

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

HOWARD GOTBETTER

FAA Order No. 2000-17

Served: August 11, 2000

Docket No. CP98EA0051

DMS No. FAA-1998-4691¹

DECISION AND ORDER²

Respondent Howard Gotbetter (Gotbetter) has appealed Administrative Law Judge Burton S. Kolko's initial decision, which imposed a \$500 civil penalty after finding that Gotbetter violated 14 C.F.R. § 91.11³ by assaulting a flight attendant. Gotbetter's appeal is denied, and the law judge's initial decision is affirmed.⁴

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They can also be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 65 Fed. Reg. 47,557, 47,573-47,574 (August 2, 2000).

³ 14 C.F.R. § 91.11 (1997), entitled "Prohibition against interference with crewmembers," provides as follows: "No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated."

⁴ A copy of the law judge's initial decision is attached.

I. Facts

A. Complainant's Version

The following is Complainant's version of the facts.

On September 29, 1997, Gotbetter was a passenger aboard an American Airlines flight from San Francisco to New York. At the beginning of the flight, another passenger became ill, passed out, and fell to the floor. (Tr. 16.) Flight attendant Patricia Murray discovered him on the floor near the lavatory, administered first aid, and escorted him back to his seat. (Tr. 16-18.)

Later in the flight, the same passenger became ill again. As he approached the flight attendant, his eyes rolled back in his head, he lost consciousness, and he began to fall. (Tr. 23.) The flight attendant tried to hold him up with her right hand as she pushed the beverage cart out of the way with her right leg. (Tr. 24.) As he fell, he vomited on the flight attendant. (*Id.*) The passenger also fell on the flight attendant's right leg, taking her down with him, and the bridge of his nose hit the beverage cart, causing some bleeding. There was a small pool of vomit, and the flight attendant tried to lift the ill passenger's head so that he did not aspirate the vomit. She immediately called for help, and a doctor who happened to be on board came forward to examine the passenger. (Tr. 25.)

The ill passenger was helped into a prone position near the flight attendant's station in the business galley where she could monitor him more easily. He had a blood pressure cuff on his arm and an oxygen mask over his mouth. (Tr. 25, 26.)

As the aircraft approached its destination, the captain announced that there would be a delay in landing due to thunderstorms in the New York area. (Tr. 28, 108.)

Gotbetter and his traveling companion, Denise Katzman, became upset over the delay. (Tr. 28.) Although the seat belt sign was lit, the pair got out of their seats and approached the flight attendant, wedging her between them. (*Id.*) Katzman's face was "beet red" and she was screaming and cursing at the flight attendant. (Tr. 29.) Katzman accused the flight attendant of lying to the passengers about the reason for the delay. (Tr. 29.) She had her finger within millimeters of the flight attendant's nose. (Tr. 30, 32.) Then Gotbetter gripped the flight attendant's shoulder and shook her as he and Katzman yelled at her. (Tr. 32.) The flight attendant was sandwiched in between the two passengers, with Katzman screaming in her face and Gotbetter shaking her and yelling at her. (*Id.*) The flight attendant said to Gotbetter, "Sir, you need to remove your hand from my shoulder," but Gotbetter only tightened his grip. (Tr. 33.) The flight attendant closed her eyes because she feared he would hit her. (*Id.*) She said to Gotbetter again, "You need to remove your hand from my shoulder." He then removed his hand and tried to go past her, but she put up her hand to indicate that he should stop. She said, "I apologize for any inconvenience this weather delay may be causing you but the seat belt sign is on. It's for your safety and the safety of those around you. You need to be in your seat." (Tr. 33.) Gotbetter told her she "didn't know what the hell she was doing" and that she needed to find another career because "she sure as hell didn't know how to explain this one." (Tr. 33-34.) Then Katzman told the flight attendant to watch herself because Katzman was going to be watching her. (Tr. 34.) At this point, the flight attendant, concluding that Katzman and Gotbetter would not listen to her, gave up and returned to the galley. (*Id.*)

When the plane landed in New York, the Port Authority police, who had been summoned by the flight crew, arrested and handcuffed Gotbetter and Katzman and escorted them to the police station. The pair was placed in jail for several hours.

The flight attendant testified that Gotbetter injured her when he gripped her shoulder and that she was unable to work for 6 months.

