

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: RICHARD W. KUHLING

FAA Order No. 2003-3

Docket No. CP00GL0049
DMS No. FAA-2000-8122¹

Served: May 6, 2003

DECISION AND ORDER²

By written order issued on November 5, 2001,³ Administrative Law Judge Burton S. Kolko held that Richard W. Kuhling interfered with the performance of the duties of a flight attendant while he was a passenger on board a Northwest Airlines flight. The ALJ held that Kuhling violated 14 C.F.R. § 121.580 and assessed a \$250 civil penalty. Both Kuhling and Complainant have appealed from the ALJ's decision. After consideration of the issues on appeal, Kuhling's appeal is granted in part and denied in part. The ALJ's determination that Kuhling violated Section 121.580 is reversed.

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, as well as indexes of the decisions, the Rules of Practice in Civil Penalty Actions, and other information, may be accessed via the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. The decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available through LEXIS, Westlaw, and Compuserve. For additional information, see 66 Fed. Reg. 7532, 7549 (January 23, 2001) or the FAA Civil Penalty web site listed above.

³ A copy of the ALJ's written initial decision is attached. A hearing was held before Administrative Law Judge Kolko on August 20, 2001, in Seattle, Washington.

I.

In its second amended complaint,⁴ Complainant alleged that Kuhling, a passenger on Northwest Airlines Flight 612 on April 22, 1999, “interfered with a crewmember by impeding a serving cart while that crewmember was performing her normal duties.”⁵ As a result, Complainant alleged, Kuhling violated Section 121.580. Complainant sought a \$1,100 civil penalty for this alleged violation.

Section 121.580 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 under this part.

14 C.F.R. § 121.580.

As will be discussed further in this decision, the ALJ held that Kuhling violated Section 121.580 by addressing the flight attendant in a loud, angry manner, intimidating her and as a result, impeding the beverage service. (Initial Decision at 3.)

II.

On April 22, 1999, Kuhling traveled aboard Northwest Airlines Flight 612, from Spokane, Washington, to Minneapolis, Minnesota. Almost all of the 150 seats on board the Boeing 727 were full during that flight. There were four flight attendants on duty, including the lead flight attendant, Michelle Orsini, who was working in the first-class

⁴ Complainant filed the original complaint on October 10, 2000, and the first and second amended complaints on March 19, 2001, and June 11, 2001, respectively.

⁵ In the original and the first amended complaints, it was alleged that Kuhling “interfered with a crewmember by pushing that crewmember with a serving cart while that crewmember was performing her normal duties.”

section, and Lora Linn-Schmidt⁶ and Nancy Auld, who were working in the coach section. (Tr. 13, 91-94.)

Kuhling, an attorney in Spokane, was seated in Seat 19C on the aisle during this flight. (Tr. 14-15, 154.) His wife and daughter accompanied him. (Tr. 155-156.)

Kuhling is 6 feet, 6 inches tall. (Tr. 156.) As a result of a condition called chondromalacia, he experiences pain in his knees when they are motionless in a bent position for more than 15 to 20 minutes. (Tr. 156.) Due to his height, and the fact that the seat in front of him was slightly reclined, his knees were hitting the seat in front of him prior to the meal service. (Tr. 158.) He usually sits in the aisle seat so that he can put one foot in the aisle. (Tr. 158.)

Three flight attendants handled the meal and beverage service in the coach section during that flight. First, the galley flight attendant went down the aisle, walking backwards and pulling the meal cart from the front toward the rear of the aircraft. Next, Nancy Auld pulled a beverage cart down the aisle. Auld, standing between the meal cart and her beverage cart, was in the "pivot" or "swivel" position. When she faced the rear of the aircraft, she could work from the meal cart, and when she faced the front of the aircraft, she could serve from the beverage cart. Last, Lora Linn-Schmidt, facing the rear of the aircraft, pushed another beverage cart down the aisle. (Tr. 15-16, 72-74.)

