

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

TRANS WORLD AIRLINES

FAA Order No. 98-11

Served: June 16, 1998

Docket No. CP96NE0294

DECISION AND ORDER

Respondent Trans World Airlines (TWA) has appealed from the oral initial decision of Administrative Law Judge Ann Cook rendered on June 6, 1997, at the conclusion of a two-day hearing.¹ The law judge concluded that TWA violated 14 C.F.R. § 121.575(c),² by allowing a passenger, a Saudi Arabian princess, to board the aircraft although she appeared to be intoxicated and 14 C.F.R. § 121.575(b)(1),³ by serving alcoholic beverages to her during the flight while she appeared intoxicated. The law

¹ A copy of the transcript excerpt setting forth the law judge's oral initial decision is attached.

² Section 121.575(c) of the Federal Aviation Regulations provides as follows:

No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated.

14 C.F.R. § 121.575(c).

³ Section 121.575(b)(1) of the Federal Aviation Regulations provides as follows:

No certificate holder may serve any alcoholic beverage to any person aboard any of its aircraft who -- (1) appears to be intoxicated.

14 C.F.R. § 121.575(b)(1).

judge held further that TWA violated 14 C.F.R. § 121.575(d),⁴ by failing to report the disturbance created by the princess during the flight to the FAA within 5 days of the incident. The law judge also held that TWA violated 14 C.F.R. § 121.577(a)⁵ by taking off without having collected a glass from the princess. The law judge assessed a \$40,000 civil penalty against TWA.⁶ TWA's appeal is denied.

The flight in question was TWA Flight 807 from Paris to Boston on January 20, 1996. While waiting for the flight, the princess, accompanied by her daughter and two female servants, went to the TWA Ambassador Club in the airport.⁷ The law judge found

⁴ Section 121.575(d) of the Federal Aviation Regulations provides as follows:

Each certificate holder shall, within five days after the incident, report to the Administrator ... any disturbance caused by a person who appears to be intoxicated aboard any of its aircraft.

14 C.F.R. § 121.575(d).

⁵ Section 121.577(a) of the Federal Aviation Regulations provides as follows:

No certificate holder may move an airplane on the surface, take off, or land when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

14 C.F.R. § 121.577(a).

⁶ The Assistant Chief Counsel for the New England Region of the Federal Aviation Administration took separate enforcement action against the princess. On March 3, 1997, the princess was issued an amended order assessing a \$3,000 civil penalty for violating 14 C.F.R. § 91.11 by assaulting, threatening, intimidating and/or interfering with a crewmember in the performance of the crewmember's duties. It was stated further in the order that the princess had failed to comply with the lighted "Fasten Seat Belt" sign and had disregarded a flight crewmember's directions to fasten her seat belt around her while the "Fasten Seat Belt" sign was lighted in violation of 14 C.F.R. §§ 121.317(f) and (k).

⁷ According to one of the other passengers in the lounge, the princess and her party arrived in the lounge at about 9:00 A.M. (Tr. 225.)

that the princess had at least one glass of champagne while waiting in the club.⁸ During her stay in the club, the princess smoked while seated in a nonsmoking area and was loud.

The princess's party was the last group to board the airplane. The princess tripped as she came through the door but then recovered her balance. Once on board, the princess and her daughter, who was supposed to sit next to her mother in first class, had a loud argument, and the daughter moved to coach and exchanged seats with one of their servants. The princess was very upset. (Tr. 13.)⁹

⁸ Richard Kirkendall, a passenger seated near the princess in the lounge, testified that the TWA attendant brought a half bottle -- a "split" -- of champagne to the princess's table and poured a glass for the princess. (Tr. 10-12, 24.) Mr. Kirkendall saw her drinking the champagne. However, he did not observe how many times her glass was filled or how much of the bottle she actually drank. (Tr. 24.) He observed that there was at least one other glass on the table. Steven Martin, who was traveling with Mr. Kirkendall, testified that after he sat down near the princess, he observed that she had a split of champagne on the table. He testified that he saw her finish the drink in front of her and immediately ask for another bottle of champagne. He said that a second split was delivered to her, her glass refilled and that she immediately proceeded to drink it. (Tr. 40-41.)

Annie Picard, the senior receptionist at the Ambassador's Club, testified that she brought a half bottle of champagne to the princess's table. She explained that none of the other members of the princess's party drank. Ms. Picard testified that the princess drank just one glass of champagne. (Tr. 115.) She testified that she only brought one half bottle of champagne to the princess. (Tr. 115, 119.) Roy Langenberg, another passenger, testified that he observed Ms. Picard serve only one half bottle of champagne, but acknowledged that he left the Ambassador Club before the princess and her party did. (Tr. 225, 228, 232.)

