

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: HILLARD ABROMS

FAA Order No. 2008-2

Docket No. CP05GL0010
FDMS No. FAA-2005-21939¹

Served: January 28, 2008

DECISION AND ORDER²

Respondent Hillard Abroms (Abroms) has appealed the decision of Administrative Law Judge (ALJ) Isaac D. Benkin. The ALJ found that Abroms violated the Federal Aviation Regulations by: (1) improperly operating a Portable Electronic Device (PED) on an air carrier flight³; and (2) interfering with crewmembers in the

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: www.regulations.gov. For additional information, see <http://dms.dot.gov>.

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

³ 14 C.F.R. § 121.306, entitled, "Portable electronic devices," provides:

- (a) Except as provided in paragraph (b) of this section, no person may operate ... any portable electronic device on any U.S.-civil registered civil aircraft operating under this part.
- (b) Paragraph (a) of this section does not apply to –
 - (1) Portable voice recorders;
 - (2) Hearing aids;
 - (3) Heart pacemakers;
 - (4) Electric shavers; or
 - (5) Any other portable electronic device that the part 119 [entitled, "Certification: Air Carriers and Commercial Operators"] certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.
- (c) The determination required by paragraph (b)(5) of this section shall be made by that

performance of their duties.⁴ The FAA had requested the maximum civil penalty of \$1,100 for the two violations for a total of \$2,200, but the ALJ assessed Abroms a civil penalty of \$750 per violation, for a total of \$1,500 for the two violations.⁵

Abroms has appealed the ALJ's finding of violations and the sanction amount. The FAA has not appealed the sanction amount.

This decision finds that the ALJ correctly determined that Abroms operated a PED improperly and interfered with crewmembers in the performance of their duties. It also affirms the \$1,500 civil penalty assessed by the ALJ.

I. Facts

On June 1, 2004, Southwest Airlines (Southwest) operated Flight 2719 from Tampa, Florida, to Columbus, Ohio. (Tr. 34, 259.) Abroms and his wife were on board. (Tr. 258; Exhibit C-19.)

Abroms had a hand-held PED that was a cell phone combined with a Personal Digital Assistant (PDA). (Tr. 59-62.) A PDA "is used especially for storing and organizing personal information (as addresses, schedule, and notes)." MERRIAM-WEBSTER ONLINE DICTIONARY, www.m-w.com.

A PED may not be used under 14 C.F.R. § 121.306(b),⁶ with limited exceptions, unless the air carrier has determined that the PED will not interfere with the aircraft's

part 119 certificate holder operating the particular device to be used.

⁴ 14 C.F.R. § 121.580, entitled "Prohibition on interference with crewmembers, provides: "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."

⁵ A copy of the ALJ's order is attached. (The ALJ's order is not attached to the electronic versions of this decision and is not included on the FAA Web site.)

⁶ See note 3 above.

communication and navigation system. Southwest flight attendants testified that Southwest's rule was that if any part of a device was a cell phone, it was considered a cell phone. (*See, e.g.*, Tr. 217.) The air carrier's stance was that cell phones interfere with the cockpit equipment, so cell phones had to be off and stowed from the time the forward-entry door was closed until after the flight attendant's announcement after landing. (Tr. 43; Exhibit C-2e; C-3a.) Southwest did not permit the operation of cell phones in "airplane mode" or "phone off mode." (Tr. 216.) Southwest's policy was that if the display was lit, regardless of whether the cell phone was off or in airplane mode, the cell phone was considered on. (Tr. 62.)

Abroms had determined for himself that he could use the PDA portion of his device (Tr. 289, 292-93), because, as he argues in his appeal brief at page 8, Southwest's written guidelines stated that PDAs could be used during the cruise portion of the flight. He turned off the cell phone before he boarded (Tr. 265-66), but during the cruise portion of the flight, he started using the PDA portion of the device to play solitaire (Tr. 267).

Two flight attendants asked Abroms at different times to turn off his PED, but Abroms was combative and refused angrily. (Tr. 58.) He insisted that both a Southwest representative on the ground and one of the two flight attendants had said previously that he could use the PDA. (Tr. 60, 217.)

One of the flight attendants advised the lead flight attendant that Abroms was refusing to turn off his cell phone and was irate. (Tr. 58.) The lead flight attendant said that he would handle it. (Tr. 106.) He approached Abroms, who was typing into his PED. (Tr. 60.) The lead flight attendant told Abroms that his cell phone needed to be off completely because (as he had been trained) it interfered with the cockpit equipment.

