Civil Penalty Actions—Orders Issued by the Administrator

Digests

(From July 1 to December 31, 1994)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1994 to December 31, 1994.

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Janet Myers

Order No. 94-25 (8/23/94)

Appeal Dismissed. Respondent failed to perfect her appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of French Aircraft Agency

Order No. 94-26 (8/24/94)

Appeal Dismissed. Respondent failed to perfect its appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of Michael R. Larsen

Order No. 94-27 (9/30/94)

Motion To Dismiss the Hearing Request. Complainant properly filed a motion to dismiss Respondent's hearing request for untimeliness, instead of a complaint, under the Rules of Practice. The law judge erred in finding that Complainant had no jurisdictional basis for filing the motion to dismiss the hearing request. The general applicability section of the Rules of Practice should be interpreted in the context of the entire subpart.

In the Matter of Toyota Motor Sales, USA, Inc.

Order No. 94-28 (9/30/94)

Civil Penalty Increased. In this hazardous materials case involving air shipment of acid-filled batteries, the law judge committed several errors in his analysis that led him to impose a sanction that was too low. The penalty is increased from \$10,000 to \$50,000.

Standard for ALJ Reduction of Civil Penalty. Complainant argued in its brief that law judges should reduce the proposed civil penalty only if clear and compelling mitigating circumstances, not made known to Complainant prior to the hearing, exist. This argument is rejected. Under the Rules of Practice, the agency attorney bears the burden of proving the agency's case, including the appropriate amount of the civil penalty. When sanction is an issue, the law judge is expected to give a reasoned explanation of the amount of civil penalty selected, whether or not the penalty is reduced.

Corrective Action. Respondent's decision to stop shipping batteries did not constitute corrective action justifying a lower civil penalty. The type of corrective action that warrants a significant reduction in the civil penalty is action to ensure that hazardous materials will be handled by the respondent in compliance with the regulations in the future—*e.g.*, sending employees to hazardous materials training.

In the Matter of Robert Lee Sutton

Order No. 94-29 (9/30/94)

Failure To File Answer. Respondent raises the possibility that he may have been misled in his discussions with the agency attorney. If communications between Respondent and the agency attorney led Respondent reasonably, but incorrectly, to believe that submitting a settlement proposal was a valid substitute for filing an answer, then in the interest of fairness, good cause may be found and Respondent should be permitted to file an answer. Complainant is directed to provide an additional brief addressing whether Respondent may have been misled by Complainant's words or actions.

In the Matter of Anthony F. Columna

Order No. 94-30 (9/30/94)

Good Cause To Excuse Late Filing of Answer. A statement in the law judge's notice of hearing may have inadvertently misled Respondent, causing him to believe that he could mail his answer after the deadline as long as he provided some explanation for doing so. Good cause has been shown. The order canceling the hearing and assessing the \$1,000 civil penalty is vacated, and the case is remanded to the law judge for a hearing.

In the Matter of Scott H. Smalling

Order No. 94-31 (10/5/94)

"Knowing" Violation of Hazardous Materials Law. Respondent argues that he could not have violated the hazardous materials regulations "knowingly," within the meaning of the Hazardous Materials Transportation Act, because he did not know that the firecrackers in his baggage were hazardous materials and that what he did was wrong. Congress intended to prevent individuals from relying on ignorance of the law as an excuse in civil hazardous materials cases. In this context—a civil case in which specific intent to violate the regulations need not be shown—lack of knowledge of the law is irrelevant. The law judge's decision assessing a \$1,250 civil penalty is affirmed.

In the Matter of Detroit Metropolitan Wayne County Airport

Order No. 94-32 (10/5/94)

Interlocutory Appeal Premature. Complainant appealed from actions contemplated by the law judge in an order to show cause. However, none of the possible actions mentioned by the law judge in the order to show cause have yet occurred. Complainant's interlocutory appeal of right is not ripe for review and is dismissed.

Obstreperous or Disruptive Behavior. The meager record to date in this case two written responses to discovery orders—does not demonstrate conduct by agency counsel that appears to rise to the level of obstreperous or disruptive behavior.

In the Matter of Trans World Airlines, Inc.

Order No. 94-33 (10/13/94)

Appeal Dismissed. Complainant withdrew its notice of appeal, and as a result, its appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94-34 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94-35 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of American International Airways d/b/a Connie Kalitta Services

Order No. 94-36 (11/29/94)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR