

June 2, 2000

James W. Johnson, Esq.
Supervisory Attorney
Air Line Pilots Association, Intl
535 Herndon Parkway
P.O. Box 1169
Herndon, Virginia 20172-1169

Dear Mr. Johnson:

This is in response to your letter of March 11, 1999, requesting a legal interpretation concerning the crediting of flight time for crewmember flight time limitations within the meaning of 14 C.F.R. §§ 1.1 and 121.471. We apologize for the delay in responding to you.

The facts that you provide are as follows. Sun Country Airlines (SCA) does not credit the taxi time a flight crew incurs when taxiing the aircraft under its own power from the gate to a de-icing pad. At the de-icing pad, the aircraft's engines are shut down and the aircraft is de-iced. The engines are restarted and the aircraft then proceeds to the active runway for departure. SCA credits the taxi time from the de-icing pad forward as flight time.

Your contention is that the entire time should be credited as flight time because when the aircraft leaves the gate, it is "with the intention of flight," and flight does follow the de-icing procedure. Our response, including a discussion of relevant authority, is set forth below.

Section 1.1 defines "flight time," in pertinent part, as pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing. That section also provides that "operate" with respect to aircraft, means "use, cause to use or authorize to use aircraft, for the purpose...of air navigation including the piloting of aircraft...." In addition, section 121.629 (c) requires

¹Section 121.629 provides, in part, as follows:

(c) Except as provided in paragraph (d) of this section, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved ground deicing/anti-icing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved ground deicing/anti-icing program must include at least the following items:

(4) Aircraft deicing/anti-icing procedures and responsibilities, pre-takeoff check procedures and responsibilities, and pre-takeoff contamination check procedures and responsibilities.... [A

a certificate holder to have in place, in its operations specifications, an approved ground de-icing/anti-icing program that must be complied with before the dispatch, release and takeoff of an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft.

Decisions in safety enforcement cases are instructive on the meaning of "with the intention of flight" or "for the purpose of flight." In Daily v. Bond, 623 F.2d 624 (9th Cir. 1980), the court of appeals affirmed an NTSB (Board) order that reinstated the FAA's suspension of Daily's pilot's certificate. The FAA charged Daily with violating 14 C.F.R. § 91.9 [now §91.13(a)] by operating (attempting to start) an aircraft in a careless or reckless manner, and 14 C.F.R. § 91.29(a) [now §91.7(a)] by operating (attempting to start) an aircraft that was not in an airworthy condition, after an airplane that Daily was attempting to start caught fire. In affirming the Board's decision, the court reasoned that operate means "incident to flight and an integral part of it."² The court also cited approvingly the Board's reasoning in Administrator v. Pauley, 2 NTSB 1369 (1975), involving a pilot found in violation of section 91.9 by the careless manner in which he attempted to start his aircraft,³ namely, that "since the attempted start was preparatory to flight, it was for the purpose of air navigation and thus constituted operation of the aircraft within the intendment of section 91.9."⁴

We note, further, that a finding⁵ of the Administrative Law Judge (ALJ) that the Board approved, in Pauley, was one that Mr. Pauley "was attempting to start the aircraft for the purpose of flight, that it is included in the term "operating an aircraft" within the meaning of Section 1.1 of the Regulations, therefore, it fits under 91.9 of the same Federal Aviation Regulations."⁶

Pre-takeoff contamination check] must be conducted within five minutes prior to beginning take-off....

(d) A certificate holder may continue to operate under this section without a program as required in paragraph (c) of this section, if it includes in its operations specifications a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been checked to ensure that the wings, control surfaces, and other critical surfaces are free of frost, ice, and snow. The check must occur within five minutes prior to beginning takeoff.

² 623 F.2d at 626.

² The pilot, Mr. Pauley, attempted to start the plane by obtaining a "jump start" from the battery of a patrol car. Mr. Pauley, who was outside the aircraft leaving a non-pilot at the controls, did not tie down the plane or chock the wheels. When the aircraft started, it momentarily broke away, striking the car and injuring the driver. 2 NTSB at 1369.

³ 623 F.2d at 626.

³ Mr. Pauley argued at the hearing before the ALJ and in his brief before the Board that section 91.9 was inapplicable to the incident since the engine start did not occur during the regulatory definition of flight time nor did it take place when air navigation was in progress. 2 NTSB at 1370. *Id.* at 1372.