(*Id.*) Abroms immediately became combative, irate, and started yelling. (Tr. 60.)

Abroms insisted repeatedly that the cell phone was off and that he could still use the PDA. (Tr. 269.)

Abroms tried to show the lead flight attendant that the device was in airplane mode and the phone was off. (Tr. 275.) The lead flight attendant did not even look to see if the cell phone was in airplane mode because Southwest did not recognize airplane mode. (Tr. 62.)

Abroms screamed at the lead flight attendant. (Tr. 169.) He tried to rise from his seat, in a manner that one passenger called violent, as he shoved the phone in the lead flight attendant's face, in an apparent attempt to show that the cell phone was in airplane mode. (Tr. 110, 169.) Abroms' device was in one hand and his other hand was in a fist. (Tr. 192.) Ultimately, however, he stayed in his seat. (Tr. 192-93.)

Witnesses variously described Abroms as agitated and belligerent, demeaning, and arrogant in his interactions with the flight attendants. (Tr. 168-69; Exhibit C-8, C-11.) Abroms challenged the lead flight attendant's authority, asking, "You're in charge of this aircraft? You're the captain?" (Tr. 168.)

The lead flight attendant testified that he tapped his finger on Abroms' shoulder as he knelt down beside Abroms. (Tr. 94, 128.) In contrast, Abroms testified that the lead flight attendant assaulted him by poking him energetically and repeatedly in the chest. (Tr. 270.)

The lead flight attendant told Abroms that if he did not listen to him, he would have to tell the captain and the authorities would remove Abroms from the flight in Columbus, Ohio, which was Abroms' final destination. (Tr. 64, 238, 259.)

As the lead flight attendant was walking away, Abroms screamed, “I’m going to have your job.” (Tr. 64.) The lead flight attendant turned back and said, “You can have my job.” (Tr. 172.) Abroms later closed the cell phone’s lid. (Tr. 79, 278, 285.)

The lead flight attendant used the intercom phone to call the captain, who said that he would have the authorities meet the aircraft in Columbus. (Tr. 68, 70.) The captain told the lead flight attendant to prepare the cabin for final descent. (Tr. 72.)

The lead flight attendant was visibly “shocked,” “dumbfounded,” and “upset” by the confrontation with Abroms. (Tr. 170-71.) Several passengers provided him and the other flight attendants with their contact information in case the flight attendants needed supporting testimony or the like. (Tr. 80.) The passengers thanked the flight attendants for handling the situation professionally. (*Id.*)

The aircraft landed. (Tr. 84.) Two police officers escorted Abroms from the airplane. (Tr. 177, 285.) The police interviewed him and then allowed him to leave after advising him that the police would write a report and might take further action. (Exhibit C-11.) The reporting police officer wrote that many disembarking passengers “spoke very highly” of the lead flight attendant’s actions and that two passengers said that they would give testimony supportive of the lead flight attendant. (*Id.*)

II. The Initial Decision

The ALJ held that the flight attendants were correct to tell Abroms to stop using his PED, given Southwest’s policy that if the device could be used as a cell phone, then it must be off after the doors are closed and until after landing, and given Southwest’s decision not to recognize airplane mode. (Initial Decision at 7-8.) The ALJ did not believe Abroms’ testimony that a flight attendant told him that he could use his device,

noting that both the flight attendant himself and a passenger contradicted Abroms' testimony. (Initial Decision at 9.) The ALJ also did not accept Abroms' claim that he acted reasonably. (*Id.*) Instead, he credited the accounts of the passengers, stating that they had no motive to lie. (*Id.*)

The ALJ found that the lead flight attendant acted professionally and did not assault Abroms. (*Id.*) He further found that the lead flight attendant touched Abroms' shoulder only to calm him, and that he was justified in doing so because Abroms' behavior was "disruptive and potentially dangerous." (*Id.*)

The ALJ found no excuse for Abroms' behavior. (*Id.*) He rejected as disingenuous Abroms' contention that he could not turn off the device because he would lose all his data. (*Id.*) According to the ALJ, Abroms knew that the flight attendants wanted him to stow the device so that its lit screen would not show and its cell phone would not be available immediately. (*Id.*) The ALJ held that Abroms' refusal to stow his device, despite numerous requests, violated 14 C.F.R. § 121.306(a)'s proscription against using PEDs improperly. (Initial Decision at 10.)