Linn-Schmidt testified that when she was at Row 18 during the service, she tried to push her beverage cart, but felt a "restraint" or "restriction" on the cart. Assuming that someone's bag or foot was in the aisle, she pulled the cart toward her and then tried again to push it forward. Once again, she felt something blocking the cart, and simultaneously,

⁶ At the time of this incident, Linn-Schmidt was single and used her maiden name, Lora Linn.

the passenger in Seat 19C – Kuhling⁷ --yelled at her not to move forward until the other flight attendant moved her cart away. (Tr. 17, 19.)⁸ Mary Margaret Hilson, the passenger in Seat 18D, testified that Kuhling "raised his voice," upsetting one of her children and frightening the other. (Tr. 115-116.) Linn-Schmidt did not see what blocked her cart. (Tr. 46, 49.)⁹

Then, according to Linn-Schmidt's testimony, she saw Kuhling push Auld's beverage cart aft until it hit Auld. (Tr. 19, 20.) Auld testified that she had been bending down to get some meals out of the meal cart when her beverage cart hit her back. Auld testified that she did not see what had caused her beverage cart to move and that the beverage cart's brake had been on. (Tr. 76, 89.)

Linn-Schmidt explained that she was caught "off guard" by Kuhling's demand.¹⁰ Linn-Schmidt testified that she replied, "Excuse me? I think everyone else around you would really like something to drink." (Tr. 20.) She said that she felt intimidated and threatened by him and decided to stay away from him. (Tr. 47-48.) As a result, she served the passengers in Row 19 from her position in the aisle at Row 18, by bending over the passengers in Row 18. (Tr. 21.) When she did move her cart, she deliberately did not stop next to Kuhling because she was afraid of him. She testified that she waited to move her cart until Auld pulled hers further aft, and then Linn-Schmidt moved her cart

⁷ Linn-Schmidt did not know Kuhling's name when this incident occurred. (Tr. 96.)

⁸ Linn-Schmidt testified that the brake was not on when she tried to push the cart and felt the restriction. (Tr. 20.)

⁹ On cross-examination, she acknowledged that she did not see Kuhling block her beverage cart with either his foot or hand. She stated that due to the size of her beverage cart, she was unable to see anything blocking it. (Tr. 46.)

¹⁰ Linn-Schmidt insisted that Kuhling *demanded* that she remain at Row 18. (Tr. 42-43.)

at least two rows past Kuhling. (Tr. 21.) According to Linn-Schmidt, the meal service was disrupted. (Tr. 21.)

Linn-Schmidt also testified that she injured her lower back during the flight. (Tr. 41.) She explained that about 10 to 15 minutes after the incident with Kuhling, when she reached the rear of the aircraft, she released her beverage cart and immediately felt a tightening in her lower back. (Tr. 24, 41, 58.) Then during the trash collection, she lifted a bag of trash, and the tightening worsened. (Tr. 24.) Within about 30 minutes, she testified, she was unable to sit in her jump seat in the aft of the aircraft or to move at all. She had to be removed from the aircraft in an apparatus called the "straight back." (Tr. 31.)

Michelle Orsini later asked Kuhling for his name, but he would only provide his first name. Orsini testified that Kuhling explained to her that he could not have the carts near him because he is claustrophobic. (Tr. 99.)

Kuhling testified that when either the first or the second cart went by him, its saddle bag hit his shoulder, but did not hurt him. When the flight attendant parked the cart near him, he had to put both feet in front of him and lean against his wife, who was seated next to him. (Tr. 159-160.) He started to experience pain in his knees because he had to pull his legs out of the aisle and squeeze them in front of himself. (Tr. 165.)

Kuhling testified that when he later saw Linn-Schmidt's beverage cart coming toward him, he was concerned that she would park it next to him, forcing him again into an uncomfortable, cramped position. (Tr. 161, 165.) He remembered that the captain had announced over the loudspeaker that the passengers should inform the crew if there was anything that they could do to make the flight more comfortable. Kuhling testified

that with the pilot's words in mind, he asked Linn-Schmidt to please hold her cart until the other cart had moved away from him. (Tr. 161.) He testified that she explained to him that she had to serve the passengers, and he replied, speaking somewhat louder, "Please hold that one there until this one gets out of the way." (Tr. 162.) He testified that he later, in a still louder and firmer voice, repeated his request that she hold her cart where it was (at Row 18) until the other cart moved. (Tr. 162.) Kuhling denied yelling at Linn-Schmidt. (Tr. 162.)

Kuhling testified that he did not stick his foot out or use his hand to stop Linn-Schmidt's cart. (Tr. 164.) He denied pushing or pulling any of the carts. (Tr. 172.) Kuhling testified regarding Linn-Schmidt's cart:

I never pushed it. I never pulled it. I never impeded it. I never stopped it. I never put any force on it. If my hand or my fingers touched it -- I don't know. But I absolutely never pushed anything.

