

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

DAVID G. STOUT

FAA Order No. 98-12

Served: June 16, 1998

Docket No. CP96WP0304

DECISION AND ORDER

This case involves alleged passenger misconduct. In her oral initial decision,¹ Administrative Law Judge Ann Z. Cook found that Respondent David G. Stout violated the safety regulations by repeatedly refusing to: (1) fasten his seat belt; and (2) return the flight attendant's security badge to her.² Complainant Federal Aviation Administration

¹ A copy of the portion of the hearing transcript containing the law judge's oral initial decision is attached.

² Specifically, Complainant alleged that Mr. Stout violated 14 C.F.R. § 91.11, which 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.

Complainant also alleged that Mr. Stout violated 14 C.F.R. § 91.517(d), which provides:

Each passenger required by § 91.107(a)(3) to occupy a seat or berth shall fasten his or her safety belt about him or her and keep it fastened while any "fasten seat belt" sign is lighted.

Finally, Complainant alleged that Mr. Stout violated 14 C.F.R. § 91.517(e), which provides as follows:

Each passenger shall comply with instructions given him or her by crewmembers regarding compliance with paragraphs (b), (c), and (d) of this section.

(FAA) (Complainant) has filed an appeal in which it argues that the \$1,700 assessed by the law judge is too low. This decision denies Complainant's appeal and affirms the \$1,700 civil penalty.

On July 27, 1995, Mr. Stout was a passenger on a United Express flight from San Francisco to Sacramento. The flight was full.

Mr. Stout became angry when he had to wait in line while boarding. (Tr. 166.) The sole flight attendant who was working the flight, Margaret Tidwell, was talking to another airline employee, and Mr. Stout asked Ms. Tidwell to get the line moving. According to Ms. Tidwell, Mr. Stout appeared to be "very angry, upset, in a hurry." (Tr. 10.) Mr. Stout testified that he was hot, and while waiting in line to board, he could feel the sun on his back.

During the boarding, the airline paged a flight attendant who was on board as a passenger and who was not working on the flight. (Tr. 11.) Flight attendants must call operations within 5 minutes of being paged or the airline considers them "no shows" and subjects them to penalties. (*Id.*) When Mr. Stout saw the flight attendant deplane to place the call, he ran up to the cockpit, demanding loudly, "Why are we holding this plane for that broad?" (Tr. 13, 168.) Mr. Stout, who was 55 years old at the time of the incident, was 6' 2" and weighed 190 pounds.

When Mr. Stout came up to the cockpit, the first officer was calculating the weight and balance figures. (Tr. 75-76, 95-96.) Accurate calculations of the aircraft's weight and balance are critical for the stability and safety of the aircraft. (*Id.*) The aircraft was not yet ready for take-off because the flight crew had not yet completed the weight and balance manifest. (Tr. 15.)

Mr. Stout asked the captain if he was a member of the "ATF." (Tr. 78.) The only organization the captain knew of with the "ATF" acronym was the Federal agency called "Alcohol, Tobacco and Firearms." (Tr. 109.) After several requests from the crew to sit down, Mr. Stout finally did so, though he was still complaining. (Tr. 13, 78.)

Some of the passengers around Mr. Stout asked Ms. Tidwell if everything was okay. She reassured them and told them that they were just waiting for the captain to release the weight and balance manifest. (Tr. 14.) The flight attendant who had gone to place a call to operations returned, said that she had to report to duty, and deplaned again. (*Id.*)

When the crew had completed the weight and balance manifest, Ms. Tidwell gave it to the ground personnel and closed the cabin door. (Tr. 15.) After Ms. Tidwell performed the safety briefing, Ms. Tidwell asked Mr. Stout to fasten his seat belt, but he would not. Ms. Tidwell asked him no less than three times, but each time he declined to fasten his belt. (Tr. 118.)

