

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: 12/21/92

FAA Order No. 92-74

In the Matter of:)

MICHAEL EDWARD WENDT)

) Docket No. CP92GL0418
)
)

ORDER

Respondent Michael Edward Wendt has moved for a ruling on whether the FAA Administrator or the National Transportation Safety Board (NTSB) has jurisdiction over his appeal from the law judge's denial of attorney fees and other expenses under the Equal Access to Justice Act (EAJA).^{1/} This case arose under the Civil Penalty Demonstration Program.^{2/}

On March 3, 1988, Respondent, as pilot-in-command of Britt Airways Flight 724, crossed an active runway at Indianapolis International Airport contrary to air traffic control instructions. An action was initiated against him under the Civil Penalty Demonstration Program. A Department of Transportation (DOT) law judge found that Respondent violated the regulations alleged in the complaint, but the Administrator reversed. In the Matter of Wendt, FAA Order No. 92-40 (June 15, 1992).

As the prevailing party, Respondent filed an application for attorney fees and other expenses under the EAJA^{3/} and the FAA's implementing regulations^{4/} on August 28, 1992, claiming that the agency's position in the proceeding was not substantially justified. A DOT law judge denied Respondent's application on October 26, 1992. Respondent filed a notice of

^{1/} Respondent has filed his "Motion for Ruling on Which Tribunal Had [sic] Jurisdiction to Hear Appeal on Equal Access Petition" with both the Administrator and the NTSB.

^{2/} The Civil Penalty Demonstration Program was in effect from December 30, 1987, until August 1, 1992.

^{3/} 5 U.S.C. § 504.

^{4/} 14 C.F.R. Part 14.

appeal with both the Administrator and the NTSB three days later. Respondent now moves for a ruling on whether the Administrator or the NTSB has jurisdiction over his EAJA appeal. Respondent suggests that the status of this case is unclear due to the recent transfer of appellate jurisdiction over pilot cases from the Administrator to the NTSB.

Shortly after the lapse of the Demonstration Program on August 1, 1992, the FAA Civil Penalty Administrative Assessment Act of 1992, P.L. No. 102-345, 106 Stat. 923 [the 1992 Act], became law.^{5/} The 1992 Act made permanent the Administrator's authority to assess civil penalties not exceeding \$50,000 for violations of the Federal Aviation Act of 1958, as amended. Jurisdiction to decide appeals in cases involving pilots, flight engineers, mechanics, and repairmen was transferred under the 1992 Act from the Administrator to the NTSB.

Despite this transfer of appellate jurisdiction in pilot cases to the NTSB, the Administrator rather than the NTSB has jurisdiction over this case. The 1992 Act applies only to "violations occurring on or after the date of the enactment of the FAA Civil Penalty Administrative Assessment Act of 1992." 49 U.S.C. App. § 1471(a)(3)(F). Although the 1992 Act repealed the Civil Penalty Demonstration Program, it specifically provides that the Demonstration Program will continue in effect for violations occurring prior to the enactment of the 1992 Act. 49 U.S.C. App. § 1471(b), (c).

Respondent requests a briefing schedule from the tribunal that has jurisdiction over this case. Under the Rules of Practice, Respondent must perfect his appeal by filing an appeal brief with the FAA decisionmaker not later than 50 days after service of the written initial decision. 14 C.F.R. § 13.233(c). An additional 5 days is allotted Respondent because the initial decision was served by mail. 14 C.F.R. § 13.211(e). The initial decision was served on Respondent on October 26, 1992. Therefore, Respondent's appeal brief is due no later than December 21, 1992. The original and two copies of the brief should be filed with the Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk.


THOMAS C. RICHARDS, ADMINISTRATOR
Federal Aviation Administration

Issued this 17th day of December, 1992.

^{5/} The President signed the 1992 Act on August 26, 1992.