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DEPT. OF TRANSPORTATION
DOCKET SECTION

98 DEC -2 PM 1:42 U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

FAA-98-4840-7

In the Matter of:)

Sun Country Airlines, Inc.)
_____)

FAA DOCKET No. CP98GLD16
(Civil Penalty Action)

FAA File No. 96-GL-73-0044

JUDGE NOT ASSIGNED

**MOTION TO DEEM ALLEGATIONS OF COMPLAINT ADMITTED,
AND TO LIMIT HEARING TO SANCTION AMOUNT**

The Federal Aviation Administration (the Agency), by and through counsel, moves the Administrative Law Judge pursuant to 49 C.F.R. § 13.209 to deem the Complaint entirely admitted, and limit the hearing in this matter to the sanction amount. In support thereof, the Agency states as follows:

The issue presented by this motion is a simple one: whether Sun Country Airlines, Inc.'s (Sun Country's) Answer (Exhibit "A") filed on July 31, 1998, is sufficient under the Rules of Practice in FAA Civil Penalty Actions (14 C.F.R. § 13.201 et seq.). A cursory review of the Answer reveals that it does not comply with § 13.209. As such, under § 13.209, the allegations in the Agency's Complaint (Exhibit "B") filed on June 30, 1998, should be deemed admitted.

49 C.F.R. § 13.209 entitled Answer dictates as follows:

(e) *Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(f) *Failure to file an answer.* A person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.

As the Administrative Law Judge will note, in response to the Agency's detailed factual allegations at Paragraphs I. 1 through 10, and legal allegations at Paragraphs II. 1 – 3¹, Sun Country merely alleges as follows:

I.

Admits the allegations of Count 1, ¶¶ 1 and 2 of the Administrator's Complaint.

II.

Specifically denies that Sun Country Airlines, Inc. violated any Federal regulations in connection with the operation of Flight #437 on March 4, 1996 and puts the Administrator to his strict proof.

...

V.

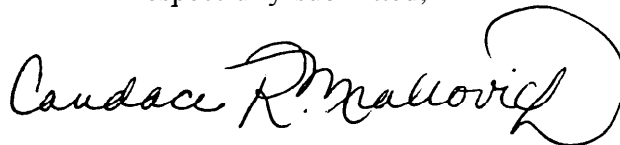
Except as herein qualified, stated or otherwise answered, specifically denies each and every matter, thing and allegation contained in said Complaint.

Exhibit "A".

Sun Country only specifically addresses Paragraphs I and 2. As to the remaining 10 allegations of the Complaint, it makes no specific response other than a general denial in Paragraph V. Sun Country's failure to specifically deny the remaining paragraphs may be deemed an admission of those allegations under §13.209(e). More importantly, its attempts to brush off responding to those allegations with a general denial is deemed a failure to answer under the last sentence in §13.209(e), and is therefore considered an admission under §13.209(f).

WHEREFORE, the Agency respectfully requests that the Administrative Law Judge deem the Complaint admitted, and limit the hearing in this matter to the sanction amount.

Respectfully submitted,



Candace R. Mrakovich
Agency Representative

¹ At the same time this Motion is being filed, the Agency is also filing an **AMENDMENT TO THE COMPLAINT** which withdraws Paragraph II. 1 of the Complaint.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion To Deem Allegations To Complaint Admitted, And To Limit Hearing To Sanction Amount have been sent overnight mail to:


ORIGINAL AND ONE COPY:

Hearing Docket
Federal Aviation Administration
800 Independence Ave., S.W.
Rm. 924A
Washington, DC 20591
(Attn: Hearing Docket Clerk)

ONE COPY:

Donald Chance Mark, Jr.
MEAGHER & GEER, P.L.L.P.
4200 Multifoods Tower
33 south sixth St.
Minneapolis, MN 55402

Dated this 1st day of September, 1998.


Tammy Gardner
Legal Technician

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

in the Matter of:

FAA Docket:
FAA File No.: 96-GL-73-0044

SUN COUNTRY AIRLINES, INC.

JUDGE NOT ASSIGNED

ANSWER OF SUN COUNTRY AIRLINES, INC.

Sun Country Airlines, Inc., for its answer to the Complaint of the Federal Aviation Administration, herein alleges:

I.

Admits the allegations of COUNT 1, ¶¶ 1 and 2 of the Administrator's Complaint.

II.

Specifically denies that Sun Country Airiines, Inc. violated any Federal regulations in connection with the operation of Flight #437 on March 4, 1 996 and puts the Administrator to his strict proof thereof.

III.

Affirmatively asserts that the Administrator has failed to state a claim upon which reiiief may be granted against Sun Country Airlines, Inc.

IV.

Affirmatively asserts that plaintiffs Complaint is stale and untimely and accordingly, Sun Country Airlines, Inc. has been duly prejudiced.

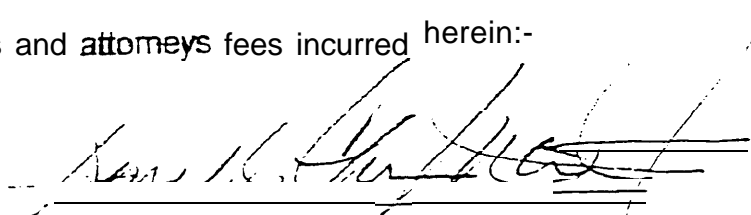
V.