⁹ Flight Attendant Nancy Hunnewell testified that there was a commotion getting the princess's party seated because the daughter did not want to sit up front with her mother. (Tr. 248.) Mr. Martin, who was travelling with Mr. Kirkendall, testified that the princess was loud, somewhat combative and appeared disorderly at this time. He said:

She was very loud. She was hollering at the flight attendants. She was upset about something about her daughter in the back of the aircraft, wanted to see her or something. She was just very loud and unruly.

(Tr. 43.) When asked whether he had noticed anything about her gait, Mr. Martin replied that she seemed somewhat disoriented, and he had attributed that to the alcohol that she had been drinking in the lounge. (Tr. 43.)

Prior to takeoff, the princess had one or two glasses of champagne. (Tr. 17-18, 33, 44, 137, 296.)¹⁰ Passengers Kirkendall and Martin, who were seated in the same row as the princess (Row 4), observed that the princess retained her champagne glass during both the taxi down the runway and the takeoff. (Tr. 15, 31-32, 44, 59-60.)

After the aircraft pushed back from the gate, the princess got up to go to the coach section to see her daughter. Sheri Albert, the flight service manager, asked the princess to sit down and to wait until the aircraft was airborne before going back to see her daughter. Ms. Albert explained that otherwise she would have to tell the captain to stop the aircraft. (Tr. 293-294.) The princess ignored Ms. Albert's first request and yelled at Ms. Albert after the second request to be seated. (Complainant's Exhibit No. 1.) The princess's traveling companion then came to them and took the princess to her seat. (Tr. 294.) The princess obsessed on her treatment by Ms. Albert for the remainder of the flight.

The princess informed Flight Attendant Valerie Garland that she demanded an apology from Ms. Albert. Ms. Garland informed Ms. Albert about the demand. (Tr. 168, 294.) About 10 to 15 minutes after takeoff, Ms. Albert placed two landing cards on the princess's tray table. The princess picked them up and threw them at Ms. Albert. (Tr. 295.) The princess screamed, used profanity, and demanded that Ms. Albert get down on her knees and apologize. Ms. Albert apologized if the tone of her voice earlier had offended the princess, but said that she would not apologize for asking the princess to return to take a seat because that was part of the flight service manager's job. This

¹⁰ Flight Attendant Morefield testified that he served the princess one glass of champagne before takeoff and he saw her drink it. (Tr. 137.) He also testified that he saw the galley person (Ms. Garland) serve a glass of champagne to the princess and saw her drink that glass. (*Id.*)

explanation only further upset the princess. (Tr. 296.) When Ms. Albert tried to get away from the princess, the princess followed her, snapping her fingers, shouting profanities, demanding that Ms. Albert get down on her knees, and threatening to have Ms. Albert killed. (Tr. 298.) The princess ignored Ms. Albert's instructions that she be seated. Finally, two other flight attendants and the travelling companion intervened and took the princess back to her seat. (Tr. 298.)

The pilot, Captain Robert Frazier, went back to talk to the princess about 35 to 40 minutes after takeoff because one of the flight attendants had reported to him that the princess was creating a disturbance and was being very difficult. (Tr. 194-195.) She was standing in the aisle in the first-class cabin and smoking when he met her. (Tr. 195.) According to the pilot, the princess was very loud and extremely angry about the way that Ms. Albert had treated her. (Tr. 195-196.) He had to ask her twice to put out the cigarette before she complied. (Tr. 195.) He was able to calm her and get her to return to her seat. (Tr. 196-197.) Captain Frazier then instructed the flight attendant in the first-class galley that the flight attendants should not serve the princess any alcohol. (Tr. 197.) Because the princess continued to behave in a loud and unruly fashion, the captain had to go back to see her two other times during the flight as well.¹¹

After takeoff and before the meal service, the princess demanded champagne from Flight Attendants Morefield and Garland. (Tr. 138, 149, 170.) Although Mr. Morefield testified that he only served the princess a mixture of club soda and ginger ale (Tr. 138-

¹¹ When he went back to see her while they were flying over the ocean, he observed that she was still very angry -- unreasonably angry, he felt -- considering that they were, by this time, in flight for 4 hours. (Tr. 199-201.)

139, 150), the law judge did not credit that testimony and held instead that Mr. Morefield served her one glass of champagne after takeoff. (Tr. 388-389.)¹² In making this finding, the law judge was influenced by the letter that Mr. Morefield wrote to his union representative summarizing the events of this flight. Mr. Morefield testified that he did not mention in this letter that he had substituted ginger ale and club soda for champagne or had otherwise decided to serve no further alcohol to the princess. (Tr. 152.)

