UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

Served: April 25, 1990

FAA Order No. 90-0012

In the Matter of:	Docket No. CP89NE0031
CONTINENTAL AIRLINES, INC.	

DECISION AND ORDER

Respondent Continental Airlines, Inc. ("Respondent") has appealed from the oral initial decision[1/] issued by Administrative Law Judge Daniel M. Head at the conclusion of the hearing held in this case on November 2, 1989, in .[2/] The law judge held that Respondent had violated section 108.5(a)(1) of the Federal Aviation Regulations (FAR), 14 CFR 108.5(a)(1),[3/] by failing to carry

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1/ A copy of the law judge's initial decision is attached.

2/ The entire hearing record was sealed in this matter. Portions of this decision have been redacted for security reasons, pursuant to 14 C.F.R. Part 191. All unredacted copies of this decision, which are marked to indicate which portions were redacted for security reasons, 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 SSP, all of whom have been given unredacted copies in addition to redacted copies.

3/ Section 108.5(a) of the FAR provides in pertinent part:

> Each certificate holder shall adopt and carry out a security program that meets the requirements of section 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.

out a particular provision of the Standard Security Program (SSP), which had been adopted by Respondent, and affirmed the $10,000 civil penalty sought in the complaint.

In the complaint, the Federal Aviation Administration ("Complainant"), through its agency attorney, alleged that on 1988, , an unauthorized person, gained access to one of Respondent's DC-9 airplanes which was parked at Gate ; that Respondent's

; and that section V.A.1. of Respondent's security program requires

. It was alleged further that the foregoing constituted a violation of the security program which Respondent had adopted, and, therefore, Respondent had violated section 108.5(a) of the FAR. As a result, the complaint sought a $10,000 civil penalty against Respondent.

On appeal, Respondent argues as follows:

1. that the FAA improperly separated this case from other cases involving other alleged violations by Respondent to avoid the $50,000 jurisdictional limitation of section 905 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1475;

2. that many of the procedural rules included in the FAA Rules of Practice governing these proceedings, 14 CFR 13.16 and Part G, are contrary to the enabling legislation and the Administrative Procedure Act and deny Respondent due process and equal protection of law;

3. that Respondent was denied an opportunity to develop a full and complete record on the issue of the separation of functions by agency personnel because Complainant refused to release information requested by Respondent in discovery;

4. that Complainant acted improperly by retroactively applying the Rules of Practice incorporated in Part 13 to these proceedings;

5. that the provisions of the SSP are not regulations and, therefore, Complainant had no authority to impose a civil penalty for alleged violations of the SSP;

6. that the law judge was in error when he held that Respondent violated section 108.13 of the FAR, 14 CFR 108.13;

7. that the preponderance of the evidence does not support the law judge's finding that Respondent failed to comply with its security program.

In reply, Complainant, through its agency attorney, argues:

1. that Complainant did not prosecute this case separately to avoid the $50,000 jurisdictional limitation;

2. that the procedural rules in Part 13 which Respondent specifically challenges in its brief do comply with the Administrative Procedure Act and the Federal Aviation Act;

3. that Respondent was not prejudiced by the law judge's denial of Respondent's motion to compel discovery of information regarding the Complainant's refusal to release information pertaining to the identity of agency personnel involved in the initiation of this case;

4. that the Rules of Practice were not applied retroactively, but were properly applied to the instant proceedings;

5. that the failure to carry out the security program constitutes a violation of section 108.5(a)(1); in other words, the security program is enforceable against a carrier through the operation of section 108.5(a).

6. that the law judge's discussion of the applicability of section 108.13 of the FAR, 14 CFR 108.13, was merely dictum and resulted in no prejudice to Respondent;

7. that the preponderance of the evidence supports the law judge's decision that Respondent violated section 108.5(a).

For the reasons discussed below, Respondent's appeal is denied, and the law judge's initial decision is affirmed. The issues raised in Respondent's appeal are addressed individually.

1. Whether it was appropriate for Complainant to prosecute this case separately.

Respondent argues in its brief that "[t]he FAA initiated this case as one of a larger amalgamation of matters but then improperly separated and segregated this case from those others initiated at the same time by the same person in order to avoid the jurisdictional limitations imposed by the applicable statute." Presumably, the "jurisdictional limitation" to which Respondent refers is the restriction in section 905(d)(3) of the Federal Aviation Act (49 U.S.C. App. §1475(d)(3)), which limits civil penalties that may be assessed under that section to $50,000. Civil penalties in excess of $50,000 must be pursued solely under section 901 of the Act (49 U.S.C. App. §1471).