The conclusion of a prior FAA interpretation involving the issue of when flight time begins in the context where pushback procedures are utilized is also noteworthy. Specifically, we responded to the question whether the time spent in moving an airplane from the loading point to another point, not under the airplane's own power, but by means of a tractor or other conveyance that pulls the airplane into position to begin a flight, must be counted in calculating the duty aloft of flight crewmembers under section 121.471. See October 18, 1972 Memorandum to AGL-7, from Dewey R. Roark, Jr., Acting Associate General Counsel, Regulations and Codification Division (copy enclosed). We stated, as follows:

Since "duty aloft" was defined in old CAR § 40.5 in terms of flight time, and since "flight time," as defined in FAR § 1.1 is defined as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing (block-to-block time), we conclude that the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time and, therefore, is not duty aloft for the purpose of § 121.471.

In our opinion, the logic and principles of the enforcement cases and our prior interpretation support the conclusion that FAA-required de-icing procedures are "preparatory to flight," and when the aircraft taxies under its own power from the gate to the de-icing pad, it is "for the purpose of flight." Thus, we further conclude that flight time starts at the moment when the aircraft taxies under its own power from the gate to the de-icing pad, and flight time continues until the moment the aircraft comes to rest at the next point of landing. And, all of that time is flight time, and must be credited for purposes of the flight time limitations of section 121.471.

This opinion was prepared by Constance M. Subadan, Attorney, Operations Law Branch, and Joseph A. Conte, Manager. It has been coordinated with the Director of the Flight Standards Service and the Air Transportation Division of the Flight Standards Service at FAA Headquarters. We hope it has satisfactorily answered your inquiry.

Sincerely,

Donald P. Byrne
Assistant Chief
Counsel

Regulations
Division

the present regulations are being revised to conform with the latest developments in the field of public health and safety. The new regulations will be more comprehensive and will cover a wider range of subjects than the old ones. They will also be more detailed and will provide more specific instructions to the public. The new regulations will be published in the near future and will be available to the public in the form of a booklet. The public is urged to read the new regulations carefully and to follow the instructions therein. The new regulations will be a valuable guide to the public and will help to protect the public's health and safety.

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U.S. Department
of Transportation

Federal Aviation
Administration

MAY 28 1992

800 Independence Ave., S.W.
Washington, D.C. 20591

James W. Johnson
Staff Attorney
Air Line Pilots Association
535 Herndon Parkway, P.O. Box 1169
Herndon, Virginia 22070

Dear Mr. Johnson:

This is in response to your March 6, 1991, request for interpretation of the meaning of "flight time" as defined in the Federal Aviation Regulations (FAR) Section 1.1. We have considered your question in the context of the flight time, duty time, and rest regulations.

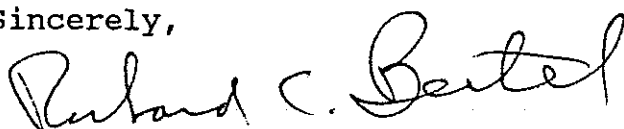
The additional information you provided in your most recent letter dated May 7, 1992, has been noted. You stated that "it is your understanding that some carriers, while paying the pilots for taxi time in situations where they depart the gate with the intention of flight but return to the gate because of mechanical problems or company orders, do not consider that taxi time as 'flight time'."

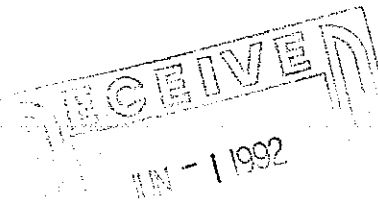
Section 1.1 of the FAR states that "flight time is the time from the moment the airplane first moves under its own power for the purpose of flight until it comes to rest at the next point of landing ("block-to-block" time.)

We are not aware of any prior interpretations on this point. It is our current position that this definition, as drafted, contemplates the usual taxi-flight-taxi situation. If the definition is to include taxi time which is not followed or preceded in an unbroken sequence by flight, then we believe the rule should be amended. As you know, Part 11 prescribes procedures for the filing of petitions for rulemaking which you may follow if you wish to have the rule amended.

We trust that we have answered your question.

Sincerely,

for 
Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division



SCANNED



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 22070 □ (703) 689-2270

May 7, 1992

Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

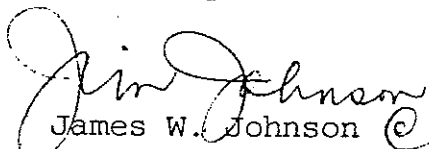
Dear Mr. Beitel:

This is in response to your letter of May 5. We appreciate your advising us that you expect to respond within 90 days to our March 6, 1991 request for interpretation regarding the meaning of "flight time" as defined in FAR 1.1.