Ms. Garland acknowledged serving the princess and her companion each a glass of champagne about 1 hour after takeoff. (Tr. 170, 188, 189.) The law judge found that Ms. Garland served the princess champagne after the captain instructed that the princess be given no further alcohol. (Tr. 388.)¹³

Passengers Richard Kirkendall and Steven Martin testified that they observed the flight attendants serve the princess red wine before and during the first meal service. (Tr. 18, 33, 35, 46-47.) They testified that the princess had at least two glasses of wine with her meal. (Tr. 33, 61.)¹⁴ The law judge found this testimony to be credible.

¹² This statement, marked for identification as Complainant's Exhibit No. 12 (Tr. 151), was not introduced into evidence.

¹³ The law judge held that Mr. Morefield served champagne to the princess *after* Ms. Garland did. (Tr. 388.) However, it appears from Mr. Morefield's testimony, that he served the princess the champagne about 15 minutes into the flight. (See his testimony on page 138 of the transcript that: "I knew that I had a seven-hour flight ahead of me and that I wasn't looking forward to spending the next six hours and 45 minutes with a woman that was going to be hell on wheels.") Ms. Garland served the princess champagne about 1 hour after takeoff.

¹⁴ Mr. Kirkendall testified that the red wine obviously was not a mixture of club soda and ginger ale. (Tr. 35.) Mr. Martin said that the red wine was poured straight from its bottle into her glass. (Tr. 46.) Flight Attendants Morefield and Garland denied serving wine to the princess and said that they did not know whether anyone had served her red wine during dinner. (Tr. 153-154, 188.) The law judge did not find their testimony to be credible and held that the princess had been served wine with her meal.

On several occasions throughout the flight, the princess got out of her seat to find the flight service manager or to see her daughter. On these occasions, the princess created commotions, being loud and abusive toward the flight attendants at times, shouting profanities and death threats. About 6 1/2 to 7 hours into the flight, the princess came up to and lunged at Ms. Albert, screaming again that she would have Ms. Albert killed. The princess attempted to grab Ms. Albert by the throat, but another flight attendant intervened. Then the princess grabbed Ms. Albert's arm with her nails. (Tr. 154-155, 299-300.)

After his last visit with the princess, Captain Frazier notified TWA flight operations that there was an unruly passenger on board whom he wanted detained when they landed. (Tr. 202.) As a result, Massachusetts State Police officer, Trooper Mark West met the aircraft when it landed in Boston. Trooper West met with Sheri Albert, who informed him that she had an abrasion where the princess had grabbed her wrist. (Tr. 68.) Ms. Albert told him that the princess was intoxicated. (Tr. 72, 311.)¹⁵

According to Trooper West, when he met the princess she was very emotional and smelled strongly of alcohol. (Tr. 70.) The princess informed Trooper West that she had been drinking wine and champagne. (Tr. 72.) When Trooper West asked the princess if she was diabetic, she said at first that she was on heart medication, but later she informed him that she was taking Tylenol. The princess's daughter told him that she did not think that her mother was taking any medication. (Tr. 78.) Trooper West later arrested the

¹⁵ Ms. Albert acknowledged on cross-examination that she told Trooper West that she thought the princess was intoxicated, which was "what I thought at the time." (Tr. 311.)

princess for assault, battery and interference with the flight crew. (Tr. 76-77.) Trooper West formed the opinion that the princess was intoxicated when he met her. He stated that he would not have allowed her to drive a car in her condition. (Tr. 73.)

The law judge held that the princess had at least one glass of champagne while she was in the Ambassador Club (Tr. 375), and one or more glasses of champagne on the aircraft before takeoff. (Tr. 375-376.) The law judge held further that the princess was served both champagne and wine during the flight. (Tr. 378.)

Regarding the issues of whether the princess appeared to be intoxicated prior to and during the flight, the law judge found the opinions of passengers Martin and Kirkendall that the princess appeared intoxicated to be the most credible. (Tr. 395.) The law judge noted that Flight Service Manager Sheri Albert's testimony that the princess tripped when she boarded the aircraft corroborated Mr. Kirkendall's observation that the princess's gait was unsteady as she approached her seat. (Tr. 391.) The law judge noted that the testimony of Mr. Martin and Mr. Kirkendall was consistent with that of State Trooper West, who testified that in his opinion, the princess was intoxicated when he met her after the flight landed. The law judge gave considerable weight to this testimony and opinion because Trooper West makes determinations regarding whether a person is intoxicated as part of his day-to-day job responsibilities. (Tr. 383-384.)