As for whether Abroms violated 14 C.F.R. § 121.580 by interfering with the crewmembers, the ALJ found that Abroms orally abused the lead flight attendant, causing him, understandably, to become shaken. (*Id.*) According to the ALJ, Abroms did not try to follow instructions, and "[a] substantial amount of time passed, and a great deal of unacceptable behavior on his part intervened between the time he was first instructed to put away his PDA and his actual compliance with that instruction." (Initial Decision at 11-12.) Abroms was "loud, combative, insulting, and abusive" to a flight attendant who simply was trying to do his job, the ALJ wrote. (Initial Decision at 12.)

Regarding the sanction, the ALJ found that a maximum civil penalty -- \$1,100 for each of the two violations -- was unwarranted. (*Id.*) Abroms' conduct was "outrageous and disrespectful," and as an attorney with some 33 years of experience, Abroms should have known better than to argue with the flight attendants. (*Id.*) At the same time, the ALJ pointed out, Abroms did not assault or physically interfere with any flight attendant. The evidence did not show that Abroms' activities compromised the ultimate safety of the flight. (Initial Decision at 12-13.) Under the circumstances, the ALJ concluded that \$750 per violation sufficed, for a total civil penalty of \$1,500. (Initial Decision at 13.)

III. Analysis

A. Improperly Operating a PED

The complaint alleged that Abroms violated 14 C.F.R. § 121.306, which, in pertinent part, prohibits persons from operating PEDs unless the air carrier has determined that the device will not interfere with the aircraft's navigation or communication system.

Southwest published its written guidelines regarding PEDs in its in-flight magazine (Exhibit C-3a) and in its flight attendant manual (Exhibit C-2). Abroms argues that one Southwest guideline permitted passengers to use PDAs during the cruise phase of the flight. However, Southwest trained its flight attendants that this guideline referred to stand-alone PDAs (Tr. 45), not to cell phones combined with a PDA accessory. Moreover, Southwest's guidelines stated that *in all cases*, passengers must abide by requests from flight attendants regarding electronic devices (Exhibit C-3a), and Abroms refused to do so. Southwest's Passenger Safety Information Card (found in each seat back pocket) (Tr. 49), also required Abroms to comply with flight attendant instructions.

(Exhibit C-4.)

Southwest considered combination cell phone and PDA devices as cell phones (Tr. 44), did not recognize airplane mode (Tr. 63), did not permit the use of cell phones after the forward-entry door had closed, and required cell phones to be stowed (Exhibit C-3a). Southwest flight attendants instructed Abroms numerous times that he must turn off his cell phone or device (Tr. 62, 220), but Abroms did not comply with the instructions to turn off the device. (Tr. 64.)

Abroms argues that the lead flight attendant told him only to turn off his *cell phone* – he did not tell him to turn off his entire device. (Appeal Brief at 4.) When the lead flight attendant asked him to turn off his “cell phone” (Tr. 63), the lead flight attendant meant the entire device, because he saw the device as a cell phone with a PDA accessory. There may have been a miscommunication at first, but as Abroms conceded at the hearing, he did understand that the lead flight attendant was instructing him to turn off and stow the entire device, and yet he still refused to comply.

ALJ: Well, at some point didn’t [sic] occur to you that if you closed [the device] and put it in your pocket that would be the end of the problem?

Abroms: I did.

ALJ: And that’s exactly what you did.

Abroms: I did. That’s right.

ALJ: So the question, what were you supposed to do, the answer is self-evident, isn’t it?

Abroms: Sure, put it away.

(Tr. 295-296.)

Abroms asserts that he was attempting to comply with instructions. As the ALJ found, however, Abroms did not make a good faith attempt to comply with the flight

attendants' instructions, but was "loud, combative, insulting, and abusive" instead. These findings were based on the ALJ's credibility determinations concerning Abroms, the flight attendants, and the passengers. Those determinations are entitled to deference on appeal because the ALJ was able to observe the witnesses' demeanor at the hearing. In the Matter of Gotbetter, FAA Order No. 2000-17 at 9 (August 11, 2000). An ALJ's credibility determinations are not overturned lightly (*id.*), and Abroms has provided no reason to overturn them.

Abroms claims that one of the flight attendants told him that he could use the PDA, but the ALJ believed contrary testimony from the flight attendant and a passenger. Again, this involves credibility determinations that are entitled to deference on appeal, and Abroms has provided no reason to overturn them.⁷ Moreover, even if it were true that one of the flight attendants initially told Abroms that he could use his PDA, this does not explain why Abroms did not comply with the lead flight attendant's instructions. Abroms conceded that he knew that the lead flight attendant was in charge. (Tr. 293.)