In support of this assertion of improper separation Respondent cites to a discovery request (with attached exhibits) which is not a part of the record in this case, but which Respondent filed in several other security violation cases. Those discovery documents simply reveal that at about the same time this case was initiated, Complainant also initiated several other cases against Respondent, all of which involved alleged failures to detect FAA-approved "test objects" in its security screening process. There is no reference to this case in any of those discovery documents, or to any case involving facts similar to this case. Hence, there is no evidence that Complainant as a deliberate matter segregated

this case from other cases, much less did so to avoid the jurisdictional limit of $50,000.

Moreover, contrary to the apparent thrust of Respondent's argument, there is no requirement under law or regulation that Complainant must consolidate in one civil penalty action all cases involving alleged security regulation violations which may have been initiated at or about the same time simply because they involve the same air carrier.[4/] That Complainant theoretically could have done so, thereby creating a civil penalty action exceeding the $50,000 limitation set forth in section 905 of the Act (49 U.S.C. App. 1475), does not mean that it was improper for Complainant to handle separately the many cases alleging discrete violations of the security regulations by this Respondent.

2. Whether the Administrator is required in these proceedings to determine whether FAA regulations comply with the due process provisions of the U.S. Constitution, the Administrative Procedure Act and the Federal Aviation Act of 1958, as amended.

Regardless of whether I have the authority under section 905 of the Federal Aviation Act (49 U.S.C. App. §1475) to decide whether the Rules of Practice included in the FAR comply

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4/ Agency counsel has requested leave to submit the Affidavit of Allan Horowitz, Manager of the Enforcement Policy Branch in the FAA's Office of the Chief Counsel. Agency counsel has represented that Mr. Horowitz discusses in this affidavit the agency policy regarding consolidation of civil penalty cases. I do not find it necessary to this decision to consider this document which is not part of the record of this case, and I am denying agency counsel's request for leave to submit Mr. Horowitz's affidavit. Accordingly, Respondent's Request to Strike this document is moot.

with the U.S. Constitution, the Administrative Procedure Act, and/or the Federal Aviation Act itself, I will decline to address those issues here for the following reasons.

First, by incorporating by reference the Petitioner's brief in Air Transport Association of America v. Department of Transportation, et al., No. 89-1195, (D.C. Cir. argued Feb. 2, 1990), Respondent has attacked the procedural rules in general terms without demonstrating how those rules prejudiced Respondent in this particular proceeding. Indeed, Respondent challenges regulations which were not even remotely involved in these proceedings. It would be an inappropriate exercise of my decisionmaking authority to consider in this proceeding a challenge to rules which are not implicated in this proceeding. Additionally, even where Respondent argues specifically in its appeal brief that certain procedural rules are improper, it has failed to specify or to demonstrate how it has been harmed by any of those rules in this proceeding.[5/]

Second, the Federal Courts of Appeals constitute a more appropriate forum to attack existing administrative regulations as not consistent with the U.S. Constitution, the Administrative

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5/ There may be situations in which it will be necessary, and within my jurisdiction, to consider certain due process arguments in cases under Section 905 of the Federal Aviation Act. For example, like the National Transportation Safety Board, I may find it necessary "to ascertain whether the standard allegedly violated is defined with a sufficient degree of specificity to support the imposition of a punitive sanction." Administrator v. Galloway, 1 NTSB 2104, 2105 (1972). But in such situations, the respondent must allege specifically that a rule deprives it of due process.

Procedure Act, and/or the agency's enabling act. Although administrative agencies are entitled to consider constitutional claims, they are not required to do so. Plaquemines Port, Harbor and Terminal District v. Federal Maritime Commission, 838 F.2d 536, 544 (D.C. Cir. 1988), citing, Motor and Equipment Manufacturers Association v. EPA, 627 F.2d 1095, 1114-15 (D.C. Cir. 1979). In any event, it is not necessary for me to rule on these challenges in order for Respondent to raise these arguments in an appropriate Federal Court of Appeals should Respondent file an appeal of my decision and order in this matter. Id. See, Reid v. Engen, 765 F.2d 1457, 1461 (9th Cir. 1985); Gaunce v. DeVincentis, 708 F.2d 1290 (7th Cir. 1983); Frontier Airlines, Inc. v. CAB, 621 F.2d 369, 371 (10th Cir. 1980).