The law judge did not find the testimony of the TWA employees at the hearing to be persuasive. She found that as loyal employees, they had some potential for bias. (Tr. 386.) The law judge also provided reasons for discounting the specific factual or opinion testimony of the individual employees. (*See* Tr. 388-391, 392, 393-394.)

The law judge also did not credit Flight Attendant Morefield's testimony that he removed the champagne glass from the princess. She stated in her decision:

Here I'm relying very heavily on the definite and specific testimony on this point of both Passengers Martin and Kirkendall and noting that Mr. Morefield, who reported having removed the Princess's champagne glass prior to takeoff or the taxi, does not recall any of the specifics of the removal, which one would expect to have stuck in his mind, given that she was already seen as a problem and that extracting the glass would have been something that a reasonable person would have had some apprehension in attempting before doing so.

(Tr. 378.)

The law judge held that:

My findings are that the preponderance of the reliable, substantive and probative evidence establishes that the Princess had enough champagne to become intoxicated while in the Ambassador's Lounge or at least prior to boarding, that she was apparently intoxicated when she boarded and continued to appear intoxicated throughout the flight and her many disturbances and outbursts during the flight. I also find that she was served both champagne and wine during the flight and that Respondent was required to file a report.

(Tr. 377-378.) She stated in conclusion:

I find the violations based primarily on the testimony of the two witnesses, passenger witnesses, presented by the FAA. My evaluation of the Respondent's witnesses is that they, when in conflict with the FAA passenger witnesses, were less credible and less trustworthy.

(Tr. 396.)

On appeal, TWA attacks the subjectivity of the standard set forth in Section 121.575. TWA argues that the term "intoxication" is not, but should have been, defined in the regulation using objective criteria. According to TWA, "absent objective testing, [section] 121.575 is arbitrary and capricious, unconstitutionally vague, contrary to the law, against public policy, and defies fundamental policies of fair play, justice and due process." (Appeal Brief at 9.) TWA argues that the preponderance of the evidence

establishes that the princess was not intoxicated when she boarded the aircraft.

Furthermore, TWA argues that “[l]ike ‘intoxication’ without a definition, ‘appears’ is a wholly subjective standard which is worthless – and unfair – in its arbitrary application by the FAA.” (Tr. 11.) TWA argues further that the observations and opinions of an untrained witness regarding whether a passenger is intoxicated should not carry more weight than the judgments of highly trained professional flight attendants. (Appeal Brief at 11.)

“Under the vagueness doctrine, a law that does not fairly inform a person of what is commanded or prohibited is unconstitutional as violative of due process.” In the Matter of [Airport Operator], FAA Order No. 96-1 at 7, 1996 FAA LEXIS 1074, at *10 (January 4, 1996.) Whether the regulations in question in this case pass the constitutional test generally is better left for an appropriate Federal court of appeals. In the Matter of Continental Airlines, Inc., FAA Order No. 97-34, 1997 FAA LEXIS 1389 (October 23, 1997). However, whether the standard “appears intoxicated” gave the TWA employees fair warning in this case of their obligations under Section 121.575 is a question to consider in this forum. See In the Matter of [Airport Operator], at 7.

In this case, all the flight crewmembers were aware of the signs or symptoms of intoxication. (Tr. 130, 163, 192, 244, 275, 289.) In addition, the flight attendants testified that they had received company training regarding the recognition of intoxication.¹⁶ (Tr. 126, 161, 187, 242-243.) However, the flight crew, as the law judge found, believed that “there had to be some certainty that the individual, that the passenger

¹⁶ Captain Frazier testified that he was familiar with TWA’s guidelines pertaining to intoxicated passengers; however, he stated, he had received no classroom training on this subject. (Tr. 216.)

was in fact intoxicated, and that that was a fairly important decision and one which there had to be a fairly great degree of certainty.” (Tr. 387; *see also* Tr. 392.) This understanding – or misunderstanding, actually – was in clear contrast to Section 121.575’s wording “appears intoxicated.”