In response to your request for additional information, it is my understanding that some carriers, while paying the pilots for taxi time in situations where they depart the gate with the intention of flight but return to the gate because of mechanical problems or company orders, do not consider that taxi time as "flight time."

I hope this information is helpful to you in resolving this question.

Sincerely,


James W. Johnson ©
Staff Attorney

JWJ:avt



AIR LINE PILOTS ASSOCIATION

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April 28, 1992

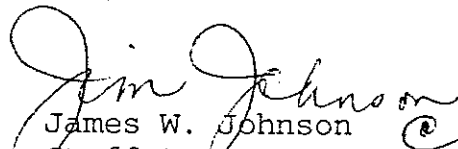
Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

Dear Mr. Beitel:

On March 6, 1991 I requested an interpretation of the meaning of "flight time" as defined by FAR 1.1. A copy of my request is enclosed for your easy reference. You circulated that request for comment on April 19, 1991, allowing 20 days to respond. We are anxiously awaiting your interpretation; and since one year has passed, we are hopeful we can expect it soon.

Would you please advise me of the status of this request.

Sincerely,


James W. Johnson
Staff Attorney

JWJ:avt
Enclosure



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

MAY 5 1991

James W. Johnson
Staff Attorney
Air Line Pilots Association
535 Herndon Parkway, P.O. Box 1169
Herndon, Virginia 22070

Dear Mr. Johnson:

This is in response to your letter of April 28, 1992, regarding your March 6, 1991 request for interpretation of the meaning of "flight time" as defined in FAR 1.1.

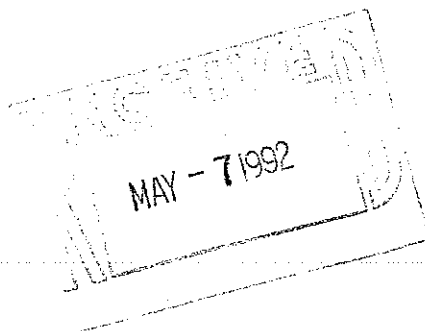
We regret that due to staffing shortages and heavy workload we have been unable to answer your request for interpretation. We hope to be able to answer it in the next 90 days. You should know that although we circulated this interpretation request for comment, we received few responses.

In reviewing the request for interpretation, we note a question, the answer to which would aid us in responding to the request. Our question is, what is the current practice of Parts 121 and 135 air carriers regarding the situation you pose in your request for interpretation.

We appreciate your patience and we look forward to hearing from you regarding our question.

Sincerely

Richard C. Beitel
Manager, Operations Law Branch
Office of the Chief Counsel





U.S. Department
of Transportation
**Federal Aviation
Administration**

JB

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 19 1991

Addressees:
(See attached list)

Ladies/Gentlemen:

The enclosed was submitted to the Federal Aviation Administration for an interpretation of Part 121 of the Federal Aviation Regulations (FAR). It is being sent to your organization for comment in accordance with procedures used by the Federal Aviation Administration to solicit information from interested parties on interpretations of the flight and duty time regulations of the FAR (See 45 FR 30424, May 8, 1980 (enclosed)).

The specific question(s) and supplemental information are set out in a letter, a copy of which is enclosed.

Your comments are invited on the question(s) for interpretation. Commenters should supply the information set forth in the FAA's established comment procedures, referenced above, and should send copies of their comments to the other interested parties listed. In particular, you should furnish copies of interpretations in your files which you believe may be dispositive of the questions raised by the interpretation requests. Mere statements of position which are not accompanied by analysis or by copies of interpretations or other supporting documents will be of little assistance to the FAA. All comments will be considered in preparing our interpretation.

You should send us your comments within 20 calendar days of receipt of this letter. In your reply letter, please reference control number 200910063.

Sincerely,

Richard C. Beitel
Manager, Operations Law Branch
Regulations and Enforcement Division

Enclosures

RECEIVE

APR 23 1991



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 22070 □ (703) 689-2270

March 6, 1991

Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591


Dear Mr. Beitel:

This is to request an interpretation of the meaning of the term "Flight Time" as defined by FAR 1.1. This request is based upon a practice at Henson Airlines where pilots depart the gate and taxi to the active runway with the intention of flight. However, before takeoff, either a mechanical problem arises or the company calls them back to the gate for some reason. In most instances after a delay for repairs or other problems are resolved the flight operates as scheduled.

The question is whether the time the crew operated the aircraft with the intention of flight but did not takeoff is considered "flight time" and whether such time should be included for determining compliance with the flight limitation regulations.

We would appreciate your prompt response.

Sincerely,


James W. Johnson
Staff Attorney

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