(Tr. 185.)

According to Kuhling's testimony, Orsini misunderstood his explanation for why he did not want the cart stopped next to him. He explained that he said that it was claustrophobic when the cart was parked next to him. He did not mean that he was claustrophobic, but instead that it was confining or tight when a cart was in the aisle next to his seat. (Tr. 182.)

III.

In his written initial decision, the ALJ concluded that Kuhling interfered with the performance of Linn-Schmidt's duties in violation of Section 121.580. (Initial Decision at 1, 4.) The ALJ wrote:

It is Ms. Linn-Schmidt's version of events which I have largely adopted. I found her testimony sincere and trustworthy. And its credibility was strengthened

by its support in key areas by the testimony of others. Mr. Kuhling's testimony, on the other hand, was adversely affected by its self-serving nature.

Linn-Schmidt's description of Respondent's tone and mood as he spoke to her was credible. It was believable firstly because it seemed to have such a stunning effect on her. The impact of the encounter suggests that she remembers it accurately. The trustworthiness of her account, further, was reinforced by the testimony of three witnesses (including Linn-Schmidt herself) that Mr. Kuhling was already ill-tempered when she approached his row. Additionally, passenger Margaret Hilson, seated one row forward and across the aisle from Respondent confirmed that he had raised his voice during the beverage service. She heard him angrily "ask" the flight attendant not to park her cart next to his seat (Tr. 115). He had "insisted," Hilson said, that Linn-Schmidt not stop her cart there (Tr. 117). As a disinterested witness, without a stake in the outcome, I find Hilson's testimony credible and important. It bears out my conclusion concerning his tone in the exchange with Ms. Linn-Schmidt. Finally, Kuhling's push of Ms. Auld's cart [the second cart down the aisle] into her ... -- while not directly tied to the violation for which he was cited, did underscore the testimony citing his anger and aggressive conduct.

I conclude that Respondent spoke to Ms. Linn-Schmidt in a loud, angry voice -- a voice whose nature intimidated her to the point where she could not continue her service properly. Mr. Kuhling impeded the flight attendant's service through his demeanor and tone of voice (*see* Tr. 69, 152). It is on that basis that I conclude that Respondent interfered with Ms. Linn-Schmidt's duties in violation of § 121.580 (*see* Tr. 230).

(Initial Decision at 3-4.)

The ALJ held that it was not necessary for him to resolve the issue of whether Kuhling actually pushed or was able to push Linn-Schmidt's beverage cart, which was the third cart to come down the aisle . As a result, he wrote, he would not decide that issue.

(Initial Decision at 4.) He also made no findings regarding Linn-Schmidt's lower back injury because no such allegation was pled in the complaint. (Initial Decision at 4, n.2.)

Regarding sanction, the ALJ assessed a civil penalty of \$250 against Kuhling. (Complainant had sought a \$1,100 civil penalty.) On the one hand, the ALJ explained, a \$250 civil penalty would suffice to deter Kuhling and others in the future from interfering with flight crewmembers in the performance of their duties. He noted that Kuhling's

behavior could have compromised aircraft safety because interference with flight crewmembers undermines their ability to carry out their safety functions. (Initial Decision at 4.) He noted, on the other hand, that only a relatively modest civil penalty was appropriate because Kuhling 1) was uncomfortable in the cramped space due to his height and medical condition; 2) had been bumped by one of the carts, and 3) had to lean over when the first two carts passed his row. The ALJ wrote that while these mitigating factors do not excuse Kuhling's behavior, they do help to explain his irritability. He also distinguished this case from previous cases involving flight crewmember interference by a passenger because in this case, there was no finding of touching, grabbing, striking, drinking, smoking or vulgar or profane language. (Initial Decision at 5.)

IV

Kuhling presents a wide range of arguments on appeal. Kuhling contends that the ALJ's assessment of a civil penalty should be held as void *ab initio* because the ALJ issued his written initial decision 47 days late under 14 C.F.R. § 13.232(c). Kuhling also challenges the validity of 14 C.F.R. § 121.580, arguing that the regulation is impermissibly vague as applied to Kuhling's actions. In addition, Kuhling argues that the ALJ's factual findings are not supported by the preponderance of the evidence and that his legal conclusions are erroneous.