Also, regarding whether the crew knew that the princess appeared intoxicated, the law judge found that the crew’s opinions that the princess did not appear intoxicated during the flight were unreliable. (Tr. 386, 389, 391, 395.) In contrast, she found their opinions expressed either in the testimony or in pretrial statements that the princess appeared to be under the influence of alcohol (or drugs or suffering from a mental disorder) more useful or candid. (Tr. 384-385, 389, 391-392.) A law judge is in the best position to observe the demeanor of witnesses at a hearing, and as a result, the law judge’s credibility findings deserve special deference. In the Matter of Emery Worldwide Airlines, Inc., FAA Order No. 97-30 at 9, 1997 FAA LEXIS 1279, at *14 (October 8, 1997); In the Matter of Werle, FAA Order No. 97-20 at 11, 1997 FAA LEXIS 1109, at *17 (May 23, 1997). The law judge’s credibility decisions in this case were reasonable and will not be disturbed.¹⁷

¹⁷ TWA’s argument that the opinions of passengers Kirkendall and Martin, who were untrained regarding intoxication, should not be given greater weight than those of the professional flight crewmembers can be easily disposed of. Generally speaking, TWA is correct that the professional flight crewmembers’ assessment should be given greater weight than untrained passengers on the question of whether another passenger is intoxicated. However, in this case, the law judge found the testimony and opinions of the TWA flight crewmembers to be less credible than those of passengers Kirkendall and Martin. Thus, the question is not one of competence, but of credibility.

There was ample reliable evidence that the princess appeared intoxicated during boarding. As a result, a reasonable flight crewmember should have concluded that the princess appeared intoxicated and should not have allowed the princess to board the aircraft under 14 C.F.R. § 121.575(c). The princess walked very slowly and unsteadily as she boarded the aircraft. (Tr. 13.) Mr. Kirkendall noted that the princess swayed from side to side and held onto the seats next to the aisle as she walked to her seat. (Tr. 13.) Mr. Martin thought that the princess appeared disoriented and staggered getting on the flight. (Tr. 43, 51.) She tripped as she entered the aircraft. Flight Attendant Debbie Gauthier, who did not testify at the hearing, wrote in her statement that when she dealt with the princess soon after the princess boarded the aircraft, the princess's speech was slurred and her eyes were half closed. (Complainant's Exhibit No. 2.) Ms. Gauthier wrote further, "She had a glass of champagne in her hand and I felt it was possible alcohol or sleeping pills played a big part in her behavior." (*Id.*)¹⁸ As soon as the princess took her seat, she became engaged in a loud argument with her daughter. (Tr. 13, 248.) After her daughter went to sit in the coach section, the princess was loud and acted in a disruptive fashion, shouting at the flight attendants that she wanted her daughter to come up front and that she would kill her daughter. (Complainant's Exhibit

¹⁸ Flight Attendant Kunz wrote in her statement that when the princess went back to the coach section shortly after takeoff searching for Ms. Albert, the princess appeared unsteady on her feet and had bloodshot eyes. (Complainant's Exhibit No. 13.) Ms. Kunz concluded that the princess was intoxicated soon after takeoff. (*Id.*) Ms. Kunz also did not appear at the hearing.

As hearsay, the statements written by Ms. Kunz and Ms. Gauthier should be accorded limited weight. However, since these statements are consistent with and corroborate the testimony presented by witnesses at the hearing, they are worthy of consideration.

No. 9.)¹⁹ The princess was very uncooperative and disregarded the instructions of the flight attendants. It was difficult even to get the princess to sit down so that the aircraft could taxi out to the runway. (Tr. 15.) When Ms. Albert asked the princess, who was walking to the coach section, champagne glass in hand, to be seated, the princess ignored her. In response to Ms. Albert's second request that the princess be seated, the princess yelled at her, "Don't ever tell me what to do." (Complainant's Exhibit No. 1.) The princess became unreasonably angry, informing Ms. Garland that she demanded that Ms. Albert, who had only been doing her job, come and apologize. (Tr. 168.)²⁰ Both passengers Kirkendall and Martin concluded that the princess was intoxicated prior to

¹⁹ Mr. Kirkendall wrote in his statement:

The woman appeared to be intoxicated when she boarded the plane. She seemed to be staggering as she walked. She asked for a glass of champagne, and almost immediately began raising a commotion. She began shouting at a flight attendant that her daughter had gone back to the coach section and she demanded that she return. She specifically said, "I'll kill the bitch!" One of the female flight attendants was talking with her and trying to calm her down. I commented to Mr. Martin who was seated next to me that they had better get her off of the plane, because she was going to be a problem.

(Complainant's Exhibit No. 9.) Mr. Martin wrote in his statement:

After boarding the flight, TWA flight attendants gave this individual 2 glasses of champagne prior to takeoff. By this time, the passenger was being quite rude and combative to them. It was obvious to me that something was wrong with this person. I attributed it to the large amount of alcohol she was consuming and was hopeful that she would be removed from the flight. However, she remained on board

(Complainant's Exhibit No. 8.)