Mr. Stout testified that each time Ms. Tidwell asked him to fasten his seat belt, he said, "I will," and that he was simply doing it slowly. (Tr. 170.) To Mr. Stout, there was no urgency. He believed he did not need to fasten his belt then. (Tr. 175.) Mr. Stout testified that he was going to do it "when he knew it absolutely had to be done." (Tr. 174.) He said Ms. Tidwell had agitated and irritated him. (*Id.*) After Mr. Stout's third refusal to fasten his seat belt, Ms. Tidwell went to the cockpit to get the captain. The flight crew could not begin its taxi unless all the passengers had their seat belts fastened. (Tr. 78.)

The captain and first officer were working together on the "before start" checklist, which they must complete before they can start the engines. (Tr. 78.) It was a "sterile cockpit" time for the flight crew, when the flight crew may not eat, drink, or talk about non-essential matters. Normally, the flight attendant does not disturb the flight crew during sterile cockpit time, which usually lasts until the aircraft either levels off or reaches an altitude of 10,000 feet, whichever occurs first. (Tr. 80.)

Mr. Stout's refusal to fasten his belt interrupted the sterile cockpit time and the "before start" checklist. (Tr. 79-80.) The captain testified that if something or someone interrupts the flight crew during their work on a checklist, they are more likely to overlook an item. (Tr. 128.) Also, during sterile cockpit time, the flight crew is obtaining clearances. Both pilots normally monitor incoming clearances, to reduce the possibility of error. (Tr. 128.) As a result of the interruption caused by Mr. Stout's refusal to fasten his seat belt, the flight crew had to start over with the checklist. (Tr. 96.) In addition, the captain testified that the delay caused by Mr. Stout could have caused the flight to miss its departure slot, which would have put the aircraft back at the end of the line. (Tr. 83.)

The captain removed his seat belt, delegated his duties to the first officer (Tr. 90), and went back to the cabin to talk to Mr. Stout. The captain testified that he saw Mr. Stout fasten his seat belt as he walked back to the cabin. (Tr. 78-79, 102.) After asking Mr. Stout to comply with the flight attendant's instructions, the captain returned to the cockpit. (Tr. 79.) The captain and first officer then started the "before start" checklist over from the beginning. (Tr. 105.)

After they were in the air, Ms. Tidwell began serving beverages. Ms. Tidwell testified that Mr. Stout asked her for identification and that she handed him her badge so that she could continue serving passengers. (Tr. 25.) She thought he had it in his hand, but when she let go, it dropped on the floor accidentally. (*Id.*) In contrast, Mr. Stout testified that Ms. Tidwell saw him looking at her badge and offered it to him, and then she intentionally threw it down on the floor by his seat. (Tr. 172, 174.)

When Ms. Tidwell offered beverages to the captain and first officer, she mentioned that Mr. Stout had been harassing her and that he had her badge. (Tr. 86.) The captain testified that Ms. Tidwell seemed shaken and scared although she was not an unusually sensitive person. (Tr. 86, 104.) The first officer instructed Ms. Tidwell to go get her badge back, but when she asked Mr. Stout to return her badge, he refused. (Tr. 27.) Ms. Tidwell could not do her job without her badge because it provided her security access. (Tr. 24, 91.)

Ms. Tidwell returned to the cockpit to inform the captain that Mr. Stout would not return her badge. The captain told her to go back and ask for her badge again, but to simply walk away if Mr. Stout still refused to give it to her. The captain asked Ms. Tidwell to try to keep Mr. Stout out of the cockpit, saying he did not want any more disruptions like the one on the ground, because they did not know Mr. Stout's frame of mind. (Tr. 27, 85.)

Mr. Stout still refused to give Ms. Tidwell her badge. He said that he planned to give her badge to the operations manager at the destination airport when he complained about her. He testified that his intent was to get her in trouble for her actions. (Tr. 177.)

When Ms. Tidwell advised the captain that Mr. Stout still would not return her badge, the captain told her to continue with her duties and avoid Mr. Stout. (Tr. 30.) The captain then called ahead to ask for assistance from law enforcement. The captain considered making a landing short of his intended destination, but decided that the situation was not yet that serious, and that he could simply have law enforcement deal with Mr. Stout when they landed in Sacramento. (Tr. 85.) The captain asked Ms. Tidwell to keep him informed of the situation at all times. (Tr. 86.) As a result, she had to go to the cockpit several times. (*Id.*)

The captain testified that the corridor from San Francisco to Sacramento is very busy and he cannot afford any distractions. He indicated that air traffic control gives frequent instructions to change altitude, direction, and speed. (Tr. 86.) According to the captain, even when the aircraft is on auto-pilot, one pilot needs to program the auto-pilot continuously for different headings, altitudes, and navigational aids, while the other pilot handles radio communications, audio tuning, and so forth. Although the captain and first officer normally help each other, the captain had to delegate all his flying duties to the first officer when he was dealing with the problems caused by Mr. Stout. With only one pilot flying the aircraft, there is a greater chance of not seeing another aircraft or missing a communication from air traffic control. (Tr. 87.)

When they landed, the captain did not permit Ms. Tidwell to stand at her normal place at the top of the stairs as the passengers deplaned, because he was concerned for her safety. (Tr. 89.) The captain asked Ms. Tidwell to go down the stairs ahead of him, where two law enforcement officers were waiting. (*Id.*)

As the passengers deplaned, a number of them complimented Ms. Tidwell on her handling of the passenger and gave her their names and telephone numbers, in case she needed witnesses. (Tr. 37-38.) According to the captain, the situation had disturbed the passengers and they were relieved to see law enforcement. (Tr. 91.)

When Mr. Stout came down the stairs, he held a sealed motion sickness bag that appeared full. (Tr. 175.) He handed it to Ms. Tidwell with what she perceived was a smirk on his face. (Tr. 41.) When one of the law enforcement officers and Ms. Tidwell opened the bag, they found her badge inside and nothing else. (*Id.*) The officers then took Mr. Stout away for questioning.

The law judge found that Complainant's witnesses, particularly the flight attendant and captain, were "credible, candid, and quite consistent with each other," and that the captain's irregularity report corroborated his testimony. (Tr. 193.) The law judge stated that she had considered, though not placed as much weight on, the crime report filed by one of the law enforcement officers at the scene. Although the report contained double and triple hearsay and unsworn statements, the law judge said, the persons supplying the statements were aware of the penalties for making false statements to law enforcement officers. The law judge noted that the crime report corroborated the testimony of Complainant's witnesses, including the testimony that Mr. Stout's behavior upset other passengers and that they volunteered to assist in any action against him. (Tr. 194.)

The law judge found that although Mr. Stout was truthful, his testimony did not provide any excuse for his actions. The conflicts between his testimony and that of Complainant's witnesses -- involving whether he fastened his belt before the captain left

the cockpit, and whether Ms. Tidwell threw her badge down -- were immaterial. If resolved in Mr. Stout's favor, the law judge said it would not change her conclusion that Mr. Stout violated the regulations as alleged in the complaint. The law judge resolved the factual disputes in favor of Complainant, however, saying that other evidence (both exhibits and testimony) corroborated Complainant's version of events. (Tr. 194-195.)

The law judge stated that it was more probable than not that the seat belt light was on when Ms. Tidwell asked Mr. Stout to fasten his belt, even though there was no direct evidence to that effect. (Actually, there was some direct testimony that the seat belt light was on, for Ms. Tidwell testified that she checked to see if Mr. Stout's seat belt light was on each time she talked to him and it was. Tr. 50-51.)

The law judge found "very credible" the captain's testimony that Mr. Stout's refusal to fasten his seat belt interfered with crewmember duties by forcing the captain to leave the cockpit when the flight crew was completing the "before start" checklist.

The law judge stated that even though Mr. Stout had his seat belt fastened when the captain arrived, he still violated the following regulations:

- Section 91.517(d), by not fastening his seat belt when the seat belt light was on;
- Section 91.517(e), by not complying with crewmember instruction regarding fastening his seat belt; and
- Section 91.11, by interfering with the captain's and flight attendant's duties.

The specific flight attendant duties with which Mr. Stout interfered included: completing the pre-flight check, retaining control as a crewmember, and assuring a safe and orderly environment.

The law judge noted that Mr. Stout did not really contest the allegation that he requested the flight attendant's identification. His testimony was simply that the request was non-verbal – *i.e.*, that she gave it to him because he conspicuously looked at the badge.

Regarding the allegation that Mr. Tidwell handed her badge to Mr. Stout, the law judge said that the only dispute was whether Ms. Tidwell handed it to him or dropped it. The law judge said that regardless, Mr. Stout obtained the badge, so Complainant had established the allegation.

The law judge also found that when the flight attendant requested the return of her badge, Mr. Stout refused. The law judge noted that although Mr. Stout said he intended to give the badge to operations, he did not dispute his refusal to return it during the flight. The law judge found that the captain then had to consider whether to make an unscheduled landing or arrange for security to meet the plane, which interfered with the captain's normal flight duties. The law judge also found that Mr. Stout's refusal to return the badge interfered with Ms. Tidwell's duties in that it prevented her from attending to other passengers. It also upset her so that she was probably not able to concentrate fully on her duties as she normally would. The law judge believed that Ms. Tidwell normally performed her duties in a "very conscientious manner."

The law judge found that the evidence did not support a finding that the flight attendant overreacted and that her behavior was the problem. The law judge found that all the evidence, including that showing the reactions of the passengers, showed that the flight attendant's behavior was "reasoned, conscientious, and responsible."

The law judge rejected Mr. Stout's excuses, stating that passengers must follow the rules, whether they are angry, tired, hot, or mistreated. (Tr. 200.) The law judge also rejected Mr. Stout's argument that there was no safety threat because he intended to fasten his belt when he felt it necessary and to return the flight attendant's badge later. To the law judge, this argument completely ignored the importance of maintaining a safe and orderly environment in the cabin. The law judge stated that Mr. Stout could not choose which orders to follow, nor could he substitute his judgment for that of the crew.

The law judge disagreed with the FAA inspector that a \$3,000 civil penalty was appropriate. In the law judge's view, the inspector's recommendation did not take into account the case law. The law judge cited In the Matter of Ignatov,³ involving a \$1,750 penalty for pushing a beverage cart onto the flight attendant's foot, causing injury, and In the Matter of Mayer,⁴ involving a \$1,500 penalty for stuffing a sandwich down the flight attendant's blouse. Although Mr. Stout probably did use some inappropriate language, the law judge said, he did not curse or swear, yell or scream,⁵ and there was no physical contact or threat of that.

On the other hand, the law judge noted, the violations occurred continuously on a short, busy flight through a heavily trafficked corridor. The crew had a full load of

³ FAA Order No. 96-6, 1996 FAA LEXIS 1515 (February 13, 1996).

⁴ FAA Order No. 97-12, 1997 FAA LEXIS 45 (February 20, 1997).

⁵ The flight attendant testified that Mr. Stout yelled and screamed. (Tr. 12, 56.) The captain testified that Mr. Stout did not scream, but that he was talking in a loud, argumentative voice. (Tr. 75, 112.)

passengers, and had much to accomplish in a short period of time. Also, Mr. Stout was an experienced flyer who should have known better, and he acted deliberately. (Tr. 202.)