Finally, the agency's position on the lawfulness of the Rules of Practice has already been set forth and is a matter of public record. See Brief for the Respondents filed in Air Transport Association of America v. Department of Transportation, et al., No. 89-1195, (D.C. Cir. argued Feb 2, 1990); and 54 Fed. Reg. 11914-11920 (March 22, 1989) (response to public comments submitted after publication of the Rules of Practice in the Federal Register). Nothing submitted by Respondent in this proceeding leads me to alter the agency's position.

3. Whether Respondent was prejudiced by the Law Judge's denial of Respondent's discovery requests for information regarding the initiation of enforcement proceedings in this case.

During the discovery process Respondent requested information about which individuals were involved in the

initiation of these proceedings and about the recommendations made by FAA staff personnel regarding the civil penalty. Respondent asserts in its appeal brief that this information is necessary in order to determine who in the FAA may consider this matter on appeal without violating the required separation of functions. Respondent has not, however, specifically alleged any violation of the APA or the Rules of Practice in this regard.

When agency counsel refused to release such information, Respondent filed a motion to compel production. The law judge denied Respondent's motion, explaining that:

> Such information has been held to be privileged if it constitutes intra-agency information, memoranda, and documents that reflect the deliberative predecisional process leading to an administrative decision, in the absence of an overriding need to know to prevent unfairness or surprise. (citations omitted) . . . Since the information Continental requests concerns the internal administrative decisionmaking process before the initiation of the proceedings and Continental has not demonstrated an overriding need to know, it is concluded that the information is protected and the motions to compel discovery or in the alternative to dismiss the complaints are denied.

In Federal Aviation Administration v. American Airlines, FAA Order No. 89-0006 (December 21, 1989) at 7-9, I held that information relating to the FAA's decisionmaking process prior to the issuance of the Order of Civil Penalty, which serves as the FAA's complaint, was irrelevant. In addition, I held that documents and information sought in discovery regarding such internal deliberations are protected from discovery by the

deliberative process privilege, at least to the extent that they contain deliberative material. As I explained in that case, "[a]lthough the deliberative process privilege is a qualified privilege which may be overcome by a showing that Respondent's actual need for disclosure outweighs the harm that could result to the agency from that disclosure, no such showing has been, or could be made." Id., at 8. That statement is equally true in this case.

The requirement for separation of prosecutorial and decisionmaking functions in civil penalty cases such as this one is set forth in section 13.203 of the Rules of Practice, 14 C.F.R. §13.203, and in the Administrative Procedure Act, 5 U.S.C. §554(d). The FAA's implementation of this requirement is further discussed in policy statements published in the Federal Register. 54 Fed. Reg. 1335 (Jan. 13, 1989); and 54 Fed. Reg. 11914, 11915-16 (March 22, 1989). I am confident that these rules and policies are being scrupulously observed by all affected agency personnel, and that Respondent's apparent suspicions to the contrary are unfounded. Moreover, in the absence of specific allegations on this point, there is no need to discover information relating to the agency's compliance with the required separation of functions.[6/]

6/ To the extent that Respondent truly believes that there has been, or may have been, a violation of the agency's separation of functions requirement, and that that violation or potential violation actually worked to Respondent's detriment or prejudice in the prosecution or adjudication of this case, then I believe that Respondent's remedy is to seek review in the appropriate United States Court of Appeals.

4. Whether the Rules of Practice apply to this proceeding.

Respondent argues that Complainant illegally applied the Rules of Practice in Civil Penalty Actions (14 CFR Part 13, Subpart G), which went into effect on September 7, 1988, to these proceedings based upon an alleged violation which occurred months earlier, . Respondent's argument is contrary to the rules and to case law.

Section 13.201(a)(1) provides that the Rules of Practice in Civil Penalty Actions (Subpart G) apply to civil penalty actions, initiated after September 7, 1988, in which an order of civil penalty has been issued not exceeding $50,000 for a violation arising under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 et seq.) or a rule, regulation, or order issued thereunder." In this case, the Order of Civil Penalty was issued on March 13, 1989, and it was thus properly adjudicated under the Rules of Practice. This conclusion is also supported by section 905 of the Federal Aviation Act (49 U.S.C. App. §1475), which authorizes the FAA to assess civil penalties under a civil penalty demonstration program. Under the heading "Limitations," that section specifies that the authority "applies to civil penalties initiated by the Administrator after the date of the enactment of this section [December 30, 1987]." 49 U.S.C. App. §1475(d)(2).

