

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

**In the Matter of:**

**RYAN INTERNATIONAL  
AIRLINES, INC.**

FAA Order No. 2000-2

Served: February 3, 2000

Docket No. CP99GL0011

DMS No. FAA-1999-5805<sup>1</sup>

**DECISION AND ORDER<sup>2</sup>**

Respondent Ryan International Airlines, Inc. has appealed from the order of Acting Chief Administrative Law Judge Ronnie A. Yoder dismissing Ryan's request for hearing as late-filed. The law judge held that Ryan had failed to show good cause for its failure to file its request for hearing in a timely fashion. After consideration of the record on appeal and the briefs filed by the parties, the law judge's order is affirmed.

Following the parties' failure to reach agreement during an informal conference,<sup>3</sup> the agency attorney reissued the Final Notice of Proposed Civil Penalty (FNPCP) against

---

<sup>1</sup> 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 use of the following Internet address: <http://dms.dot.gov>. For additional information, see 65 Fed. Reg. 1654, 1671 (January 11, 2000.)

<sup>2</sup> The Administrator's civil penalty decisions are available on LEXIS, Westlaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can 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. 1654, 1671 (January 11, 2000.)

<sup>3</sup> Ryan asserts in its appeal brief that the parties were unable to agree upon the appropriate fine in this matter. Apparently Ryan is not contesting the factual allegations. (Appeal Brief at 2.)

Ryan on May 12, 1999. The FNPCP alleged that Ryan had violated various Federal regulations related to the transportation of hazardous materials,<sup>4</sup> and proposed a \$90,000 civil penalty. In the paragraph following the penalty proposal on page 4 of the FNPCP, it was written as follows:

Within fifteen (15) days after Ryan International's *receipt* of this Final Notice of Proposed Civil Penalty, it must elect to either submit the full civil penalty amount of \$90,000 or request a formal hearing. If Ryan International fails to respond with one of these alternatives, an Order Assessing Civil Penalty, requiring payment of the full amount of the proposed civil penalty, will be issued.

(Emphasis added.) Ryan received the FNPCP on May 18, 1999.

The request for hearing was due to be filed no later than 15 days after Ryan received the FNPCP, or in other words, by June 2, 1999, under 14 C.F.R.

§§ 13.16(e)(2)(ii)<sup>5</sup> and 13.16(f). However, Ryan's counsel did not file the request for

---

<sup>4</sup> It was alleged in the FNPCP that Ryan knowingly carried 1 halon fire extinguisher and 2 explosive squibs as company owned material. These hazardous materials, it was alleged, were stowed on the main deck behind the lavatory in one of Ryan's aircraft on a cargo flight from Indianapolis to Philadelphia. The FAA alleged violations of the following Hazardous Materials Regulations: 49 C.F.R. §§ 171.2(a), 172.200(a) and 172.202, 172.204(a) or (c)(1), 172.300 and 172.301(a), 172.400(a), 172.600 and 172.602(a), 172.702(a), 173.1(b), 173.24(c)(1), 173.62(a), 175.3, and 175.33(a).

<sup>5</sup> Section 13.16(e)(2) of the Federal Aviation Regulations provides as follows:

Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following:

- (i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order shall be issued in that amount;
- (ii) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

hearing until June 4, 1999,<sup>6</sup> 17 days after Ryan received the FNPCP.<sup>7</sup> Subsequently, the agency attorney filed a motion to dismiss the late-filed request for hearing.<sup>8</sup>

The Administrator has held that an untimely request for hearing will be excused only if good cause is shown. In the Matter of Larsen, FAA Order No. 1994-27 at 5 (September 30, 1994); In the Matter of Langton, FAA Order No. 1993-12 at 6 (March 25, 1993). Ryan has not demonstrated good cause for its late-filed request for hearing. In this case, as the law judge noted, Ryan admitted that it filed its request for hearing late but failed to offer any explanation for the late-filing. Order at 3. In its Memorandum in Response to the FAA's Motion to Dismiss Request for Hearing, Ryan's counsel wrote:

This matter involves events that occurred nearly two years ago, and it involves a request for a quite substantial penalty by the FAA. The handling of this complaint over the two year period involved numerous phone calls, much correspondence, and significant investigation on both sides. It culminated in an informal conference when counsel for Ryan, as well as representatives of the company, traveled to Chicago for an informal hearing. Unfortunately, the matter was not resolved at the time. Given the 23 months that have passed since the original incident combined with the complexities and the extent of the penalty sought, Ryan respectfully suggests that the parties would not be prejudiced in allowing this matter to go to hearing and having a decision on the merits.