²⁰ Ms. Albert wrote in her statement dated January 20, 1996, (the same day as the flight), that before she sat down for takeoff, one of the first class flight attendants informed her that the princess "was 'out of control' with anger and was demanding that I come immediately to apologize for the way I had spoken to her." (Complainant's Exhibit No. 1.) She testified at the hearing that Ms. Garland informed her as they were rolling down the runway that the princess was really angry, and wanted Ms. Albert to get down on her knees to apologize. (Tr. 294.)

takeoff. (Tr. 21-22, 43-44, 51.)²¹ Add to this loud, disruptive behavior, excessive anger, unsteady gait, slurred speech, and disoriented look the fact that the cabin crew knew that they had served the princess champagne before takeoff. Also, the flight crew was alerted to the fact that the princess had been loud and "carried on" while in the Ambassador Club at the airport prior to the flight. (Tr. 45.)²² Under these circumstances, a reasonable crewmember should have concluded (as did some of the passengers) that the princess appeared intoxicated during the boarding process and should have been put off the aircraft prior to takeoff.

There was even more evidence that the princess appeared intoxicated after takeoff so that no additional alcohol should have been served to her. To summarize the evidence, within the first hour or so after takeoff, the princess was extremely loud and abusive, exhibited uncontrollable anger, cried in the arms of one of the flight attendants, and smoked when smoking was prohibited. Moreover, the evidence indicates, as will be explained *infra.*, that the captain thought that the princess appeared intoxicated and ordered that no alcoholic beverages be served to her. Nonetheless, the crew continued to serve her alcoholic beverages after takeoff and even after the captain instructed that the princess be given no more alcohol.

²¹ See also footnote 19.

²² Flight Attendant Morefield testified on cross-examination that passengers in Rows 3, 8 and 9 informed him even before the princess boarded about a woman who had been making a loud commotion in the Ambassador Club. Based on that information, he was expecting trouble. (Tr. 145.)

Within 15 or 20 minutes after takeoff, Ms. Albert and the princess were back at it again, with the princess arguing with Ms. Albert, shouting profanities, and screaming that Ms. Albert get down on her knees and apologize. The princess refused to accept Ms. Albert's apology, and became hysterical. (Tr. 295-296.) During this time, the princess was flailing her arms as she screamed at the flight service manager. (Tr. 296.) The princess threw the landing cards at Ms. Albert. (Tr. 295.) Then, when Ms. Albert tried to get away from the princess, the latter followed her down the aisle, snapping her fingers, screaming profanities, yelling that Ms. Albert should get down on her knees, and threatening to have Ms. Albert killed. (Tr. 298.) The princess was so out of control that Flight Attendant Jim Morefield and the princess's attendant had to bring the princess back to first class. (Tr. 298.)

The captain went back to see the princess for the first time about 35-40 minutes into the flight. He reported that he had to ask her more than once to put out her cigarette. She was very angry about her perceived mistreatment by the flight service manager. He testified, "She was loud and using her hands and describing what she thought was wrong with the way she been approached. I mean, she was literally so angry that there was spittle coming out of her mouth." (Tr. 196.) Although he testified at the hearing that he observed no signs of intoxication at this time (Tr. 198), his statement written shortly after the flight contradicts that testimony:

I was first made aware of a problem with an unruly passenger some time shortly after level off enroute (sic) to Boston. Although not aware of specifics at this time, I was informed that this female passenger was sufficiently upset as to require my assistance. I went to the first class cabin and encountered a very agitated and upset lady, which *with proper training, I would probably have diagnosed as intoxicated and filled with rage.*

(Complainant's Exhibit No. 3) (emphasis added.) At the hearing, Captain Frazier tried to explain away this statement by testifying that this was merely a poorly written statement, and that what he meant to write was that he had expected that the princess would be intoxicated because most passengers who are that unruly are intoxicated. (Tr. 207, 216.) The law judge, quite reasonably, rejected this explanation, and held that this portion of the captain's written statement is "a very candid and credible comment or observation...." (Tr. 385.) Indeed, the captain's explanation at the hearing is simply too much of a stretch to be credible. Consequently, the law judge's credibility determination that the captain believed that the princess was intoxicated at this early point in time is affirmed.

After seeing the princess the first time, the captain instructed Flight Attendant Garland not to serve any alcoholic beverages to the princess. However, the evidence indicates that Ms. Garland served champagne to the princess about 1 hour into the flight and that red wine was served to the princess during the meal service. Hence, additional alcohol was served to the princess after the captain realized that the princess was intoxicated. The princess's emotional and aggressive outbursts continued throughout the flight, and yet the flight crew continued to serve alcohol to this woman whom the captain believed to be intoxicated.