Kuhling's arguments are addressed one at a time below. Most of his arguments are rejected. However, due to the compelling nature of two of his arguments -- that a passenger's tone of voice could not impede a beverage cart and that at most, Kuhling's loud and angry demand only caused a minimal interference with Linn-Schmidt's duties -- the ALJ's finding of a violation of Section 121.580 is reversed. Although Kuhling should

not have addressed the flight attendant in the manner that he did, Kuhling's action did not amount to a violation and no civil penalty is assessed.

1. Kuhling argues that the initial decision is void *ab initio* because it was issued late. The hearing, at which the parties presented closing arguments, was held on August 20, 2001. The ALJ issued his written initial decision 77 days later on November 5, 2001. Section 13.232(c) provides that the ALJ "may issue a written initial decision not later than 30 days after the conclusion of the hearing" 14 C.F.R. § 13.232(c). The initial decision, therefore, was 47 days late.

The Administrator has refused to dismiss previous cases in which an ALJ issued the written initial decision more than 30 days after the conclusion of the hearing. In the Matter of Horner, FAA Order No. 2000-19 (August 11, 2000); In the Matter of Sanford, FAA Order No. 1997-31 (October 8, 1997). In In the Matter of Sanford, the Administrator cited McCarthy v. FAA & NTSB, 954 F.2d 1147, 1152 (6th Cir. 1992), in which the court held that an official who does not meet a statutory time limit retains jurisdiction regardless of the lateness of his action unless the statute expressly establishes loss of jurisdiction as a consequence for failing to meet the deadline. The Administrator noted that it was reasonable to apply this rule when an ALJ misses the deadline set forth in 14 C.F.R. § 13.232. In the Matter of Sanford, FAA Order No. 1997-31 at 8. Section 13.232(c) does not expressly specify a particular consequence if an ALJ takes more than 30 days to issue a written initial decision. Also, neither party filed a motion to compel the issuance of the decision, and Kuhling has not demonstrated any prejudice caused by the delay. The initial decision in this case, therefore, is not void *ab initio*.

2. On appeal, Kuhling argues that the ALJ's factual finding that he addressed Linn-Schmidt in a hostile voice is based upon an erroneous credibility determination. Kuhling argues that the ALJ should not have found Linn-Schmidt's testimony to be credible because Linn-Schmidt's testimony differed from the written incident report that she prepared in flight. Linn-Schmidt wrote in her report that Kuhling pushed the beverage cart against her twice and that by the time that she reached the galley, her back pain was unbearable. (Complainant's Exhibit 1.) She testified at the hearing, in contrast, that she did not know what had restrained her cart, did not see Kuhling touch her cart, and did not start to experience any back pain until after she completed the service.

Despite the differences in Linn-Schmidt's incident report and her testimony at the hearing, there is no need to reverse the ALJ's credibility findings. An ALJ's credibility findings will not be overturned lightly on appeal. In the Matter of Warbelow's Air Ventures, FAA Order No. 2000-3 at 12 (February 3, 2000). An ALJ's credibility findings are entitled to deference because the ALJ is able to observe the witness's demeanor at a 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 ALJ did not make a finding regarding the issue on which Linn-Schmidt appears to have reversed herself, *i.e.*, whether Kuhling pushed her beverage cart (the third cart), but instead found credible her description of Kuhling's mood and tone when addressing her during the beverage service. (Initial Decision at 3.) Moreover, a disinterested witness, Margaret Hilson, whose testimony the ALJ found credible, confirmed Linn-Schmidt's testimony regarding the manner in which Kuhling addressed the flight attendant. (Initial Decision at 3; *see* Tr. 115-116.)

Kuhling challenged some of the other factors that influenced the ALJ's credibility assessment in favor of Linn-Schmidt, including the self-serving nature of Kuhling's testimony. Kuhling argues that "self-serving testimony is credible if true, reasonable, and corroborated" and that "[p]resumably, a [r]espondent's version of events will have some 'self-serving' component." (Appeal Brief at 31.) A respondent's testimony cannot, as a general rule, be disregarded simply because of its inherently self-serving nature. Nonetheless, while Kuhling's argument in this regard may be correct, it does not advance his cause because unlike Linn-Schmidt's testimony about his angry tone, which was corroborated by a disinterested witness (Hilson), Kuhling's version was uncorroborated.

