UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:	FAA Order No. 94-44
AMERICAN AIRLINES, INC.	Served: December 20, 1994
	Docket No. CP93SO0286

DECISION AND ORDER

Complainant appeals from the oral initial decision of Chief Administrative Law Judge John J. Mathias issued on February 2, 1994.[1] The law judge found that Respondent American Airlines, Inc., violated the Federal Aviation Regulations, (FAR), when it permitted a passenger to board its aircraft with a loaded gun that remained accessible to him in carry-on baggage during flight.[2] The law judge assessed a $1,000 civil penalty.

The only issue to be decided in this appeal concerns the amount of the civil penalty. Complainant argues on appeal that the law judge erred in assessing a civil

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

[2] The law judge found that Respondent violated Sections 108.5(a)(1) and 108.11(a), 14 C.F.R. §§ 108.5(a) and 108.11(a), which provide in pertinent part:

> **§ 108.5 Security program: Adoption and implementation.**
> (a) Each certificate holder shall adopt and carry out a security program that meets the requirements of § 108.7 for each of the following scheduled or public charter passenger operations:
> (1) Each operation with an airplane having a passenger seating configuration of more than 60 seats.
>
> **§ 108.11 Carriage of weapons.**
> (a) No certificate holder required to conduct screening under a security program may permit any person to have, on or about his person, a deadly or dangerous weapon, either concealed or unconcealed, accessible to him or her while aboard an airplane for which screening is required...

penalty lower than the $10,000 civil penalty sought in the complaint. Respondent did not appeal the law judge's decision.

On March 19, 1991, Edward H. Sullivan, a passenger on an American Airlines flight from Miami, Florida, to Knoxville, Tennessee, was detained by airport police while he was changing aircraft in Nashville, Tennessee. A loaded .22 caliber derringer was detected in his briefcase by x-ray at a security screening checkpoint at Nashville International Airport. Sullivan testified that he had boarded the American Airlines flight at Miami International Airport with the loaded gun in his briefcase after he and the briefcase had gone through a security screening checkpoint there. (TR 8-12). Sullivan testified that during the flight the briefcase containing the loaded gun was "underneath my feet the whole trip." (TR 11).[3]

After finding that Respondent violated the regulations alleged in the complaint, the law judge assessed the reduced civil penalty based on the following two factors: (1) the six-week delay between the incident and the date on which the FAA notified Respondent of the incident hindered Respondent's investigation and impeded any corrective action that Respondent could have taken,[4] and (2) the record contained no evidence of whether Respondent was solely responsible for the

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[3] Sullivan testified that before leaving for the airport, a hasp on his regular briefcase had broken requiring him to change briefcases. (TR 14). He explained that he transferred the contents of the broken briefcase into an old briefcase which, unknown to him, contained the loaded gun. (TR 14). The loaded gun was confiscated by the Nashville airport police and Sullivan was assessed a $300 civil penalty by the FAA.

[4] FAA Special Agent Alex H. Evans testified that he notified Respondent of the incident by letter dated May 1, 1991, after he had contacted Sullivan and had received Sullivan's written admission of the incident. (TR 32).

operation of the security screening checkpoint that failed to detect the loaded gun, or whether it shared that responsibility with other air carriers.

Complainant argues on appeal that the two factors relied on by the law judge to reduce the civil penalty were invalid. Complainant argues that Respondent presented no evidence of how Respondent's investigation of the incident or attempts at corrective action were hindered by the six-week delay. Complainant also states that Respondent took no corrective action after it was notified of the incident.

A six-week delay by the FAA in notifying an air carrier that an incident involving one of its passengers is under investigation is less than desirable, but not *per se* unreasonable. More importantly, nowhere in the record did Respondent explain what it would have done differently to investigate this incident or to take corrective action had Respondent been notified of the matter sooner.

In its reply brief Respondent argues that the delay by the FAA in notifying it of the incident deprived it of the opportunity to investigate the matter and to mitigate the civil penalty. Respondent, however, did not explain in its reply brief or at the hearing how or why the six-week delay made a difference to its investigation or to its efforts at mitigation. Respondent for example, could have presented evidence or argument that specific documents or specific witnesses were lost to it because of the the six-week delay, or that it could not have taken a particular corrective action after the six weeks had passed. Respondent has presented no such

evidence or argument.[5] In his decision the law judge did not explain his basis for finding that the six-week delay impeded Respondent's investigation or its efforts at corrective action.