---

<sup>6</sup> The request for hearing was dated June 4, 1999. It was sent to the Hearing Docket via U.S. Mail, certified return receipt requested. The envelope was postmarked on June 4, 1999. Under 14 C.F.R. § 13.211(d), it is provided in pertinent part: "The date of service shall be the date ... shown on the postmark if there is no certificate of service."

A copy of the request for hearing was sent via regular U.S. Mail to the agency attorney, and that envelope was postmarked on June 7, 1999. The postmark date on the envelope that was filed with the Hearing Docket (June 4, 1999), rather than the postmark on the envelope served on agency counsel (June 7) is the controlling date.

<sup>7</sup> Ryan's counsel received a copy of the FNPCP as well, but he does not recall when he received it. In the Memorandum in Response to the FAA's Motion to Dismiss Request for Hearing, Ryan's counsel wrote that he "acknowledges that the response was not properly calendared."

<sup>8</sup> 14 C.F.R. §§ 13.208(a) and 13.218(f)(2)(i); In the Matter of Larsen, FAA Order No. 1994-27 (September 30, 1994) in which it was held that under Section 13.218(f)(2)(i), the agency attorney may elect to file a motion to dismiss a request for hearing instead of filing a complaint.

Memorandum at 1-2. None of these factors constitute good cause for excusing a late-filed request for hearing, as none of these reasons provide an acceptable reason for the lateness of the request. See In the Matter of Langton, at 7.

On appeal, Ryan argues for the first time that its request for hearing was not late because it actually was not due until June 7, 1999, rather than June 2. Ryan argues that its filing date was extended by an additional 5 days under the "mailing rule," 14 C.F.R. § 13.211(e).<sup>9</sup>

The Administrator rejects this argument because the "mailing rule" does not extend the time for filing a request for hearing. Section 13.211(e) provides as follows:

Additional Time After Service by Mail: Whenever a party has a right or a duty to act or make any response within a prescribed period *after service by mail*, or by a date certain *after service by mail*, 5 days shall be added to the prescribed period.

14 C.F.R. § 13.211(e)(emphasis added). The date of *service by mail* is the date on which the document was placed in the mail.<sup>10</sup>

A party must file a request for hearing not later than 15 days from the date it *receives* the FNPCP, not from the date on which Complainant put the FNPCP in the mail. 14 C.F.R. § 13.16(e)(2)(ii). Hence, the "mailing rule," providing extra time to file a response after service by mail, by its very language, does not apply. Because Section

---

<sup>9</sup> Ryan did not argue that it misunderstood the "mailing rule" and, as a result, that it had miscalculated the due date of its request for hearing.

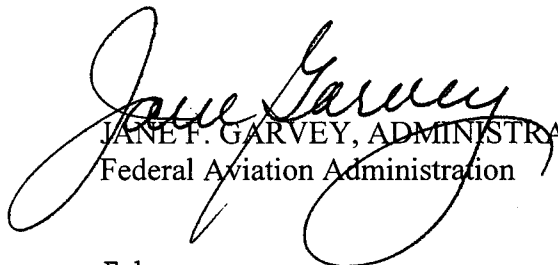
<sup>10</sup> Section 13.211(d) provides as follows:

*Date of Service.* The date of service shall be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

14 C.F.R. § 13.211(d).

13.16(e)(2)(ii) provides that the request for hearing must be filed no later than 15 days after the party *receives* the FNPCP, there is no need to allow an extra 5 days to compensate for mail delivery. In the Matter of Larsen, at 4-5, n.11.

Therefore, Ryan's appeal is denied. The law judge's order is affirmed except as noted in this decision. A \$90,000 civil penalty is assessed.<sup>11</sup>

  
JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 2nd day, of February, 2000.

---

<sup>11</sup> Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(1999).)