Kuhling argues that the preponderance of the evidence does not support the ALJ's conclusion that Kuhling was ill-tempered *as early as pre-boarding*. The ALJ wrote on page 2 of his initial decision: "[A]s early as pre-boarding, the evidence showed, Respondent was not in an agreeable or relaxed mood." On page 3 of the decision, the ALJ wrote: "The trustworthiness of her [Linn-Schmidt's] account, further, was reinforced by the testimony of three witnesses (including Linn-Schmidt herself) that Mr. Kuhling was already ill-tempered *when she approached his row.*"

The evidence indicating that Kuhling appeared upset prior to boarding was rather weak. FAA Inspector Holly Van Zandt testified that as part of her investigation, she had a telephone conversation with Margaret Hilson, who stated that she had noticed Kuhling prior to boarding and that he seemed "agitated." (Tr. 140.) At the hearing, however, Hilson testified that she did not notice Kuhling until he raised his voice to the flight attendant during the flight. (Tr. 115.) Linn-Schmidt and Auld testified only about how Kuhling appeared to them during the flight. Linn-Schmidt testified that when she dealt

with Kuhling during the meal service, he appeared “tense,” agitated and “very irritated.” (Tr. 59.) She said that “his fists were clenched into his lap.” (*Id.*) Auld testified that Kuhling looked “strange,” “jumpy,” “uncomfortable,” and “a little bizarre, weird,” but did not recall whether she had made this observation during the meal service or prior to the service when she was walking through the cabin performing a cabin check. (Tr. 77.)

In any event, Kuhling’s appearance – whether prior to boarding or in-flight – is consistent with the ALJ’s finding that Kuhling spoke to Linn-Schmidt in a loud, angry voice as she was about to move her cart to his row. This is not to say that Kuhling’s appearance was unreasonable, considering how uncomfortable he was in such a cramped environment, or that his agitated appearance compels a finding that he addressed the flight attendant in a loud, angry voice. The testimony about his agitation was only one factor that tends to confirm Linn-Schmidt’s description of Kuhling’s tone and mood. (Initial Decision at 3.)

Kuhling also challenges the ALJ’s determination that an agitated Kuhling pushed Auld’s beverage cart into her, and that this incident confirms Linn-Schmidt’s description of his anger and irritability when addressing her. Auld was in the “pivot” position, pulling the second cart down the aisle and working from both the first cart, the meal cart, and her own cart. Kuhling argues that it would have been impossible for him to turn around and push the 100-pound cart into Auld because the cart’s brake was on and he never got out of his seat or even removed his seatbelt. He argues further that there is no independent, corroborated evidence in the transcript that he pushed the cart into Auld. (Appeal Brief at 37-38).

As Kuhling points out, Linn-Schmidt was the only witness who testified that she saw Kuhling push Auld's beverage cart.¹¹ Auld testified that although the brake was on, the cart bumped into her while she was bending over. She testified that she stood up and turned around to find out what had happened but did not see what had caused her cart to move. (Tr. 76.)

The ALJ's finding that Kuhling pushed the second cart into Auld will not be reversed. Although Linn-Schmidt could not see over her own cart (the third cart) to see what had restrained it, there is no reason that she could not see Kuhling push Auld's cart, which was about 4 feet further down the aisle from Linn-Schmidt. (Tr. 19.) Also, Holly Van Zandt, an FAA cabin safety inspector, testified that the cart could be pushed from the back even though the brake in the front of the cart was on. (Tr. 134.)¹²

Consequently, Kuhling's argument that he did not push Auld's beverage cart is rejected, and the ALJ's finding that Linn-Schmidt was a credible witness will not be disturbed.

3. Complainant alleged that Kuhling "interfered with a crewmember by impeding a serving cart while that crewmember was performing her normal duties." The clear import of this allegation is that Kuhling impeded the third cart pushed by Linn-Schmidt.

¹¹ Linn-Schmidt testified:

Well, after he said, "You will not move your cart forward until the other girl does;" he, in a very irritated, agitated manner, put his hand on the back of the beverage cart in front of me and pushed it as far as – at arm's length away from him as he could until it hit the girl in front of me – Nancy – to the point that it hit her. And she stood up abruptly to see what was happening.

(Tr. 19.)

