



Airlines must comply with their own security plans

By Daniel W. Raab on March 26, 2014



A recent case of interest to the air cargo industry is *Suburban Air Freight, Inc., Petitioner v. Transportation Security Administration, Respondent*, 716 F.3d 679 (U.S. Court of Appeals for the District of Columbia 2013), which deals with the alleged failure of an airline to comply with its own security plan. It is an example of what could go wrong in an investigation with an alleged failure to comply with the law.

By way of background with regard to the applicable regulations, it should be noted that Congress endowed the Transportation Security Administration with authority to make regulations to promote transportation security. With respect to aviation security, the TSA has established different sets of rules for different kinds of aircraft operators. This case deals with “twelve-five” operations – that is, operations that (1) are not regulated under another the TSA program; (2) utilize an airplane weighing more than 12,500 pounds; (3) run scheduled or charter service and (4) carry passengers and/or cargo. The TSA requires twelve-five operators to ensure that cargo is screened and inspected for any unauthorized person, and any unauthorized explosive, incendiary and other destructive substance or item. This airline was required to file such a plan in order to comply with the regulations.

In this case, TSA inspectors when observing the loading of a Suburban Air Freight, Inc. aircraft made a determination that the carrier had failed to adequately implement the pilot identification ID check and failed to have an employee supervise the custody and control provision in violation

of its own security plan that was filed with the TSA. This matter was then sent to an administrative law judge, who agreed and imposed an \$18,000 fine, which the TSA upheld. The airline then petitioned to have this ruling reversed. The fine was then confirmed by the Appellate Court.

The airline's actions or inactions can be strictly construed by the TSA and the courts. For instance, in this case, the pilot turned his back while the cargo was being loaded, so it was held that nobody from Suburban was involved in the loading process, even though DHL employees who were obviously involved in the process were present. DHL is an indirect air carrier that presumably had experience in loading planes. The court found that the flight plan could hardly have been clearer – Suburban "employees and authorized representatives are the only individuals authorized to maintain custody and control of cargo" – and the pilot was the only such individual on hand while the DHL packages were loaded onto the plane. The court felt that even if DHL had properly supervised the loading of the plane, further observation by a representative of Suburban would be a good safeguard.

As to the pilot checking his own ID, this would be more of an obvious violation. You cannot verify your own identification. This provides no safeguard as to the legitimacy of the pilot. Suburban unsuccessfully argued that there was only one pilot and no other crew, so the pilot ID check was unnecessary.

Suburban even tried to contend that it was not subject to the rules as it did not issue an air waybill, and therefore the plane was not moving cargo. As cargo was in fact being moved, this argument was also unsuccessful.

When an agency makes a determination, it is not necessarily easy to have it set aside on appeal. When you submit plans to the TSA, make sure that you are going to follow them and make sure that your crew and other involved employees are aware of the plan. This is better than going through the administrative process and the courts.

- See more at: <http://www.aircargoworld.com/Air-Cargo-World-Magazine/2014/03/airlines-must-comply-their-own-security-plans/6396#sthash.8d2S2Nff.dpuf>