civil Aeronautics Board, is expressly excluded from the operation of an air service by the petitioner James H. Fleming under and pursuant to the authority or order of the Court of First Instance of Rizal (Civil Case No. 1907; Annexes 2 and 2-A attached to the Motion to Dismiss), the contention of the petitioner that he is not excluded or precluded from flying or rendering air service on the Manila-Bacolod-Cebu and/or Davao route 'directly in both directions', because he may do so by breaking off at some other point, being untenable. The petition for a writ of preliminary injunction of 16 April 64 asked by the petitioner is denied."

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The case was submitted for decision on March 2, 1965 after the parties had filed their respective memoranda and briefs.

On November 13, 1969, however, respondent PAL filed a Motion to Dismiss the petition on the ground that the case had become moot and academic, alleging that after the case was submitted for decision, CAB withdrew the authorization granted to it to operate the questioned air services and that pursuant thereto, it had stopped the operation of said services as early as 1965; and that petitioner had likewise stopped his operation for a number of years.

On November 18, 1969, the Court issued a resolution requiring petitioner to comment on PAL's motion to dismiss but the resolution was returned unclaimed. To this date, no comment has been filed for petitioner nor has any other pleading been filed on behalf of petitioner since then.

In addition to the sufficient time of over six years that has elapsed for petitioner to comment on or object to the motion to dismiss, there has been no indication of any interest on petitioner's part, much less of any controversion of the allegations of PAL's above-cited motion to dismiss.

Under the circumstances and considering that petitioner has failed to show grave abuse of discretion in the issuance of CAB's questioned provisional authority which was in effect upheld by the Court's above-quoted non-stay resolution of April 27, 1964, and that at any rate both petitioner and PAL have long ceased to operate the questioned air services, and rendered moot the issue between them, the case is ordered dismissed.

Makasiar, Esguerra, Muñoz Palma, and *Martin, JJ.,* concur.

Case dismissed.