¹² Van Zandt testified:

The beverage carts ... have a braking system which is on one side of the cart, which would be the side of the cart where the flight attendant is standing. ... When the flight attendant engages the brake, on that side of the cart, it normally stops movement of the cart – of the flight attendant pushing the cart – so they can actually get something out. However, you can push the cart from the other side.

(Tr. 134.)

The ALJ made no finding regarding whether Kuhling physically blocked or pushed Linn-Schmidt's beverage cart in any way. Kuhling argues on appeal that "a person cannot impede a physical object with his voice – a measure of physical contact is necessary." (Appeal Brief at 41.) Moreover, he argues, he did not interfere with the performance of Linn-Schmidt's duties because all the passengers were served. (Appeal Brief at 42.)

It was alleged in the second amended complaint that Kuhling "interfered with a crewmember by *impeding a serving cart....*" (Emphasis added.) While a flight attendant could be intimidated by a passenger who addressed her in a loud, angry voice, a beverage cart, unlike a flight attendant, is incapable of fear or apprehension, and therefore could not be impeded by a voice alone. Kuhling, therefore, argues correctly that it was impossible for him to impede the serving cart itself with only his voice,¹³ and consequently, Complainant did not prove the allegation. While this decision is not meant to condone the angry tone that Kuhling used when addressing Linn-Schmidt¹⁴ or to imply that Kuhling might not have assaulted or intimidated Linn-Schmidt, Complainant did not allege assault or intimidation of the flight attendant but rather that Kuhling "impeded" the

¹³ In Complainant's reply brief, he argues that, in essence, an object can react to a voice and thus can be impeded by it. Complainant wrote:

Appellant is simply wrong when he asserts that one cannot impede a physical object with his voice. In this case, the Appellant's voice and deeds were the bases for the hindrance. Here is an everyday example of a physical object being impeded by a voice. How about a traffic cop raising or waving his hand and using his voice at a busy intersection during rush hour in downtown Washington, D.C. In a criminal context, to follow the Appellant's logic, one could not have an assault without a battery.

Complainant's Reply Brief at 11. Complainant's logic is flawed. The drivers, not the cars, react to the traffic cop's shouted instructions (and gestures). Likewise, people, not objects, are placed in fear of an unwanted touching and are thus the victims of assault.

¹⁴ Loud expressions of hostility toward crewmembers are inconsistent with the calm atmosphere necessary to maintain a safe environment on an aircraft flying thousands of feet above the earth, especially when the cabin is tightly packed with passengers.

cart. Complainant is bound by the language of the complaint. In the Matter of Webb, FAA Order No. 1990-10 at 5-6 (March 19, 1990).

Moreover, Complainant did not prove that Kuhling's interaction with Linn-Schmidt resulted in anything more than a minor interference with her duties. Linn-Schmidt testified that she felt afraid of Kuhling and decided to stay away from him. Consequently, she served the occupants of Row 19 by bending over Row 18.¹⁵ She also delayed moving her cart forward until Auld moved her cart. This interference – the awkward way in which Linn-Schmidt served Row 19's passengers and the time that she waited to move her cart – was too insignificant to constitute a violation of Section 121.580. In the Matter of Dorfman, FAA Order No. 1999-16 at 15 (December 22, 1999).

4. Kuhling argues that the phrase "interfering with the duties of a crewmember" in 14 C.F.R. § 121.580, as it was applied in this case, is so vague that he was denied due process under the Fourteenth Amendment. Due to the reversal of the ALJ's finding that Kuhling violated Section 121.580, there is no reason to address this issue.

V.

Complainant's appeal is limited to the issue of sanction, arguing that the \$250 civil penalty assessed by the ALJ is inappropriate and urging the Administrator to impose a \$1,100 civil penalty as sought in the complaint. No civil penalty, however, is assessed because it is found in this decision that Kuhling did not violate Section 121.580.

¹⁵ Complainant did not allege or prove that Kuhling was responsible for Linn-Schmidt's back injury, and as a result, for Linn-Schmidt's inability later in the flight to attend to her duties due to that injury.

VI.

In conclusion, Kuhling's appeal is granted in part, and rejected in part. It is held that Complainant failed to prove its allegation in the second amended complaint that Kuhling violated Section 121.580. In light of this finding, there is no need to address Complainant's appeal. The initial decision is reversed as explained in this decision.



MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 2nd day of February, 2003.