

107.21(a)(1) of the Federal Aviation Regulations (FAR) (14 C.F.R. §107.21(a)(1))^{4/}, as alleged in the complaint.

However, he reduced the sanction sought for those violations from \$2,500 to \$2,000, and indicated a willingness to reduce that amount further, as discussed below.

The incident giving rise to these violations occurred on November 4, 1988, at a security checkpoint at Standiford Field Airport, when Respondent (a ticketed airline passenger) presented his carry-on bag for x-ray screening and the bag was found to contain a loaded .25 caliber automatic weapon. In his answer to the complaint in this case Respondent denied only that the weapon was loaded, stating that he had insufficient knowledge or memory to confirm or deny that fact. At the hearing, testimony of the police officer who investigated this incident established that the gun was in fact loaded.

In addressing the sanction in this case, the law judge noted that in section 901(d) of the Act Congress has authorized

^{4/} 14 C.F.R. §107.21(a)(1) provides:

§107.21 Carriage of an explosive, incendiary, or deadly or dangerous weapon.

(a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual's person or accessible property --

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area[.]

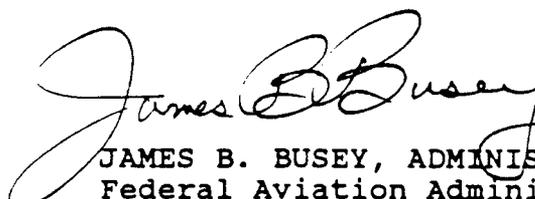
a maximum civil penalty of \$10,000 in weapons cases such as this. He cited the legislative history of that section, which indicates that Congress had in mind even cases where, as apparently occurred here, an individual "absent minded[ly]" forgets that he has a gun in his carry-on luggage. Accordingly, the law judge concluded that the \$2,500 civil penalty sought in this case was "relatively small," and "not unreasonable." Nonetheless, the law judge reduced the civil penalty to \$2,000, based on Respondent's counsel's assertion that the gun in this case was destroyed. The law judge stated further that he would be prepared to reduce the sanction by an additional \$1,000 if, within the next 60 days, Respondent had published in a newspaper of general circulation a letter making the public aware of the need to exercise great care in keeping weapons out of carry-on luggage. The law judge stated that he would retain jurisdiction of the case for the limited purpose of disposing of any motion regarding a dispute as to the amount of civil penalty to be assessed in this case.

Complainant has appealed from the reduction in sanction arguing that, assuming the loss of value of the gun is an appropriate basis for reduction, the law judge should not have reduced the civil penalty without some evidence as to the value of the gun. Complainant also argues that the law judge exceeded his authority by providing for a further reduction of the civil penalty based on publication of a letter in a

newspaper. As discussed below, because the law judge's \$500 reduction and his conditional offer of an additional \$1,000 reduction in sanction were both improper, the full \$2,500 civil penalty sought in the complaint will be assessed.

As I explained in In the Matter of Broyles, FAA Order No. 90-23 (September 14, 1990), at 8-9, the Sanction Guidance Table contained in Appendix 4 of FAA Order 2150.3A, Compliance and Enforcement Program, prescribes fixed penalties for violations involving concealment of a deadly or dangerous weapon which would be available in flight in air transportation. That Table prescribes a \$2,500 civil penalty when, as in this case, the weapon is loaded. There are no other mitigating or aggravating factors appropriate to consider, and this sanction amount is to be strictly adhered to. Id. Accordingly, in light of this strict enforcement policy, reduction of the penalty in this case based on the alleged forfeiture and destruction of the Respondent's weapon was improper, as was the law judge's offer of a potential additional reduction based on Respondent's publication of a letter in a newspaper. Furthermore, the Rules of Practice do not permit a law judge to condition the assessment of a civil penalty on the subsequent remedial conduct of a respondent (such as publication of letter in a newspaper), or to retain jurisdiction over the case after issuance of an initial decision. In the Matter of Degenhardt, FAA Order No. 90-20 (August 16, 1990), at 5-6.

THEREFORE, in light of the foregoing, the law judge's reduction in sanction is reversed.^{5/} A civil penalty in the amount of \$2,500 is hereby assessed.^{6/}



JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11th day of October, 1990.

5/ I have also considered whether any changes made in the Rules of Practice during the pendency of this case may have affected the result in this case, and have concluded that no change in the Rules is pertinent to this case. If Respondent believes that changes in the rules would have affected the outcome of this case, he may file a petition for reconsideration of this decision and order, pursuant to 14 C.F.R. §13.234. Such a petition for reconsideration must include a particularized showing of harm, citing the specific rule change (or changes) and its relevance to the challenged findings or conclusions. See, 55 Fed. Reg. 15110, 15125 (April 20, 1990). Although the filing of a petition for reconsideration does not normally stay the effectiveness of the Administrator's decision and order, under these circumstances, if Respondent files such a petition I will stay the effectiveness of this decision and order pending disposition of the petition.

6/ Unless Respondent files a petition for reconsideration within 30 days of service of this decision (as described in the footnote above), or a petition for judicial review within 60 days of service of this decision (pursuant to 49 U.S.C. App. §1486), this decision shall be considered an order assessing civil penalty. See, 55 Fed. Reg. 27574 and 27585 (July 3, 1990) (to be codified at 14 C.F.R. §§13.16(b)(4) and 13.233(j)(2)).