The risks to safety that occurred here hardly need mentioning. The princess required the undue attention of several flight attendants throughout the flight. The flight service manager practically had to hide from the princess during most of the flight. Hence, while the flight attendants were dealing with the princess, they were not available for their other duties. Also, the captain was required to leave the cockpit three times to

attend to the princess. All of these crewmembers have important safety functions that they should not have been taken away from to deal with an aggressive, overwrought, and disruptive passenger who should not have been served any alcohol because the alcohol undoubtedly exacerbated her condition.

Although TWA argues that the princess did not appear intoxicated and its employees did not serve alcoholic beverages to someone who appeared intoxicated, TWA also argues, somewhat incongruously, that it should not be held responsible for the unauthorized actions of its employees. According to TWA, any TWA employee who acts contrary to company policies and/or the Federal Aviation Regulations is in breach of his/her fiduciary duty to the company. TWA argues that the individual employees should be assigned some liability for their unauthorized actions (serving alcoholic beverages to a passenger who appeared intoxicated.)

TWA's argument that it should not be held responsible for the actions of its employees is rejected as contrary to FAA civil penalty case law. The Administrator has held that an employer is responsible for the acts or omissions of its employees acting in the scope of their employment. *See e.g., In the Matter of Westair Commuter Airlines, Inc.*, FAA Order No. 93-18 at 7, 1993 FAA LEXIS 205, at *7 (June 10, 1993); *In the Matter of USAir, Inc.*, FAA Order No. 92-48 at 7, 1992 FAA LEXIS 294, at *9 (July 22, 1992), *petition for reconsideration denied*, FAA Order No. 92-70 at 5-6, 1992 FAA LEXIS 352, at *3 (December 21, 1992); *accord, In the Matter of Pacific Aviation International*, FAA Order No. 97-8, 1997 FAA LEXIS 145 (February 20, 1997); *In the Matter of Horizon Air Industries*, FAA Order No. 96-24, 1996 FAA LEXIS 2058

(August 13, 1996.) In this case, there was no question that serving beverages to the passengers was in the scope of employment of the flight attendants.

TWA argues that it was a breach of fiduciary duty for its flight attendants to serve alcoholic beverages to passengers who appeared intoxicated because that would constitute a violation of the Federal Aviation Regulations and TWA policy. A similar argument was rejected in Westair Commuter Airlines. *Id.*, at 5-7. It has been explained that:

The fact that the servant's act is expressly forbidden by the master, or is done in a manner which he has prohibited, is to be considered in determining what the servant has been hired to do, but it is usually not conclusive, and does not in itself prevent the act from being within the scope of employment. A master cannot escape liability merely by ordering his servant to act carefully. If he could, no doubt few employers would ever be held liable. Thus, instructions to a sales clerk never to load a gun while exhibiting it will not prevent liability when the clerk does so, in an effort to sell the gun.

W. Page Prosser et al., Prosser and Keeton on the Law of Torts, § 70, at 502-503 (5th ed. 1984). The cases that TWA cites in its brief pertaining to the fiduciary duty owed by an agent to a principal²³ have nothing to do with the issue of *respondeat superior* or imputed responsibility.

Finally, TWA challenges the appropriateness of the \$40,000 civil penalty assessed by the law judge in this case. In its sanction argument, TWA again argues that the preponderance of the evidence does not support the findings of violations relating to the issue of intoxication. There is no need to revisit those issues here, except to repeat that as

²³ Burdett v. Miller, 957 F.2d 1375 (7th Cir. 1992); Western Pacific Railroad Corporation v. Western Pacific Railroad Company, 197 F.2d 994 (9th Cir. 1951); B.J. McAdams v. Boggs, 439 F. Supp. (E.D. Pa. 1977).

found above, the preponderance of the evidence supports the law judge's holdings that the princess appeared intoxicated during boarding as well as during the flight. Moreover, because the princess appeared to be intoxicated, the disturbance(s) that she created, assaulting the flight service manager in particular, should have been reported to the FAA within 5 days of the incident, but no such report was filed. Hence the preponderance of the evidence supports the violations of 14 C.F.R. §§ 121.575(b)(1), 121.575(c), and 121.577(a).

