UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

In the Matter of: DELTA AIRLINES, INC.
FAA Order No. 1994-1
Docket No. CP90**0022
Served: February 18, 1994

DECISION AND ORDER

This case arises from an airport security inspection conducted on May 2, 1988, by two FAA special agents.[1/] During the inspection, the agents walked past an aircraft belonging to Respondent Delta Airlines that was located on the airport operations area (AOA). Two of Respondent's employees noticed the agents, but failed to challenge them. The agents were not wearing identification badges indicating that they were authorized to be on the ramp.

[1/] Portions of this decision have been redacted for security reasons under 14 C.F.R. Part 191. All unredacted copies of this decision must be treated in a confidential manner. Unredacted copies of this decision may not be disseminated beyond the parties to this proceeding and those carriers bound by the Standard Security Program, all of whom have been given both unredacted and redacted copies.

Administrative Law Judge Robert L. Barton, Jr., issued a written initial decision[2/] in which he held that Section V.A.2 of the Air Carrier Standard Security Program (ACSSP) requires * * *

.[3/] He distinguished that requirement from Section VI.A.4,[4/] which, he found, requires * * *

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Because Complainant alleged that Respondent had failed to

[2/] A copy of the law judge's written initial decision, served on June 24, 1992, is attached.

[3/] Complainant alleged that Respondent had failed to carry out Section V.A.2 of the ACSSP, which provides as follows:

V. AIRPLANE SECURITY.

A. Access to Airplanes.

2. * * *

[4/] Section VI.A.4 provides as follows:

VI. AREA SECURITY.

A. Area and Facilities.

4. * * *

carry out Section V.A.2, rather than VI.A.4, of the ACSSP, the law judge held that Complainant had not proven the allegations contained in the complaint.[5/]

Complainant has appealed from that decision, arguing that Section V.A.2 applies to

* * *

. Complainant argues that Section VI.A.4 contains a generic requirement that

* * *

. In response, Respondent argues that Complainant is trying "to obfuscate the simple, common sense reading of the ACSSP, by essentially taking the position that each section of the ACSSP is duplicative, redundant and ... vague ...." Respondent's reply brief at 1. For the reasons that follow, the law judge's reasoning is rejected, Respondent is found to have violated 14 C.F.R. § 108.5(a) as alleged in the complaint, and the $4000 civil penalty sought by Complainant is affirmed.

The facts of this case may be summarized as follows.[6/] During an unscheduled airport security inspection on May 2,

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[5/] It was alleged in the complaint that Respondent violated 14 C.F.R. § 108.5(a)(1) by failing to carry out Section V.A.2 of the ACSSP. Section 108.5(a) requires that "[e]ach certificate

holder shall adopt and carry out a security program ...." 14 C.F.R. § 108.5(a)(1).

[6/] Respondent admitted all of the numbered factual allegations contained in the complaint. At the hearing held on April 15, 1992, both FAA special agents testified about their investigation.

1988, two FAA special agents walked through an open walkway door at a gate and onto the AOA. They walked past one of Respondent's aircraft which was located on the ramp in front of the gate. A pilot, who was in the righthand seat of the aircraft, and another employee, who was on top of truck stairs washing the aircraft windows, made eye contact with the special agents.[7/] Neither of these employees of Respondent challenged the special agents, who were not displaying any identification. The aircraft was open at this time. The inspectors walked down the ramp about 500 yards, and after talking with some employees of another air carrier, the inspectors returned to Respondent's aircraft, which was now being boarded. To board the aircraft, the passengers had to walk across the ramp and then climb up the truck stairs. The inspectors had been on the ramp for about 10 to 15 minutes by the time they returned to Respondent's aircraft.

Respondent is correct in that Section V.A.2 is not a model of clarity. This section is capable of being read as narrowly

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[7/] Both FAA special agents testified that they made eye contact with Respondent's employees. Respondent did not introduce any evidence to rebut that testimony.