B. Gotbetter's Version

Gotbetter's version of the facts is as follows.

Gotbetter, who is a lawyer and who has represented himself throughout these proceedings, was returning to New York City from a business trip. (Tr. 418.) To Gotbetter, the flight was uneventful until the last hour or so. (Tr. 420.) He wanted to talk to his traveling companion, Denise Katzman, who was not sitting with him. (*Id.*) There were two aisles on the plane. Gotbetter's seat was on the right aisle, halfway back in coach (Tr. 421), and Katzman's seat was on the left aisle in the back of the plane (Tr. 420). Gotbetter wanted to show Katzman a skiing magazine.

The "fasten seat belt" sign was not lit when he and Katzman got up to talk to each other. (Tr. 424.) The back of the plane was crowded with people waiting to use the lavatory, so Gotbetter went forward down the right aisle toward the business class galley to meet Katzman. (*Id.*) Gotbetter did not see any sick passengers lying in the aisle or any broken glass.

Katzman was moving forward in the left aisle, but when she got within 12 to 15 feet of the business class galley, the flight attendant sprang out at Katzman "like a bat out of hell all upset, very disturbed." (Tr. 421.) The flight attendant was screaming at Katzman, "Hot tray, hot tray," and was "totally out of control." (Tr. 422.)

Gotbetter cut through the business class galley to get to the left aisle. He did not see any blood or vomit on the floor. (Tr. 423.) He came up behind the flight attendant. The flight attendant "had her face in Katzman's face." (Tr. 424.) Gotbetter, holding the skiing magazine in his hand, went up behind the flight attendant and he said, "Cool it. What's happening?" (*Id.*) The flight attendant backed up a bit or tried to turn and backed into the ski magazine, and then she started to "jabber away." (*Id.*) Gotbetter testified he never cursed at the flight attendant, and that she never told him to take his hands off her because he never had his hands on her in the first place. He also denied that he derided her performance and suggested she seek other employment.

He returned to his seat because the captain announced he was turning the seat belt light on and began to doze. (Tr. 425.) He acknowledged that after he returned to his seat, one of the flight attendants gave him an "in-flight disturbance form," advising him that he may have violated the Federal Aviation Regulations. After that, he dozed off again, and the plane landed. (Tr. 427.) When Gotbetter left the plane, he and Katzman were handcuffed and taken to the police station. (Tr. 428.)

C. The Law Judge's Findings

The law judge held that Complainant proved that Gotbetter assaulted a crewmember in violation of 14 C.F.R. § 91.11, and he imposed a civil penalty of \$500. The law judge found that the flight attendant "was generally a credible witness," and he largely adopted her testimony. (Initial Decision at 3.) He found it difficult, however, to credit the flight attendant's insistence that the ill passenger's vomit did not bother her. Also, the law judge thought she could not have liked being knocked off her feet when the

ill passenger fainted, especially given her previous back problems.⁵ As a result, he found that these episodes undoubtedly affected her demeanor and attitude when she encountered Gotbetter and Katzman. (*Id.*)

The law judge found the testimony of both Katzman and Gotbetter “to be generally not worthy of belief,” for two reasons. (Initial Decision at 5.) First, he found the opposing testimony of the flight attendant to be “basically credible,” and he believed that the flight attendant, who seemed to him to be a reasonable person, had no reason to lie. The law judge rejected as “utterly unconvincing” Katzman’s explanation that the flight attendant lied because she did not like the way Katzman looked or sounded. Second, the law judge wrote, the flight attendant’s version was reinforced by the testimony of two passengers, Suzanne Minatti and Nancy Surdoval, who were disinterested observers with credible demeanors. Both passengers testified that the flight attendant handled herself calmly and professionally, and that Katzman was uttering profanities. One of the passengers (Surdoval) supported the flight attendant’s testimony that Gotbetter gripped her shoulder. The other passenger supported the flight attendant’s testimony that Gotbetter derided the flight attendant’s ability and suggested that she seek other employment. The law judge rejected Gotbetter’s argument that the flight attendant’s general credibility was suspect because she could not recall the addresses of her chiropractors or physical therapist. (Initial Decision at 6.)

⁵ At the beginning of a flight 6 years earlier, in March 1991, when the flight attendant was showing passengers how to use their oxygen masks, the airplane started to slide due to ice on the runway, and the captain slammed on the brakes. The flight attendant was thrown into a bulkhead wall and broke her back. (Tr. 179.)

The law judge held that Gotbetter's act of gripping the flight attendant's shoulder and then tightening his grip when she told him to remove his hand constituted an assault. He based this determination upon his finding that Gotbetter had engaged in a deliberate unwanted and offensive touching. As an alternative ground, he found that Gotbetter's action constituted an assault because it "generated a reasonable apprehension in [the flight attendant] that he would hit her." (Initial Decision at 7.)

The law judge, however, found that there was no proof, on this record, that Gotbetter's grip caused the flight attendant's injuries. (Initial Decision at 7.) He noted that her injuries might have resulted from the incident 6 years earlier in which the flight attendant's back was broken, or from when the ill passenger had fallen on her during the flight. The law judge noted, however, that proof of injury is unnecessary to show an assault.

The law judge rejected the agency's contentions that in addition to the assault, Gotbetter's actions also violated 14 C.F.R. § 91.11 by interfering with the flight attendant's performance of her duties with regard to the other passengers, particularly to the ill passenger. (Initial Decision at 7.) The law judge noted that the ill passenger was stabilized and Gotbetter's grip was brief, lasting only about 14 seconds. (*Id.*) Although the flight attendant testified that she had been unable to prepare her carts because of the incident, the law judge found that responsibility for the delay rested almost entirely with Katzman.

The law judge also rejected Complainant's attempts to show a violation of Section 91.11 other than through Gotbetter's gripping of the flight attendant. For example, the law judge said, the boxing in of the flight attendant while Katzman was

“spewing finger-pointing abuse” could not have occurred without Katzman. (Initial Decision at 8.) Furthermore, he held that while profanity could constitute a threat or intimidation, Complainant failed to prove that Gotbetter uttered any profanity other than “hell.” The law judge said that use of this term concerning the flight attendant’s job performance may have been rude and insulting, but did not constitute a threat or intimidation.

As for the sanction, the law judge imposed a \$500 civil penalty. The law judge reasoned that passengers must treat flight attendants with respect, as flight attendants have important safety responsibilities. Gotbetter’s conduct undermined the authority of the flight attendant and was therefore “intolerable.” (Initial Decision at 8.) On the other hand, the law judge said, Complainant failed to prove that: (1) Gotbetter caused the flight attendant’s injuries; (2) Gotbetter interfered with the flight attendant’s duties to the ill passenger or to the passengers in the business-class section; or (3) Gotbetter’s actions (other than gripping the flight attendant) constituted threatening or intimidating behavior under Section 91.11.

II. Gotbetter’s Arguments on Appeal

On appeal, Gotbetter’s principal arguments are as follows:

- A. The record does not support the finding of assault.
- B. The law judge was biased.
- C. The law judge unfairly penalized Gotbetter for the actions of Katzman.⁶

⁶ Any arguments not expressly addressed in this decision have been considered and rejected as unsubstantiated and not compelling.

III. Analysis

A. Does the Record Support the Finding of Assault?

1. Were the Agency's Witnesses Credible?

Gotbetter challenges the credibility of two of the agency's witnesses – the flight attendant and the FAA investigator. At the outset, it should be noted that a law judge's credibility findings will not be overturned lightly. In the Matter of Warbelow's Air Ventures, FAA Order No. 2000-3 at 12 (February 3, 2000). A law judge's credibility findings are entitled to deference because the law judge is able to observe the witnesses' demeanor at the hearing. In the Matter of Warbelow's Air Ventures, FAA Order No. 2000-14 at 3 (June 8, 2000) (denying reconsideration of FAA Order No. 2000-3).

The law judge expressly credited the flight attendant's version of events, with minor exceptions concerning whether she was bothered by being knocked down and vomited upon by the ill passenger. (Initial Decision at 3.) The law judge stated that her testimony was "basically credible." (*Id.* at 5.) In contrast, he found the testimony of both Gotbetter and Katzman to be "generally not worthy of belief." (*Id.*)

a. The Flight Attendant.

Gotbetter claims that the flight attendant was not credible because she gave the following differing accounts of Gotbetter's actions:

1. in a written statement, she wrote that Gotbetter "put his hands on me";
2. a police officer who testified about his conversation with the flight attendant immediately after the flight said that she explained that Gotbetter "grabbed her"; and
3. the police report completed at the station indicated that she said Gotbetter "grabbed her right shoulder."

The above-cited statements are not in conflict. To the extent they differ, it is only in their level of specificity. Gotbetter's claim that the statements raise doubts about the flight attendant's credibility is unpersuasive.

Gotbetter also points out that one passenger called by the agency (Minatti) testified that she did not see Gotbetter touch the flight attendant, while another passenger (Surdoval) testified that she never saw a sick passenger. Even if passenger Minatti did not see Gotbetter touch the flight attendant (although passenger Surdoval did), this does not prove that Gotbetter did not touch the flight attendant, especially in light of the great weight of evidence, which the law judge specifically credited, showing that he did. Similarly, even if passenger Surdoval never saw the sick passenger, it does not mean that there was no sick passenger aboard the flight.

b. **The FAA Investigator.**

Gotbetter argues that the FAA inspector who investigated his case and who testified at the hearing is a "liar." (Appeal Brief at 3.) Gotbetter points out that although the FAA investigator testified that he spoke to passenger Surdoval during his investigation and also recorded the content of his interview of her,⁷ Surdoval testified that she never spoke to him (Tr. 299). Gotbetter argues that the FAA investigator's testimony that the passenger simply may have forgotten that she spoke to him is incredible. (Appeal Brief at 3.)

Whether the investigator spoke to the passenger is irrelevant. Even assuming, for

⁷ See Exhibit A to Gotbetter's Post-Hearing Brief, which is a record of the investigator's interview of Surdoval.

the sake of argument, that the FAA investigator failed to speak to passenger Surdoval during his investigation, Gotbetter has failed to show that this would change the outcome of the case.

2. Did the Law Judge Find that Gotbetter Never Intimidated, Threatened, or Interfered with the Flight Attendant? If So, Does This Contradict the Finding of Assault Because the Requisite Intent Was Lacking?

Gotbetter argues that the requisite intent to assault was lacking because the law judge found that Gotbetter did not threaten, intimidate, or interfere with the flight attendant. The law judge, however, expressly found that Gotbetter assaulted the flight attendant when he deliberately gripped her shoulder, and when he subsequently tightened his grip in response to her request that he remove his hand. He also found that Gotbetter's gripping of the flight attendant's shoulder intimidated and frightened her, and that her fear of Gotbetter was reasonable under the circumstances. Unwanted touching constitutes assault under 14 C.F.R. § 91.11, as does inducing reasonable fear in another. In the Matter of Mayer, FAA Order No. 97-12 at 9 (February 20, 1997). Thus, the law judge did not err in finding that Gotbetter committed an assault on the flight attendant.

Gotbetter is correct that the law judge found that his unwanted touching of the flight attendant did not constitute an interference with her duties. The law judge reasoned that Gotbetter gripped her shoulder only for about 14 seconds and she was not engaged in important safety duties at the time.⁸ Nevertheless, Gotbetter still violated Section 91.11. To violate the regulation, a person need only commit one of the named, prohibited acts:

⁸ This decision does not address the issue of whether the law judge erred in finding that the assault did not also constitute an interference. It is unnecessary to address this issue because Complainant did not appeal the law judge's finding to this effect.

an assault, a threat, an intimidation, or an interference with the crewmember's duties.⁹ Thus, the law judge properly found that Gotbetter committed an assault, even if he also found that Gotbetter did not interfere with the flight attendant's duties.

As for the law judge's finding that Gotbetter neither threatened nor intimidated the flight attendant, it is clear in the context of the decision that the law judge meant that Gotbetter did not threaten or intimidate her *other than* when he gripped her shoulder. The law judge did not think that Gotbetter's *words* constituted a threat or intimidation, but by gripping her shoulder, Gotbetter caused the flight attendant to fear reasonably that he would hit her. Thus, Gotbetter's argument that he did not commit an assault is rejected because the law judge only found that Gotbetter did not orally threaten or intimidate the flight attendant.

