

The day of the flights in question, the empty weight and center of gravity had been calculated from values established by an actual weighing that had taken place approximately 12 months earlier. The law judge's finding that Respondent did not violate 14 CFR 135.185(a) is affirmed.

**Load Manifests.** It is held that Respondent violated 14 CFR 135.63(c), which makes the operator responsible for the accuracy of the load manifest. In meeting the requirements of Section 135.63(c), an operator cannot use an aircraft weight that he knows is inaccurate, even when the empty weight was established by an actual weighing done within the previous 36 months. It is undisputed that if the empty weight and center of gravity figures are wrong, then all of the calculations based thereon, such as the weight and balance for a loaded aircraft, likewise will be wrong.

**Equal Protection.** There is no merit to Respondent's argument that it is being treated differently than other similarly situated certificate holders who have the right to appeal to the National Transportation Safety Board under the FAA Civil Penalty Assessment Act of 1992. The provisions of that Act do not apply to violations such as the ones in this case that occurred prior to August 26, 1992.

**Penalty.** A \$5000 civil penalty, as sought by Complainant is assessed even though it is found that only 14 CFR 135.63(c) was violated. A \$5000 civil penalty is appropriate in light of the totality of the circumstances in this case: (1) The serious safety implications of flying without accurate weight and balance information; (2) Respondent's continued use of the August 1989 weighing despite the FAA inspectors efforts to help Respondent to come into compliance; (3) \$5000 is well below the maximum allowable civil penalty.

*In the Matter of Dewey E. Towner*

Order No. 94-41 (12/16/94)

**Withdrawal of Appeal.** Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

*In the Matter of Francis Taylor*

Order No. 94-42 (12/16/94)

**Withdrawal of Appeal.** Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

*In the Matter of Ezequiel G. Perez*

Order No. 94-43 (12/20/94)

**Requirement to File an Answer.** The law judge had dismissed Respondent's

request for hearing, finding that Respondent had not filed an answer. Respondent appealed and explained that he had sent an answer to the agency counsel in Orlando, Florida.

The Administrator finds that Complainant did not fully respond to Respondent's statement on appeal that he sent an answer to the agency attorney in Orlando. Complainant did not state that Respondent's answer was not received by the agency attorney in Orlando, who initiated the action. Complainant also did not state that no answer was received by agency counsel in the FAA Eastern Region, where the action was transferred for hearing. Agency counsel or the records custodian for agency counsel's office should have made all statements of fact pertaining to the non-receipt of Respondent's answer in an affidavit or declaration. Case is remanded to the law judge with instructions to hold a hearing on the issue of whether Respondent filed an answer and if not, whether, in light of Respondent's language difficulties, good cause exists to excuse the failure to file an answer.

*In the Matter of American Airlines*

Order No. 94-44 (12/20/94)

**Sanction.** The law judge found that Respondent had violated 14 CFR 108.5(a)(1) and 108.11(a) by permitting a passenger to board its aircraft with a loaded gun that remained accessible to the passenger during flight. Complainant sought a \$10,000 civil penalty. The law judge reduced the civil penalty to \$1000 based upon (1) the six-week delay between the incident and the date on which the FAA notified Respondent of the incident, and (2) the absence of any evidence regarding whether Respondent was solely responsible for the operation of the security screening checkpoint that failed to detect the loaded gun. On appeal, the Administrator rejects these two factors as valid grounds for reducing the civil penalty.

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 sooner.

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. Respondent does not avoid its

responsibility under its security program by suggesting, without any evidence to support it, that perhaps the passenger went through a security screening checkpoint that was operated by another carrier.

A \$5000 civil penalty will adequately reflect the seriousness of the violations committed by Respondent and deter future violations by Respondent and others.

### **Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders**

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

*AvLex*, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822-4669;

*Civil Penalty Cases Digest Service*, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798-1677;

*Federal Aviation Decisions*, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546-1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896-0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733-2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and GENIE.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

### **FAA Offices**

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following locations in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A,