The second factor relied on by the law judge to reduce the civil penalty - the lack of evidence in the record on whether Respondent was solely or jointly responsible for the operation of the security screening checkpoint that failed to detect the loaded gun - was also invalid. Regardless of which security screening checkpoint Sullivan went through at Miami International Airport, Respondent remained responsible under 14 C.F.R. § 108.5(a)[6] for carrying out its security program. Under Respondent's security program Respondent was responsible for the screening of persons and carry-on baggage going on board its aircraft. (Complainant's Exhibit G-1). The fact that a passenger boarded and flew on Respondent's aircraft with a loaded gun in his accessible carry-on baggage was a failure by Respondent to carry out its security program under 14 C.F.R. § 108.5(a). Respondent does not avoid its responsibility under its security program by suggesting, without any evidence to support it, that perhaps Sullivan went through a security screening checkpoint that was operated by another carrier. The violation of 14 C.F.R. § 108.11, prohibiting the unauthorized carriage of a deadly or dangerous weapon on board an aircraft, was complete when Respondent permitted Sullivan to have on his person a loaded weapon that was accessible to him while on

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[5] Respondent's argument on appeal that if notified sooner of the incident it would have had the opportunity to show that Sullivan did not go through an American Airlines security screening checkpoint in Miami is unsupported by any evidence or argument of how Respondent would have established this point and how the delay affected its ability to do so.

[6] See footnote 2.

board the aircraft, regardless of which security screening checkpoint Sullivan went through before boarding the aircraft in Miami.

The United States District Court case cited by the law judge in his decision in support of the second factor[7] is distinguishable because in that case there was only one security screening checkpoint, and it was jointly operated by four air carriers under an express agreement. In this case, there was no evidence regarding which checkpoint Sullivan and his carry-on bag went through or who operated that checkpoint. Moreover, even if the checkpoint was operated jointly by several carriers, a reduction of an otherwise appropriate penalty would not be justified because each carrier remains responsible for the implementation of its security plan and for preventing passengers with firearms from boarding its aircraft. Furthermore, the violation in the case cited by the law judge involved the failure to detect a test object during an FAA test of airport screening procedures, and not the actual boarding of an aircraft with, and transportation of, a loaded gun. The possibility of harm to the passengers and to the aircraft was non-existent in the test object case but present in Respondent's case.[8]

Jack Bullard, Respondent's Corporate Security Manager, testified that Respondent did not take any corrective action after the incident because there was nothing that it could have done other than continue to run its security screening checkpoints "as well as we know how," and because the FAA had not identified any corrective action that it could have taken. (TR 76). Respondent's explanation for

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[7] *See* United States v. American Airlines, Inc., America West Airlines, Inc., Continental Airlines, Inc., and Southwest Airlines, Co. SA, 89 CA 903 (W. Tex. January 31, 1991).

[8] Inspector Evans testified that it is very dangerous for a loaded weapon to get into a sterile area, or on board an aircraft inside carry-on luggage, because the weapon could discharge if the luggage is dropped. (TR 28).

why it took no corrective action is not convincing. Inspector Evans testified that Respondent could have retrained its security screening checkpoint personnel at the Miami airport. (TR 36). Certainly the air carrier could have reviewed the incident and existing procedures with its security screening checkpoint personnel at Miami International Airport, *see* In the Matter of Delta Airlines, FAA Order No. 92-5 at 7 (January 15, 1992) (air carrier took corrective action when it posted a memorandum and held staff briefings concerning unauthorized access to the air operations area).[9]

Permitting a passenger to board an aircraft with a loaded gun that remains accessible to him during flight is a serious violation of the FAR. Nonetheless, a $5,000 civil penalty will adequately reflect the seriousness of the violations committed by Respondent and deter future violations by Respondent and others. The $10,000 civil penalty sought by Complainant is unnecessary. Hence, the decision of the law judge to reduce the civil penalty is modified to assess a $5,000 civil penalty.[10]

DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of December, 1994.

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[9] After the incident Respondent did contact its contractor at Miami International Airport, who provided Respondent with the security screening checkpoint records showing that there had been no problems on the day in question. (TR 54; Respondent's Exhibit AA-6). However, the review of its contractor's records alone is not corrective action. Sullivan could have gone through one of Respondent's security screening checkpoints in Miami and the records would still indicate that no problems had occurred because Sullivan's loaded gun was not detected in Miami.

[10] 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).