As for the law judge's finding that the princess was allowed to keep her champagne glass, there was ample evidence to support this finding. Both passengers Kirkendall and Martin testified that the princess retained her champagne glass during takeoff. Mr. Kirkendall testified that the princess was allowed to keep her glass of champagne while the aircraft taxied out onto the runway and during takeoff. He recalled thinking that this was rather unusual. (Tr. 15-16, 32.) He testified further that he observed the glass sitting out in full view on the little center table between the seats during takeoff. (Tr. 31.) Mr. Martin testified that he observed the princess finishing her champagne during takeoff and then put the glass on the seat. He stated that the princess did not hide her glass in any way. (Tr. 44, 59-60.) The law judge held, quite reasonably, that Mr. Martin's and Mr. Kirkendall's observations of the location of the glass were not contradictory but that they simply noticed the glass at different times. (Tr. 382.) The TWA flight attendants did testify at length about the normal procedures that they follow to ensure that they pick up all of the glassware before takeoff. However, there was, as the

law judge noted, little detail about anyone actually picking up the princess's glass.²⁴ (Tr. 387.) Indeed, Mr. Morefield did not testify that he actually recalled picking up the glass until he had been "pinned down" in cross-examination. (See Tr. 134-137, 148-149.) The law judge did not find the testimony of TWA's witnesses to be credible to the extent that it contradicted the testimony of Mr. Kirkendall and Mr. Martin. In light of Mr. Morefield's lack of forthrightness about picking up the glass and the fact that no one testified that they saw Mr. Morefield pick up the champagne glass, there is no reason to disturb the law judge's credibility assessment. Moreover, considering how difficult the princess had been by this time, it is not surprising that none of the flight attendants wanted to aggravate her any more by trying to remove her champagne glass.²⁵

TWA is correct that the princess was responsible for her actions on board the aircraft in violation of the Federal Aviation Regulations. However, TWA is wrong that the princess alone should be assessed a civil penalty for the events of this day. TWA itself may have had been placed in a difficult situation – having a Saudi princess in first-class who appeared intoxicated during boarding and who carried on throughout the flight in a loud and disruptive manner. Nonetheless, TWA's flight crew undoubtedly added to the difficulty of their situation – and certainly violated the regulations – by continuing to serve her alcohol during the flight. There is no excuse for the failure to file the report.

²⁴ Trooper West testified that when Sheri Albert attempted to take the princess's champagne glass, the princess grabbed Ms. Albert's wrist, causing an abrasion, and told Ms. Albert not to remove the glass. (Tr. 69.) This evidence, however, was not corroborated by any of the witnesses, either for TWA or for Complainant.

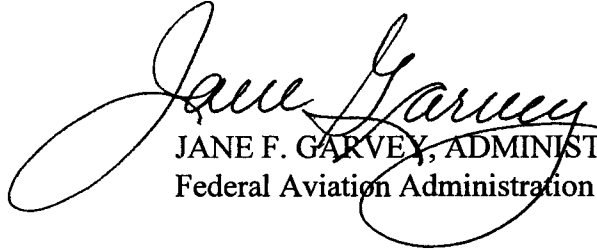
²⁵ That would have been especially true if some champagne remained in her glass.

Consequently, the assessment of a civil penalty against TWA by the law judge was proper.

TWA also challenges the amount of the civil penalty, arguing that the \$40,000 amount is excessive and that there were mitigating factors. TWA's sanction argument is rejected.

First, as the agency attorney notes in its reply brief, the penalty is consistent with the guidance provided in the Sanction Guidance Table, which states that a maximum civil penalty should be sought in cases in which an air carrier has served alcoholic beverages to a person who appears intoxicated or allows a person who appears to be intoxicated to board the aircraft. FAA Order No. 2150.3A, App. 4, at 6. Under 49 U.S.C. § 46301, the maximum civil penalty that may be assessed against an air carrier is \$10,000 per violation. In this case, TWA was not an innocent victim of the excesses of the princess. Instead, the TWA employees exercised very poor judgment in allowing the princess to board the aircraft and then in serving her alcoholic beverages throughout the flight. TWA had an opportunity to get this unruly passenger off the aircraft before they took off, but failed to do so. Moreover, as already discussed, even after the captain ordered that no alcoholic beverages be served to the princess, she continued to be served champagne and red wine. Also the flight attendants allowed her to keep her glass during takeoff, creating another safety problem. Finally, they were required to report the incident to the FAA but failed to do so. Under the circumstances, there are no factors that justify reducing an otherwise reasonable civil penalty, and the \$40,000 civil penalty is just such a reasonable penalty.

THEREFORE, TWA's appeal is denied in its entirety, and the \$40,000 civil penalty assessed by the law judge in this matter is affirmed.²⁶


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11th day of June, 1998.

²⁶ 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).