Respondent's argument that applying these Rules of Practice to this incident constitutes an unconstitutional retroactive application of rules that were not in effect at the time of the

incident is also contrary to established case law. It has been held that the procedural regulations in force at the time that administrative proceedings occur are the ones that govern, rather than the procedural rules in effect at the time when the alleged violation occurred. Chilicott v. Orr, 747 F.2d 29, 34 (1st Cir. 1984).

Finally, the substantive rule which Respondent is alleged to have violated (14 C.F.R. §108.5) is not being applied retroactively, and it is undisputed that Respondent was bound by that rule at the time of the alleged violation here at issue.

5. Whether Respondent's failure to carry out a provision of its security program constitutes a violation of 14 CFR 108.5(a)(1).

In the Order of Civil Penalty, which serves as the complaint in these proceedings, Complainant alleged that Respondent failed to carry out a specific provision of its security program, and as a result, violated section 108.5(a)(1) of the FAR. Respondent argues that the provisions of the security program themselves are not regulations and that, therefore, Complainant lacks the authority to assess a civil penalty against Respondent pursuant to section 901(a)(1) of the Federal Aviation Act for failure to abide by that security program. According to Respondent, in order for Complainant to take enforcement action against Respondent based upon an alleged failure to comply with its security program, the FAA would have had to incorporate Respondent's security program by reference into the regulations.

Respondent's argument is unpersuasive. Complainant may take enforcement action against a carrier that fails to implement the provisions of its security program because carriers are specifically required under section 108.5(a) to "adopt and carry out a security program that meets the requirements of section 108.7 . . . . " 14 CFR 108.5(a) (emphasis added). The plain language of this regulation makes it clear that it is not enough for an air carrier to have a security program; the program must be implemented under section 108.5(a). Thus, failure to implement (i.e., "carry out") the security program is a violation of section 108.5(a).7/

Respondent adopted the Air Carrier Standard Security Program (SSP), which was developed jointly by the FAA and the air carrier industry. (See 46 Fed. Reg. 3782, 3784 (January 14, 1981)). As the evidence introduced at the hearing demonstrated, Respondent's Director of Safety and Security

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7/ Respondent attempts to distinguish between the language of section 108.5(a) and 108.5(b), alleging that the language of the latter section (which does not apply to this case), unlike the language of section 108.5(a), requires that the provisions of the security program be carried out. This argument is meritless. Subsection (a) provides in pertinent part that the carrier "shall adopt and carry out a security program . . . " for certain listed operations, while subsection (b) provides that "[e]ach certificate holder that has obtained FAA approval for a security program for operations not listed in paragraph (a) of this section shall carry out the provisions of that program." 14 CFR 108.5(a) and (b)(emphasis added). There is no meaningful difference in the language of the two subsections with regard to whether the certificate holder is required to carry out the provisions of its security program.

signed the SSP to indicate that he was accepting it on behalf of Respondent. (Respondent's Exhibit No. 4). Consequently, it is not unfair to require Respondent to abide by the terms of the SSP because Respondent had actual notice thereof. For that matter, even if the SSP was a substantive rule of general applicability which was required to be published in the Federal Register -- which it is not -- it could still be enforced against Respondent because Respondent has had actual and timely notice of the SSP which it adopted. 5 U.S.C. 552(a)(1)[8/].

Respondent cites numerous cases to support its argument that the SSP cannot be enforced against Respondent. However, these cases are inapposite for many reasons, including the fact that they involved agency manuals which, unlike the airline's security program in this case, had not been adopted by the parties involved. Nor did those cases involve a regulation analogous to section 108.5(a), which requires Respondent to "carry out" its security plan. Respondent attempts to distinguish section 108.5(a) from other rules in the FAR which

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8/ 5 U.S.C. §552(a)(1), which requires that agencies publish in the Federal Register (among other things) substantive rules of general applicability as authorized by law, and statements of general policy or interpretations of general applicability, also provides, in pertinent part:

> Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.

(Emphasis added).

Respondent concedes do have the effect of requiring compliance with some program or document not set forth in the regulations. But contrary to Respondent's assertion, section 108.5(a) is similar in this respect to the requirements imposed by, e.g., FAR sections 121.367(a) (air carrier maintenance must be performed in accordance with air carrier's manual), and 43.13(a) (any person performing maintenance shall use methods, techniques, and practices prescribed in current manufacturer's maintenance manual).

Respondent also quotes from Air Line Pilots Ass'n, Int'l.v. FAA, 454 F.2d 1052 (D.C. Cir., 1971). The court there noted, in dictum, that "[i]t is doubtful that 14 CFR section 121.133(a), which quite sensibly requires airlines to maintain some published guide to operations, intended to elevate every company manual provision to the status of an FAA regulation." Id., at 1055, n. 7. Although that case is distinguishable from the matter before me, the court made it clear that it would not consider the argument that the airline manual provisions at issue were not regulatory and, therefore, could not be enforced, because this argument had not been raised before the FAA as required by 49 U.S.C. App. §1486(e). Id. Thus, that case is not dispositive of the issue before me.

6. Whether the law judge's discussion of the applicability of 14 CFR 108.13 resulted in any prejudice to Respondent.

Complainant did not allege in the Order of Civil Penalty (Complaint) that Respondent had violated section 108.13 of the FAR (14 CFR 108.13). Among other things, that section requires

a certificate holder, such as Respondent, to use the procedures, facilities, and equipment described in its approved security program, with respect to each airplane operation for which screening is required, to prohibit unauthorized access to airplanes. Although the agency attorney mentioned section 108.13 during the course of the proceedings, he did not argue that that regulation was violated. Rather, he made clear in closing argument that the agency's case was based solely on Respondent's failure to carry out a provision of its security program, in violation of section 108.5(a).

In his initial decision, the law judge found that section 108.13 was "applicable" to the proceeding by virtue of the language in section 108.5(a) referring to section 108.7, which in turn refers to section 108.13. However, he made clear that section 108.5(a) "adequately covers the charge in the complaint," and he plainly found a violation of that regulation.[9/] He also noted that the seriousness of that violation warranted the requested $10,000 civil penalty. The law judge's discussion of section 108.13 was not essential to his ultimate finding of violation, or to his imposition of the civil penalty. Consequently, Respondent was not prejudiced by the agency attorney's discussion or by the law judge's comments on section 108.13.

9/ Moreover, it is also clear that the law judge's discussion of this issue was in particular response to the issue raised by Respondent's counsel. Essentially, Respondent's counsel argued that the agency was attempting to enforce section 108.13, which was not alleged in the complaint, and that, in any event, Respondent had not violated that section.

7. Whether the preponderance of the evidence supports the law judge's decision that Respondent failed to abide by a provision of its security program.

After careful consideration of the entire record in this case, I have concluded that the preponderance of the evidence demonstrates that the subject aircraft was , contrary to the requirements of Respondent's security program. I have reached this conclusion despite Complainant's failure to introduce any direct evidence that this actually occurred. In my view, the circumstantial evidence leads to only one conclusion: that the aircraft was , thereby allowing an unauthorized person to get aboard.

, who was on duty as a firefighter at at the time of this incident, testified on behalf of Complainant that between 3:00 and 4:00 A.M., he saw through his window a DC-9 parked at . The emergency escape chute had been deployed and the tail cone was "bouncing" on the tarmac. He saw a person standing in the aircraft, who slid down the chute and walked over to the fire station. , a police officer employed by the , testified on Complainant's behalf, that he was dispatched to the fire station between 3:45 and 4:00 A.M. When he arrived, he observed an unknown incoherent female. He testified that she refused to respond to inquiries about what she was doing in the aircraft. Eventually,

he brought her to , Psychiatric Division, where she was accepted as a patient.

testified on cross-examination that he never found out how that woman got on the airport ramp. He explained that the airport authority and the state police have responsibility for security on the ramp.

, a special agent assigned to the FAA's , testified on behalf of Complainant that the SSP requires that an airplane

testified that he conducted an investigation of this incident. He explained that despite his efforts to do so, he was never able to interview the woman who had gained access to Respondent's DC-9. According to her physician, she had refused to be interviewed by him.