Abroms contends that he used the device repeatedly on other Southwest flights both before and after this incident. Even if this were true, it is irrelevant because Southwest still required Abroms to comply with flight attendant instructions on the flight at issue.

Abroms asserts that because Southwest guidelines did not expressly address

⁷ Abroms argues that the ALJ showed bias and prejudice at the hearing by asking Abroms whether he had ever served in the military. Abroms argues that the ALJ's query implied that Abroms simply should have followed orders, even if the orders were unreasonable or he had complied already. Abroms' interpretation of the ALJ's question, however, is speculative; he has failed to show bias.

Furthermore, Abroms did not object to the ALJ's question during the hearing or in his post-hearing brief. By failing to raise the issue below, he failed to preserve it for appeal. In the Matter of Northwest Aircraft Rental, FAA Order No. 1994-4 at 9 (March 10, 1994).

combination devices, Southwest should bear responsibility for the confusion. Southwest, however, did prescribe unambiguous guidelines for Abroms that he chose to ignore – that he must follow flight attendant instructions (per the Passenger Safety Information Card), and that he must follow flight attendant instructions regarding PEDs specifically (per the in-flight magazine). Clearly, Abroms violated these requirements.

B. Interfering with Crewmembers

The complaint also alleged that Abroms violated 14 C.F.R. § 121.580, which provides that “[n]o person may ... interfere with a crewmember in the performance of the crewmember’s duties” Abroms argues that there was no evidence that he interfered with the crewmembers. He asserts that the incident was brief and that little time passed between the time when the lead flight attendant first approached him and when he decided to stow the device. He also states that the incident did not interfere with the other passengers’ obtaining the services “to which they were entitled.”

The incident was not brief, as it was not limited to the angry, face-to-face confrontation between Abroms and the lead flight attendant. The incident began with Abroms’ first refusals to comply with flight attendant instructions earlier in the flight, and it continued well beyond his confrontation with the lead flight attendant. Abroms’ behavior left the lead flight attendant shocked, dumbfounded, and upset. (Tr. 170-71.) Further, his actions interfered with the lead flight attendant’s securing of the cabin for final descent. (Tr. 83.) The lead flight attendant and other flight attendants were diverted from other duties by the need to complete paperwork on the incident before landing. (Tr. 83; Exhibit C-1.) The lead flight attendant testified that he was required to focus intently on having information ready for the police instead of on his other duties. (Tr.

83.) Further, the lead flight attendant had to brief the captain several times (Tr. 64, 71) and the captain had to arrange for the authorities to meet the plane (Tr. 70), interfering with both their other duties. All of this disruption caused by Abroms' failure to comply with flight attendant instructions was unnecessary.

Abroms erred when he took it upon himself to overrule the flight attendants' interpretation of the air carrier's PED policy. Order and safety are so important that even if the flight attendants had misinterpreted Southwest's policy, Abroms was obliged to comply with their instructions. Once the plane landed, Abroms was free to lodge a complaint with Southwest, but while on board, he was not free to act in a way that interfered with the flight attendants. Respect for the crew's authority is essential on an aircraft, where crew and passengers are confined in a relatively small space far above the ground.

C. Sanction

Abroms argues that \$750 per violation was excessive because he was not disrespectful or outrageous. Further, he contends that he did not treat the flight attendant's instructions as an "invitation to debate," as the ALJ stated, but he only wished to show that was he was complying because the phone was in airplane mode.

Abroms has offered no valid reason to overturn the ALJ's credibility determinations about the nature of his behavior. Being argumentative with flight attendants (Tr. 223) and treating them in a demeaning manner (Tr. 168) are not to be condoned. Abroms' angry, combative, and aggressive behavior towards the lead flight attendant (Tr. 60, 110) was so intense that the lead flight attendant became agitated and upset (Tr. 172) and had difficulty securing the cabin before descent. (Tr. 83.) The ALJ

was correct that as an attorney with 33 years of experience (Tr. 289), Abroms should have realized the importance of compliance. He should also have realized the importance of compliance because he was an experienced flier. (Exhibit C-19d.) The civil penalty of \$1,500 will stand.⁸

For these reasons, this decision affirms the ALJ's decision finding that Abroms violated 14 C.F.R. §§ 121.306 and 121.580, as well as his assessment of a \$1,500 civil penalty.⁹

[Original signed by Robert A. Sturgell]

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

⁸ Any arguments not specifically addressed in this decision have been found not worthy of discussion.

⁹ This decision shall be considered an order assessing civil penalty unless Respondent files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for the circuit in which the respondent resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2007). *See* 71 Fed. Reg. 70460 (December 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases).