

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of:**

**EVGENIY V. IGNATOV**

FAA Order No. 96-6

Served: February 13, 1996

Docket No. CP94GL0076

**DECISION AND ORDER**

Respondent Evgeniy V. Ignatov has appealed from the oral initial decision of Administrative Law Judge Burton S. Kolko finding that Mr. Ignatov committed two violations of 14 C.F.R. § 91.11, which provides that "No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated."<sup>1</sup> The law judge imposed a \$1,750 civil penalty, payable in monthly payments of \$100.

On December 13, 1992, Mr. Ignatov was a passenger aboard a Northwest Airlines flight from Seattle to Detroit. At one point during the flight, Mr. Ignatov left his seat to go to the rear of the airplane, where he encountered a flight attendant, Ms. Sallie Kessey, who was serving the passengers from a beverage cart.<sup>2</sup> Because the captain had turned on the "fasten seat belt" light due to possible

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<sup>1</sup> A copy of that portion of the hearing transcript containing the law judge's decision is attached.

<sup>2</sup> This was not Mr. Ignatov's first encounter with Ms. Kessey. Earlier, Mr. Ignatov noticed music near his seat, and pressed the call button. Mr. Ignatov described the music, which was coming through the hole for the headset, as a "satanic racket." (Tr. 76.) He was upset with Ms. Kessey when she was unable to stop the music, which apparently resulted from a mechanical abnormality that would require the services of a mechanic. The music stopped of its own accord later in the flight.

turbulence, Ms. Kessey asked Mr. Ignatov to return to his seat and fasten his seat belt.<sup>3</sup> (Tr. 40.) Mr. Ignatov immediately became irate. Ms. Kessey testified that Mr. Ignatov “started yelling violently” at her, (Tr. 30), calling her a “swine”<sup>4</sup> and a “waitress,” and telling her that she was being paid for him to be on the plane. (Tr. 30.) He threatened to have her fired from the company. (Tr. 43.) Mr. Ignatov refused to return to his seat. He insisted that Ms. Kessey move out of the way for him.

The aircraft was a Boeing 757, a narrow-bodied aircraft that has a narrow aisle. (Tr. 29.) In fact, the aisle of the Boeing 757 is so narrow that there is not room enough for a person easily to move by on one side of a beverage cart. To permit a passenger to pass by, the flight attendant would have to move the cart all the way to the front or the back of the aircraft. A passenger who wishes to get on the other side of the beverage cart may also move into the space in front of an empty seat, allowing the cart to pass by in the aisle. (Tr. 29-30.)

The plane was very full that day, and there were very few empty seats. (Tr. 30.) To comply with Mr. Ignatov’s demand that she move for him, Ms. Kessey testified, she would have had to pull the beverage cart all the way to the back galley, which was quite a few rows back. She also testified that it is very difficult to pull a cart backwards, instead of pushing it forward. (Tr. 40.)

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<sup>3</sup> As Ms. Kessey testified, passengers who do not have their seat belts fastened when turbulence occurs may be tossed around the aircraft, injuring themselves and other passengers.

<sup>4</sup> Mr. Ignatov testified that he told her please do not act like a swine, rather than calling her a swine directly (Tr. 82.) It is unclear that there is any qualitative difference between the two statements.

Mr. Ignatov was blocking Ms. Kessey from moving forward to continue serving her passengers. (Tr. 29.) Ms. Kessey again asked Mr. Ignatov to go to his seat. (Tr. 31, 87.) Instead, Mr. Ignatov started to push her cart out of the way. (Tr. 31.) Ms. Kessey testified that she was extremely scared that Mr. Ignatov would tip over her beverage cart, which carries hot coffee and hot tea that could burn her passengers. (Tr. 29.) Ms. Kessey held onto the cart so that the beverages would not spill. (Tr. 31.) Mr. Ignatov grabbed her by the shoulders to step around her and the cart, pushing her and stepping hard on her foot. Once past Ms. Kessey, Mr. Ignatov went to his fiancée's seat, where he talked with her a few minutes before returning to his seat. (Tr. 84.)

As for Ms. Kessey, she experienced extreme pain in her foot that lasted for 20 to 30 minutes. Later she found that her foot was bruised. (Tr. 31, 32, 41.) Several male passengers who witnessed the incident jumped up out of their seats. Extremely upset, they wanted to know if Ms. Kessey needed assistance. (Tr. 34, 42, 46.) One of them promised to "nail this idiot to the floor." (Tr. 34.) Ms. Kessey attempted to calm the passengers, preventing one of them from attempting to fight Mr. Ignatov. (Tr. 42; 45.) Ms. Kessey then put the lock on her cart and went back to the telephone. She called the lead flight attendant to say that she was having difficulty and needed assistance. (Tr. 42.) The lead flight attendant came back and talked to Mr. Ignatov. (Tr. 54.) Mr. Ignatov argued with the lead flight attendant too, calling Ms. Kessey a "menopausal swine" and saying that he had never seen such treatment of economy-class passengers. (Tr. 55.)

Although Mr. Ignatov testified that his original reason for refusing Ms. Kessey's request was that he needed to use the lavatory (Tr. 81), he testified

that the "urge" to use the lavatory "had gone" after his encounter with Ms. Kessey. (Tr. 84.) Ms. Kessey testified that Mr. Ignatov never stated that he needed to go to the restroom, which was not in the back of the plane anyway. She testified that when Mr. Ignatov approached her beverage cart, there was nothing blocking him from either using the lavatories, or returning to his seat. (Tr. 52, 97.) The lavatories were in the direction from which he came. (Tr. 52.)

Ms. Kessey filed a report of the incident with Northwest Airlines. Her report was supported by statements from the captain, the lead flight attendant, and several passengers. This report formed the basis of the instant civil penalty action against Mr. Ignatov.

The law judge found that Mr. Ignatov had committed two separate violations of Section 91.11--one involving interfering with a crewmember, and the other involving assault, which the law judge interpreted to include battery. The law judge went on to state that there were two acts, one verbal and one physical. As to the verbal violation, the law judge likened it to yelling fire in a crowded movie theater. The law judge pointed out that flight attendants are responsible for the safety of the passengers who are encased in a metal capsule hurtling through the air, and the passengers must follow the directions given by flight attendants, because law and order in an enclosed capsule at 30,000 feet must be maintained. (Tr. 115-116.)

The law judge did not rely at all on the testimony of one of the passengers, a Dr. Hendrickson, who testified via conference call. The law judge explained that Ms. Kessey testified credibly, and therefore, Dr. Hendrickson's testimony was not necessary. The law judge considered Mr. Ignatov's speech--saying that Ms. Kessey was acting like a swine or in fact calling her a swine--interference with her duties in

that it caused at least two male passengers to stand up and practically start a fist fight on board the aircraft. (Tr. 116-117.) The law judge said that a fight was averted because Ms. Kessey's abilities to calm down the other passengers worked to allay what could have been a dangerous situation on that aircraft. Nevertheless, the law judge found that through his verbal actions, Mr. Ignatov had created an "uncalm" and potentially unsafe environment on board the aircraft, which constituted interference even if it did not escalate into an actual brawl on board the aircraft. (Tr. 118.)

As for the assault, the law judge said he preferred the term "battery" because there was an unconsented physical touching. (Tr. 118.) The law judge found that Mr. Ignatov's "foot landed on Ms. Kessey's to the point where sharp pain ensued, resulting in a declamatory exclamation from her and . . . residual pain through the next several minutes." (Tr. 118.) According to the law judge, this was exactly the kind of unconsented touching that the regulation was intended to prohibit. (Tr. 118.)

The law judge did not believe Mr. Ignatov's statement that he was heading down the aisle to go to the lavatory. (Tr. 119.) Instead, the law judge found that Mr. Ignatov was going to visit his fiancée. (Tr. 120.) The law judge found that Mr. Ignatov had no excuse for not complying with the flight attendant's request that he return to his seat and fasten his seat belt. (Tr. 120-121.)

As for the amount of the civil penalty, the law judge assessed a \$750 civil penalty for the violation involving the speech, an amount less than the maximum of \$1,000, because no profanity was used. Regarding the physical movement, however,

which the law judge believed to be “totally beyond the pale,” he assessed the maximum penalty of \$1,000. (Tr. 121.)

The first issue involves the definition of the term “assault” in Section 91.11. In his appeal brief, Mr. Ignatov argues, through counsel, that the law judge erred in interpreting Section 91.11’s reference to “assault” to include “battery.” The Federal Aviation Regulations do not define “assault.” Mr. Ignatov argues that United States v. Tabacca, 924 F.2d 906 (9th Cir. 1991), indicates that assault and battery are two distinct offenses. At issue in Tabacca was the following statute, criminal in nature, which involves interference with crewmembers:

Whoever, while aboard an aircraft . . . assaults, intimidates, or threatens any flight crewmember or flight attendant . . . of such aircraft, so as to interfere with the performance by such member or attendant of his duties or lessen the ability of such member or attendant to perform his duties, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

49 U.S.C. App. § 1472(j) (recodified as 49 U.S.C. § 46504).<sup>5</sup> In Tabacca, a jury instruction defined “assault” as follows:

Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm constitutes an assault. An assault may be committed without actual touching, or striking, or doing bodily harm, to the person of another.

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<sup>5</sup> The recodified version of the statute is as follows:

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the attendant to perform those duties, shall be fined under title 18, imprisoned for not more than 20 years, or both.

924 F.2d at 911. Mr. Ignatov argues that the definition of assault used in Tabacca should apply in the instant case, and that, under this definition, Complainant failed to establish that Mr. Ignatov assaulted Ms. Kessey. According to Mr. Ignatov, the evidence shows only that Mr. Ignatov injured Ms. Kessey accidentally while trying to push past her, and not that he made any willful attempt or threat to inflict any injury upon her.

As Complainant points out, the definition of assault varies, depending on the context.<sup>6</sup> The definition of assault used in Tabacca, a criminal case, is inapplicable here. The instant case was not brought under the *criminal* statute. Instead, it was brought under *civil* regulatory and statutory provisions--specifically,

1. Section 91.11, which prohibits assaulting, threatening, intimidating, or interfering with a crewmember; and
2. 49 U.S.C. App. § 1471(a)(1) & (3) (recodified as 49 U.S.C. § 46301(a)(1) & (d)(2)), which provides for civil penalties not to exceed \$1,000 for each violation of applicable regulations (including Section 91.11).

(Complaint at 2.) The statutory authority for Section 91.11 is not the criminal statute involved in Tabacca. Rather, it is 49 U.S.C. § 44701, which provides as follows:

(a) . . . The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing-- . . . (5) regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

Section 91.11 is broader in the scope of behavior to which it applies than is the criminal statute. Under the criminal statute, assaulting and intimidating are

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<sup>6</sup> For example, it may vary, depending on whether the case is civil or criminal. It may also vary depending on the jurisdiction.

forms of interference with the performance of a crewmember; interfering does not appear to be a violation independent from assault and intimidation under the criminal statute. In contrast, Section 91.11 lists each of the following as distinct types of violations: assaulting, threatening, intimidating, and interfering with the performance of a crewmember's duties. The regulation states: "No person may assault, threaten, intimidate, *or* interfere with a crewmember in the performance of the crewmember's duties." (Emphasis added.) Because of the use of the disjunctive "or" to connect the various acts described, the violation of interfering may be found even in the absence of an assault or intimidation.

Rather than relying on the criminal statute's definition of assault, it is more appropriate to look to civil law in interpreting Section 91.11. In the civil arena, a battery is "a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact, or apprehension that such a contact is imminent."<sup>7</sup> The least touching of another person in anger is a battery, and no actual damage of any kind is required. United States v. Ortega, 24 U.S. 467 (1826); *see also* PROSSER & KEETON, *supra* note 7, at 41 & nn.33-34. As for assault,

[t]he interest in freedom from apprehension of a harmful or offensive contact with the person, as distinguished from the contact itself, is protected by an action for the tort known as assault. No actual contact is necessary to it, and the plaintiff is protected against a purely mental disturbance of this distinctive kind.

*Id.* at 43.

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<sup>7</sup> W. PAGE KEETON ET AL., PROSSER & KEATON ON THE LAW OF TORTS § 9, at 39 (5th ed. 1984).



However, the terms "assault" and "battery" are often used interchangeably, both in common usage and in certain laws.<sup>8</sup> Common sense demands that the term "assault" as used in Section 91.11 be read to include both assault and battery. To hold otherwise would result in the illogical and undesirable result that shaking one's fist under a crewmember's nose would constitute an assault under Section 91.11, but actually hitting the crewmember would not.

Assuming, for the sake of argument, that "assault" as used in Section 91.11 does not include the concept of battery, the result in this case would be the same. Even under the technical definition of assault as distinct from battery, it appears that Mr. Ignatov committed an assault. Ms. Kessey testified that "*He [Ignatov] said he was getting past me, and he started to physically push my cart out of the way.*" (Tr. 31; emphasis added.) Ms. Kessey also testified that she was "extremely scared" that the beverage cart, with its hot coffee and tea, would tip over, burning those who were near. (Tr. 32.) Under the circumstances, where there was no room for a person to move by the beverage cart without causing contact and serious disruption, an assault, even as it is used in its more narrow, technical sense, did in fact occur. The law judge's statement that he did not have the sense from Ms. Kessey that she was intimidated (Tr. 116) does not alter this. As stated by Prosser and Keaton, "Apprehension is not the same thing as fear, and the plaintiff is not deprived of an action [for assault] merely because of being too courageous to be frightened or

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<sup>8</sup> "The two terms are so closely associated in common usage that they are generally used together, or regarded as more or less synonymous. Loosely drawn criminal statutes, which make use of 'assault' to include attempted battery, or even battery itself, have assisted in obscuring the distinction." PROSSER & KEATON, *supra* note 7, at 47 & n.37 (5th ed. 1984).

Complainant points out that Black's Law Dictionary also indicates that "an assault is frequently used to describe illegal force which is technically a battery."

intimidated.”<sup>9</sup> As for Mr. Ignatov’s argument that he did not intend to cause Ms. Kessey injury, “the intent [for assault] need not necessarily be to inflict physical injury, and it is enough that there is an intent to arouse apprehension.”<sup>10</sup> It is enough that Mr. Ignatov intentionally, through his words and physical movements, created a reasonable apprehension in Ms. Kessey that he was going to push past her when there was not sufficient room to do so without causing a battery.

Mr. Ignatov also takes the law judge to task for allegedly failing to specify the particular duties with which Mr. Ignatov allegedly interfered. However, it is clear from the law judge’s decision that the law judge found interference with at least the following duties of the flight attendant: attending to the passengers’ needs; ensuring that the passengers were in their seats with seat belts fastened when the seat belt light was lit; and keeping a calm, safe, and orderly environment aboard the aircraft.

Mr. Ignatov further argues that the law judge erred to the extent that he equated assault with interference.<sup>11</sup> Mr. Ignatov is correct to the extent that he is arguing that the same behavior (*e.g.*, pushing someone) would not appear to justify a finding of two separate violations of the same regulation. Any statements in the

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<sup>9</sup> PROSSER & KEATON, *supra* note 7, at 44 & n.15.

Note also that even under the criminal statute, “proof that the victim was in fact frightened for her own physical safety is not required to find that a defendant performed the criminal act of intimidation. It is sufficient that the conduct and words of the accused would place an ordinary, reasonable person in fear.” *U.S. v. Tabacca*, 924 F.2d 906, 911 (9th Cir. 1991), citing *U.S. v. Meeker*, 527 F.2d 12, 15 (9th Cir. 1975). Thus, it appears that Mr. Ignatov’s behavior could also have been classified as intimidation within the meaning of Section 91.11.

<sup>10</sup> PROSSER & KEATON, *supra* note 7, at 46 & n.32.

<sup>11</sup> In this regard, Mr. Ignatov notes that the law judge stated that “it was an interference with [Ms. Kessey’s] duties in that it caused at least two, perhaps more large male passengers to rise in their seat and practically start a fist fight on board the aircraft.” (Tr. 116.)

law judge's decision that may suggest that he was counting the same behavior as separate violations constitute harmless error, however, because it is clear from the record that there were two distinct sets of action on Mr. Ignatov's part that violated Section 91.11. The first violation, consisting of interfering with the performance of a crewmember's duties, occurred when Mr. Ignatov refused to return to his seat in compliance with Ms. Kessey's request and the "fasten seat belt" light and when he blocked Ms. Kessey's passage while she was trying to serve passengers. The second violation, the assault, occurred when Mr. Ignatov, asserting that he was going to get by when there was not room to do so safely, pushed past Ms. Kessey, grabbing her shoulders and stepping on her foot.<sup>12</sup>

Mr. Ignatov next argues that the law judge erred in failing to make a specific finding that a flight attendant is a "crewmember" within the meaning of Section 91.11. Mr. Ignatov states that Section 91.11 does not contain the word "flight attendant," although the criminal statute involving interfering with crewmembers does.