The law judge did not make a specific factual finding that the special agents made eye contact with the employees. It is unlikely that the law judge rejected the unrebutted testimony of the agents as unsupported by the evidence. At the conclusion of the hearing, the law judge explained that he found the testimony of these witnesses to be credible. The law judge most likely did not make a specific factual finding on

the eye contact issue because it was unnecessary once he found that Section V.A.2 of the ACSSP was inapplicable.

as the law judge has done.[8/] However, the term "access to airplanes," which is the title of Section V.A., can, and in this context, should be read as including * * *

. "Access," as it applies to Section V.A.2, should not be interpreted as applying only in * * *

.[9/]

There is a zone around an airplane in which a person would be able to come in contact with that airplane readily. Individuals within such proximity to an airplane, even if not aboard the airplane, might have the opportunity to sabotage it. For example, an unauthorized person could tamper with any number of critical aircraft components without ever boarding the airplane. Hence, it is essential that * * *

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[8/] In addition, the text of Section V.A.2 is capable of being read very broadly. * * *

However, such an interpretation would be unreasonable.

[9/] The definition of the word "access" includes "permission, liberty, or ability to enter, approach, communicate with, or

pass to and from." Webster's Ninth New Collegiate Dictionary, at 49 (1986).

Section V.A.2, as interpreted in this decision, is distinguishable from the requirements of Section VI.A.4. Both Sections V.A.2 and VI.A.4 require the * * *

. Section VI, entitled "Area and Facilities," pertains to security measures to be taken on * * *

. See Sections VI.A.1 and 2. The requirements contained in Section VI must be followed regardless of whether * * *

. Section VI.A.4 also is applicable when there are * * *

. Section V, in contrast, applies only when there is * * *

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The fact that the challenging requirements set forth in Sections V.A.2 and VI.A.4, as interpreted in this decision, may overlap does not make one or both of these sections invalid. The cases that Respondent cites in its reply brief to support the proposition that Complainant's interpretation of the ACSSP is contrary to principles of statutory construction are inapplicable.[10/]

[10/] Respondent cites Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) and West v. Keve, 721 F.2d 91 (3d Cir. 1983).

(Footnote 10 continued on next page.)

Complainant proved that the inspectors came close enough to Respondent's airplane to have had access to it. Unrefuted testimony was given by the reporting inspector in this case that established that the inspectors were "just a few feet from the nose" of the airplane when they were first seen by the person sitting in the copilot's seat. (TR-20) When asked by Complainant's counsel what distance she and the other inspector came to the airplane, the reporting inspector testified that they got about as close to the nose of the airplane as the distance "probably from here to the door [of the hearing room.]" (TR-21). These distances, while not exact measurements, are certainly within a zone constituting access to the airplane. Furthermore, the fact that the inspectors made eye contact with the person sitting in the copilot's seat corroborates the inspector's opinion that the inspectors had come "quite close" to the nose of the airplane and rules out the possibility that the inspectors were not seen. (TR-17).

(Footnote 10 continued from previous page.)

These cases stand for the proposition that competing statutes should not be interpreted so that one will render ineffective the provisions of the other. Ruckelshaus v. Monsanto Co., 467 U.S. at 1018; West v. Keve, 721 F.2d at 96. In this case, Sections V.A.2 and VI.A.4 are not competing because they are not inconsistent. Indeed, both require air carrier employees to do the same thing: to challenge unauthorized or unbadged persons and to report the presence of these persons to a supervisor, law enforcement officer or airport authority, as appropriate.

The $4000 civil penalty sought by Complainant is reasonable in light of the serious safety risks associated with unauthorized persons on the AOA, especially when there are open aircraft on the AOA. The Administrator previously has recognized the seriousness of offenses involving unauthorized individuals on AOAs by affirming sanctions of $4000 and $5000 in cases in which air carrier employees failed to challenge unbadged individuals on the AOA. In the Matter of Continental Airlines, FAA Order No. 90-19 (November 7, 1990). Accordingly, the $4000 civil penalty sought by Complainant is affirmed in this case.

THEREFORE, Complainant's appeal is granted, the law judge's decision is reversed, and a $4000 civil penalty is assessed.[11/]

DAVID R. HINSON,
ADMINISTRATOR
Federal Aviation Administration

Issued this 20th day of December, 1993.

[11/] 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. App. § 1486), this decision

shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).