Except as herein qualified, stated or otherwise answered, specifically denies

each and every matter, thing and allegation contained in said Complaint.

WHEREFORE, Sun Country Airlines, Inc. prays that the Federal Aviation Administration take nothing by its Complaint and that judgment be entered in its favor together with its costs, disbursements and ~~attorneys~~ fees incurred herein:-

Dated: 7/31/98



Donald Chance Mark, Jr. (#67659)
MEAGHER & GEER, P.L.L.P.,
4200 Muttifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 338-0661

Attorneys for Sun Country Airlines, Inc.

6. Sun Country personnel subsequently advised representatives of the Federal Aviation Administration (FAA) of the carriage of the engine fire extinguisher bottle as COMAT aboard Flight "137. FAA representatives verified the results of the above-described investigation, and during their subsequent investigation, found that the shipment was not accompanied by shipping papers describing and certifying its contents, nor was the Pilot in Command notified in writing prior to departure of, among other things, the proper shipping name, hazard class and identification number of the hazardous material being carried.
7. An aircraft engine fire extinguisher bottle is classified as a hazardous material under the Department of Transportation Hazardous Materials Regulations (HMR) (49 C.F.R. § 172.101). The proper shipping name of the material is Compressed Gases, nos., it is in Hazard Class 3.2 (Non-Flammable Gas), and has an assigned identification number of UN1956. The proper label is NON-FLAMMABLE GAS.
8. Sun Country accepted the above-described shipment of hazardous material for transportation by air when the shipping papers did not include:
 - (a) the proper shipping name prescribed for each material;
 - (b) the hazard class prescribed for each material;
 - (c) the assigned identification number prescribed for each material; and
 - (d) the total quantity of each hazardous material.
9. Sun Country accepted the above-described shipment of hazardous material for transportation by air when it failed to:
 - (a) certify that the materials were in accordance with the HMR (49 C.F.R. §§ 171. et seq.) by printing the certification set forth in § 172.204(a) or § 172.204(c)(1) or the HMR (49 C.F.R. § 172.204(a) or § 172.204(c)(1);
 - (b) add the certification required by § 172.204(c)(3) of the HMR (49 C.F.R. § 172.204(c)(3)); and
 - (c) prepare the required certifications in duplicate.
10. Sun Country accepted the shipment of hazardous material for transportation by air when it did not instruct each officer, agent and employee having responsibility for this shipment as to the applicable Hazardous Materials Regulations (49 C.F.R. §§ 171. et seq.).

II

By reason of the above, Sun Country violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.3 (49 C.F.R. § 175.3), in that Sun Country accepted hazardous materials aboard an aircraft which were not prepared in accordance with this subchapter.

2. Section 175.33(a)(49 C.F.R. § 175.33(a)), in that Sun Country, as the operator of an aircraft carrying hazardous material, did not give the pilot-in-command the following information, in writing, as early as possible prior to departure:

- (1) The proper shipping name, hazard class and identification number as specified in Section 172.101, or the ICAO Technical Instructions;
- (2) The total number of packages;
- (3) The net quantity or gross weight, as applicable, for each package;
- (4) The location of the packages aboard the aircraft;
- (5) Confirmation that no damaged or leaking packages have been loaded on the aircraft:
an&
- (6) If applicable, an indication that the material is being transported under an exemption.

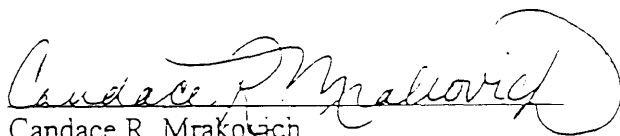
3. Section 175.35(a)(49 C.F.R. § 175.35(a)), in that Sun Country carried 2 shipment of hazardous materials aboard an aircraft without the accompanying shipping papers required by 49 C.F.R. 175.30(a)(2).

Pursuant to Title 49 of the United States Code, Section 46301 (49 U.S.C. §46301). Respondent is subject to a civil penalty not to exceed \$25,000.00 for each violation of the regulations.

Under the facts, facts and circumstances of this case, a civil penalty of \$5,000 is appropriate.

WHEREFORE, the Agency, by counsel, respectfully requests that the Administrative Law Judge enter an Order that Respondent be assessed a civil penalty in the amount of \$5,000.

Respectfully submitted this 25th day of June, 1998.


Candace R. Mrakovich

Attorney
Federal Aviation Administration
Great Lakes Region AGL-7
2300 East Devon Avenue
Des Plaines, IL 60018

I hereby certify that the foregoing Complaint has been mailed this date by Certified Mail, Return

Receipt Requested. to:


Original and One Copy:

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S. W.
Room 923.4
Washington, DC 20591
(Attn: Hearing Docket Clerk)

One Copy:

Donald Chance Mark, Jr.
MEAGHER & GEER, P.L.L.P
4200 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402

Dated this 30th day of June, 1998


Tammy Gardiner
Legal Technician
FAA Great Lakes