Section 1.1 of the Federal Aviation Regulations, 14 C.F.R. § 1.1, defines crewmember as "a person assigned to perform duty in an aircraft during flight

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<sup>12</sup> At least once in his decision, the law judge referred to the interfering violation as the "verbal" violation, and the assault violation as the "physical" violation. A potential problem with this type of categorization is that an assault can be solely verbal--*e.g.*, telling the flight attendant, "I'm going to hurt you." An assault can also arise from words plus action which together place an individual in fear of imminent harm. Thus, an assault is not necessarily a "physical" violation. Similarly, an interference can be physical in nature--*e.g.*, holding down a flight attendant when he or she is attempting to give a passenger first aid. Thus, categorizing the assault as the physical offense and the interference as the verbal offense may be unnecessary and confusing. In any event, the law judge did properly find two separate violations of Section 91.11.

time.” There is no question that a flight attendant falls within Section 1.1’s definition of a crewmember.<sup>13</sup>

A finding that a flight attendant is a crewmember is implicit in the law judge’s decision. Any failure on his part to make a specific finding to this effect is harmless, particularly when there is no question that a flight attendant is a crewmember, and Mr. Ignatov did not raise the issue before the law judge.

Mr. Ignatov argues that the law judge failed to issue specific findings of fact and conclusions of law as required by Section 13.232.<sup>14</sup> However, even a cursory look at the law judge’s oral initial decision shows to the contrary. The initial decision is complete and does not run afoul of Section 13.232.

Mr. Ignatov also argues that Ms. Kessey’s testimony should be disregarded because it was confusing and contained inconsistencies. Mr. Ignatov lists a number of alleged inconsistencies. For example, Mr. Ignatov contends that Ms. Kessey’s testimony as to getting around the cart was inconsistent, citing the following excerpts from the hearing transcript:

Excerpt 1 (Tr. 29):

Q. Was he on the other side of the cart?

A: Yes, it was the front side of the cart and the 757 has the narrowest aisle of all narrow bodied aircraft so you cannot position our carts which are identical on all aircraft to one side to enable you to scoot by on the other side. You actually have to move the cart all the way to the back of the aircraft on the front, wherever you need to, in order to let a passenger by or they can move into an aisle seat that is empty.

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<sup>13</sup> See Letter to Joseph P. Carr from Edward P. Faberman, Acting Assistant Chief Counsel, Regulations and Enforcement Division (October 23, 1979), in 1 Federal Aviation Decisions, at I-412 (Clark Boardman Callaghan 1993) (stating that a cabin attendant is a crewmember).

<sup>14</sup> Specifically, Section 13.232 provides as follows: “In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions.” 14 C.F.R. § 13.232.

Excerpt 2 (Tr. 32):

Q. Did he [Mr. Ignatov] scoot into an aisle and back?

A. Yes.

(Appeal Brief at 11-12.) Any inconsistency in Excerpts 1 and 2, like the other alleged inconsistencies cited by Mr. Ignatov,<sup>15</sup> is trivial and does not affect the weight and substance of Ms. Kessey's testimony. The law judge found that Ms. Kessey's testimony was credible. A law judge's credibility determinations are entitled to deference on appeal. In the Matter of Hereth, FAA Order No. 95-26 at 9 (December 19, 1995). Mr. Ignatov has failed to present any compelling reason for disturbing the law judge's credibility determinations. Indeed, a thorough review of the record supports the law judge's credibility determinations.

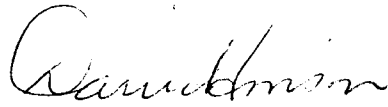
Finally, Mr. Ignatov argues that the civil penalty of \$1,750 assessed by the law judge is unreasonably severe, given that in another case involving the same regulation, In the Matter of Park, FAA Order No. 92-3 (January 9, 1992), a \$1,000 civil penalty was assessed. The instant case, however, involves two violations of Section 91.11, while Park involved only one.<sup>16</sup> Given the potentially dangerous situation created by Mr. Ignatov's actions in the cabin of an aircraft in flight, the \$1,750 civil penalty assessed by the law judge cannot be considered too severe.

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<sup>15</sup> Discussion of the other alleged inconsistencies would take too much space. Note, however, that each alleged inconsistency has been examined and found to be without merit.

<sup>16</sup> In Park, although Complainant alleged two violations of Section 91.11, the law judge found only one, and Complainant did not appeal the issue. Had Complainant done so, more than one violation of Section 91.11 might well have been found. Complainant's decision not to appeal the issue was within the bounds of its prosecutorial discretion.

In conclusion, the law judge's decision finding two violations of Section 91.11 and assessing a \$1,750 civil penalty is affirmed.<sup>17</sup>



DAVID R. HINSON, ADMINISTRATOR  
Federal Aviation Administration

Issued this 13th day of February, 1996.

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<sup>17</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) (1995).