B. Was the Law Judge Biased?

Gotbetter argues that the law judge was biased *against* him and *for* the agency, the agency's investigator, American Airlines, and the flight attendant. Gotbetter claims that the law judge is in essence "a puppet" of the FAA, which in turn is a puppet of the airlines. (Appeal Brief at 4.)

1. Alleged Bias in Favor of Complainant

Gotbetter claims, erroneously, that the law judge is an employee of the FAA. The United States Department of Transportation employs the law judge.

Gotbetter also contends that the law judge was improperly "cozy" with agency counsel because the law judge renewed his acquaintance with agency counsel after the

⁹ See the text of the regulation contained in note 3 above.

hearing and discussed agency counsel's new baby. Merely making small talk with counsel does not rise to the level of a showing of bias.

2. Alleged Bias in Favor of the FAA Investigator

Gotbetter claims that the law judge chose to believe the FAA investigator's testimony that he interviewed passenger Surdoval rather than Surdoval's testimony that she did not remember talking with the FAA investigator because the law judge wanted to protect the FAA investigator from possible criminal charges for filing false reports. Gotbetter, however, fails to provide any evidence to support his claim.

3. Alleged Bias in Favor of American Airlines

Gotbetter claims that the FAA is "a puppet" of the airlines, and that the law judge decided this case against him because the law judge wanted to give American Airlines (as well as the police of the Port Authority of New York and New Jersey), a defense to Gotbetter's civil suits against them.¹⁰ This unsubstantiated argument deserves no further attention.

C. Did the Law Judge Unfairly Penalize Gotbetter for Katzman's Actions?

Gotbetter argues that the law judge found against him because the law judge wanted to punish Gotbetter, through guilt by association, for the acts of passenger Katzman. (Appeal Brief at 4.) This argument is rejected.¹¹ The law judge specifically

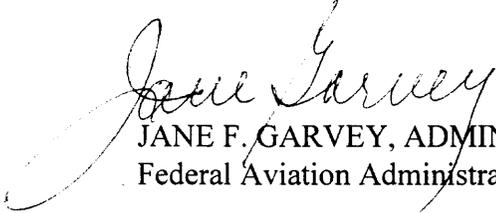
¹⁰ It is unlikely that the airlines would agree that the FAA is their puppet. Arguably, the enforcement actions the agency takes against the airlines refute his argument.

¹¹ Gotbetter sent the law judge a letter asking him to impose sanctions on Complainant's counsel under Rule 11 of the Federal Rules of Civil Procedure because Complainant's reply brief "is disgusting and creates the false impression that [Gotbetter] injured [the flight attendant] when you [the law judge] found the opposite."

held Gotbetter responsible for assault, but declined to hold Gotbetter responsible for Katzman's actions.¹²

IV. Conclusion

The law judge's decision is affirmed and a \$500 civil penalty is assessed.¹³


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11th day of August, 2000.

Rule 11 of the Federal Rules of Civil Procedure, which provides for monetary and other sanctions against counsel, does not apply in FAA Civil Penalty cases. Instead, the Rules of Practice contained in 14 C.F.R. Part 13, Subpart G, apply. Section 13.205(b) of the Rules of Practice provides that: "The administrative law judge shall not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart." Additionally, the Rules of Practice do not authorize the FAA Administrator to impose monetary sanctions against counsel. Even if the Administrator did have the power to impose sanctions on counsel, there is no reason to do so here. The entire record on appeal, including the law judge's initial decision, is reviewed before the Administrator issues the agency's final decision and order. Thus, the Administrator was not confused or misled by the challenged portion of Complainant's reply brief.

¹² In this regard, the law judge wrote: "[The flight attendant] also testified that she had been unable to set up her carts and bring them to her business-class passengers on account of the altercation. Responsibility for the delay, however, must rest almost entirely with Katzman; and she, of course, is not the respondent here. And other instances in which Complainant attempted to show threats or intimidation in violation of § 91.11 emanated either from Katzman or from Katzman and Gotbetter jointly. For instance, the conduct of these passengers in boxing in [the flight attendant] while Katzman was spewing finger-pointing abuse at [the flight attendant] could very well constitute § 91.11 intimidation, but it was a joint effort. It could not have occurred without Katzman." (Initial Decision at 8; citations omitted.)

¹³ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(2000.)