After noting that Mr. Stout knew he was creating a problem and still persisted, the law judge assessed \$1,100 for the seat belt violations and \$600 for the badge violation, for a total of \$1,700. (Tr. 203.) When asked about a penalty for interfering with the crewmembers, the law judge indicated that the \$1,700 penalty already included a penalty for the interference.⁶ (*Id.*)

On appeal, Complainant challenges the rationale for the law judge's reduction of the proposed civil penalty -- *i.e.*, that the penalty in this case must not be higher than in cases involving physical violence. (Appeal Brief at 4-5.) Complainant argues that the law judge failed to consider the extent and egregiousness of Mr. Stout's interference with the duties of the captain and the flight attendant. (*Id.* at 5.) Complainant also argues that the law judge improperly failed to defer to the FAA inspector's sanction determination. (*Id.*)

Mr. Stout challenges Complainant's characterization of the law judge's assessment of a \$1,700 civil penalty as a "reduction" in the civil penalty, arguing that no penalty existed before the law judge's decision. (Reply Brief at 1.) Mr. Stout also points out that on appeal Complainant seeks to distinguish the two cases it relied upon before the law judge. Mr. Stout argues that in both Ignatov⁷ and Mayer,⁸ the passenger-

⁶ Mr. Stout's resistance both to putting on his seat belt and returning the flight attendant's badge interfered with the duties of the flight attendant and the captain.

⁷ See *supra* note 3.

⁸ See *supra* note 4.

respondents committed battery, but Complainant alleged no such touching here. For these reasons, Mr. Stout asks the Administrator to deny Complainant's appeal and leave the law judge's sanction determination undisturbed.

Contrary to Complainant's argument, nothing in the Rules of Practice required the law judge to defer to the inspector's sanction determination. Complainant bore the burden of establishing not only the violations, but also the appropriate sanction amount. In the Matter of Toyota Motor Sales, FAA Order No. 94-28 at 6-7, 1994 FAA LEXIS 275, at *10 (September 30, 1994); In the Matter of Luxemburg, FAA Order No. 94-18 at 6, 1994 FAA LEXIS 216, at *11 (June 22, 1994) (both citing 14 C.F.R. § 13.224(a), which provides that, except for affirmative defenses, Complainant bears the burden of proof).

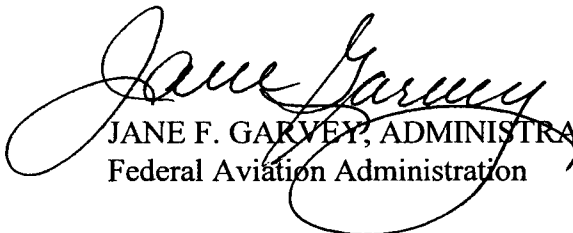
Complainant is correct that the determining factor, in setting the sanction, is not whether the interference was "physical" or not. One can imagine situations in which certain words (*e.g.*, threatening to strangle the flight attendant), depending on all the circumstances of the case, might justify a harsher sanction than certain physical acts (*e.g.*, pushing past the flight attendant, contrary to instructions, without causing injury to the flight attendant).

Nevertheless, the law judge in this case offered a reasoned explanation for her sanction determination. She attempted to square the penalty in this case with the penalties imposed in previous cases. Contrary to Complainant's claims, it is difficult to say that Mr. Stout's behavior was so much worse than that of Mr. Ignatov (who was assessed \$1,750 for conduct including pushing a beverage cart onto a flight attendant's

foot, causing her injury), or that of Mr. Mayer (who was assessed \$1,500 for stuffing a sandwich down a flight attendant's blouse) that it merits a civil penalty of \$3,000. Thus, the law judge did not err in assessing a civil penalty of \$1,700.

This is not to say that Mr. Stout's behavior can in any way be minimized or condoned. His behavior was inexcusable, and his refusal to comply with crewmember requests and instructions had serious safety implications. Here the flight attendant was able to keep Mr. Stout out of the cockpit, but uncontrolled anger on an airplane can be extremely dangerous. Still, a \$1,700 civil penalty against an individual under all the circumstances of this case is sufficient.⁹

For the foregoing reasons, this decision denies Complainant's appeal and affirms the law judge's decision assessing a civil penalty of \$1,700.


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11th day of June , 1998.

⁹ This decision does not affirm the particular penalty breakdown specified by the law judge. It indicates only that \$1,700 is an appropriate penalty under the totality of the circumstances.