As a result of his investigation, concluded . However, he was not able to determine exactly how this woman had gained access to the aircraft. He explained that he never acquired conclusive evidence indicating whether she gained access to the aircraft through the terminal, or through Respondent's Operations Center, which is on the ramp level.

acknowledged that between 2:00 and 5:00 A.M., there is a substantial amount of activity on the ramp, because at that time in the morning there are maintenance, service, and catering personnel working on and around the airplanes on the ramp. He also testified that if there are

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Respondent at the time of the incident, testified on Respondent's behalf. He explained that the following services are normally performed on Respondent's aircraft when they are parked overnight on the ramp: 1) passengers are deplaned; 2) catering representatives remove all remaining food and garbage; 3) the aircraft is cleaned; 4) mechanics perform either a normal service check or a more extensive service check; 5) a preflight departure check is performed; 6) flight dispatch papers are placed on board; 7) the aircraft is fueled; and, 8) the catering company stocks the aircraft for the morning departures. He also explained that workers gain

access to the aircraft through Respondent's airport operating area.

According to , the personnel during the evening on Respondent's aircraft are employees of Respondent. They must wear identification badges, and they are required to challenge anyone who is not wearing a badge. He explained further that at some point during the evening the

Complainant called ., who was Respondent's supervisor of terminal operations on duty at the time of this incident. testified that the cleaning of the aircraft probably was completed between 2:00 and 2:15 A.M., and between that time and 3:45 A.M., when the incident was reported to him,

. This procedure, he explained, was not approved by Respondent.

Based upon this evidence, I can only conclude that Respondent failed to comply with the provision of its security program which requires that an aircraft not be left unattended unless the access doors are secured.

Consequently, I conclude that the preponderance of the evidence supports the law judge's finding that

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Respondent has argued that Complainant has failed to prove that the aircraft was unattended. Indeed, as I have already mentioned, there is no direct evidence that this aircraft was unattended at the time that this unauthorized individual gained access to the aircraft. However, a party may use circumstantial evidence to sustain its burden of proof. This principle has long been recognized by Federal Courts reviewing decisions of the National Transportation Safety Board and its predecessor agencies adjudicating certificate suspension and revocation actions under the Federal Aviation Act. See, Proud v. CAB, 357 F.2d 221, 223-24 (7th Cir. 1966), (FAA sustained its burden of proof in a certificate revocation action by substantial evidence, even though the evidence was circumstantial);

Sorenson v. NTSB, 684 F.2d 683, 685 (10th Cir. 1982) (circumstantial evidence may be used to meet the FAA's burden of proof in certificate actions under the Federal Aviation Act). See also, Administrator v. Dickman, NTSB Order No. EA-2126 (1985); Administrator v. McCormmach, NTSB Order No. EA-2023 (1984); Administrator v. Kato, NTSB Order No. EA-1856 (1982).

Based upon the circumstantial evidence presented in this case, it is clear that the aircraft

, otherwise the unauthorized individual would not have gained access to the aircraft. The evidence clearly established

This holding should not be read to suggest that the mere presence of an unauthorized person onboard an aircraft is always sufficient to establish that the aircraft was

"unattended" for purposes of aircraft security. The fact that an unauthorized person was able to gain access raises a presumption that the aircraft was unattended or insufficiently attended. A respondent might rebut this presumption with evidence showing, for example, that the aircraft actually was properly attended but that an unauthorized person nonetheless gained access by force, or by other means that could not reasonably have been prevented by those attending the aircraft. However, no such evidence was presented in this case.

, it must be inspected before it can be placed back in service. As Respondent pointed out, in this case the aircraft was thoroughly searched. However, the fact that Respondent took the necessary steps to put that aircraft back into service does not mean that it carried out the provision of the security plan at issue in this case, which requires that airplanes

Finally, Respondent argues that it is the airport operator, not Respondent, which is responsible for control of access to the air operations area, including the ramp on which the aircraft was located, under section 107.13 of the FAR. However, the fact that other entities may also be responsible for the security of the ramp is not exculpatory because Respondent is independently responsible for the security of its aircraft under the terms of its security program.

THEREFORE, in light of the foregoing, Respondent's appeal is denied, and the law judge's initial decision is affirmed. A civil penalty in the amount of $10,000 shall be assessed.10/

JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 6th day of April, 1990.

10/ Complainant, through its agency attorney, shall promptly prepare and issue an Order Assessing Civil Penalty, citing as authority this Decision and Order which I am issuing today. The Order Assessing Civil Penalty shall be effective upon service and shall remain in effect unless stayed by subsequent order.

Respondent may appeal this Decision and Order by petition for review in an appropriate United States Court of Appeals pursuant to section 1006 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. §1486), and section 13.235 of the Rules of Practice (14 C.F.R. §13.235) not later than 60 days after service of this Decision and Order.