

SERVED SEP 17 2005



US DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

PETER L. BRADLEY

FAA DOCKET NO. CP04WP0030
(Civil Penalty Case)
DMS FAA-2005-20532 - 16

MEMORANDUM AND ORDER OF COURT

This matter was set for hearing on August 29 and 30, 2005, at the U.S. Tax Court, Federal Building and U.S. Courthouse, Room 2-1350, 450 Golden Gate Avenue, San Francisco, CA 94102, pursuant to our "Notice of Hearing" served July 26, 2005. The week prior to the hearing, counsel for the Federal Aviation Administration (hereinafter "Complainant") contacted the Office of Hearings and inquired about filing a Stipulation in lieu of a hearing. At 7:48 a.m. August 29, 2005, the court was notified that after 6:00 p.m. EDT August 26, 2005, the Office of Hearings¹ received a "Stipulation" which was faxed to the Office of Hearings.² The court convened at the date and time set for the hearing. Neither counsel nor their clients appeared.

On August 30, 2005, the court received the following email:

Judge Goodwin,

We have faxed you our signed stipulation on Bradley.

Counsel for complainant does not intend to appear at the hearing on Monday, August 29; neither does counsel for respondent. Both will appear on Tuesday, August 30, if required.

Neither counsel filed a pleading requesting the matter be continued from August 29 and 30, 2005. To date no pleading other than "Respondent's Stipulated Proof of Numbered Paragraphs of Complaint", dated August 26, 2005, has been received by the Court.

¹ Located in Washington, D.C.

² At the time the undersigned was in travel status on the west coast.

DISCUSSION

In a 1991 “Order Canceling Hearing and Terminating Proceeding”, Judge Kolko addressed a similar situation In the Matter of Kerry James Eldridge.³ Judge Kolko’s Order warrants reiteration in its entirety:

I. The Instant Proceeding

The hearing in this matter is scheduled to take place on January 24, 1991. On January 7, 1991, this office was notified by a telephone call from the Hearing Docket that the matter had settled. To date, no document has been received from the Hearing Docket to so indicate. Nor has any document reached me from counsel for either party, although the Rules of Practice contemplate that the agency attorney’s withdrawal of the complaint or the respondent’s withdrawal of its request for a hearing is to be followed by action by the presiding judge, 14 C.F.R. 13.215, action that cannot follow if the presiding judge does not have the underlying filings. Nevertheless, because the hearing date is imminent and to avoid unnecessary expense in traveling to the hearing site, the hearing is canceled and the proceeding is terminated, in reliance upon the telephonic information from the Hearing Docket.

II. All Other Cases Pending Before Me

Especially when there are so many cases to be heard, any unnecessary clogging of the gears in one case impedes the entire process. Therefore, the rest of this order pertains to counsel both in this case and in other pending cases, and concerns the manner in which case settlements and other matters are brought to the presiding judge’s attention. The instant case is a perfect example of how not to do it.

Firstly, common courtesy dictates that the presiding judge be advised directly and promptly of a settlement by either party or by the parties jointly. This is doubly true when the hearing has been scheduled for a near date, thereby implying not only that arrangements have been made to hear the case in the field but also that these arrangements need speedy adjustment lest the agency’s constrained travel budget be unnecessarily drawn down. Secondly, it is not a reasonable expectation that notifying the Hearing Docket will cause that burdened office to, in turn, notify the presiding judge that a case has settled and should be terminated. Diligent counsel should know that since under the Rules of Practice the presiding judge is seized of the case after he has been assigned, proper practice compels a written communication (or an oral one if time is critical) directly to that judge.

In general, this case exemplifies all too typically the loose practice engaged in by some counsel when procedural or substantive documents, such as motions, notices of appearance or withdrawal, etc., have to be filed. These are at various times either misfiled (e.g. filed with the N.T.S.B. judges or with only the Hearing Docket), served late, or, as appears in the instant case, not served at all. This cavalier attitude toward comporting with proper practice is a trend that is all the

³ In the Matter of Kerry James Eldridge, FAA Docket CP89GL0458.

more ironic since it is frequently agency counsel who attempt to use the strictness of the Rules of Practice against the slightest missteps of respondents, many of whom lack the luxury of any kind of professional help. Nor is it an answer that these are gaffes that occur in the ministerial process of serving and transmitting documents. Counsel are responsible for both the timely generation and the timely and proper service of their documents.

*2 Accordingly, this is to put generally all and particularly agency counsel on notice that a greater professional mien will be expected of them than has been heretofore demonstrated. The Rules of Practice apply to all parties to these proceedings, and counsel representing the United States Government are always expected to practice their calling at the highest, rather than at a minimal, level of professional conduct. Attention to the details of litigation practice is included in that responsibility. That translates here as follows: 1) any time there happens in a case an event that involves that case, ranging from a change of counsel or of an address to settlement of the case, a filing must be made; and 2) any time a filing of any kind is made, from the time the judge is assigned to the case until the case is concluded, that filing must be timely served upon the presiding judge. In the case at hand, that certainly includes settlement notices or motions. The service list attached to the first order in the case will show counsel that filing with the Hearing Docket does not constitute filing with the presiding judge, if for no other reason than the fact that the Hearing Docket cannot be expected to relay the filing immediately...

Until recently we attached a "Notice to Parties" to our Orders. One is attached to our Procedural Order served March 21, 2005. We have expressed our displeasure in several prior Orders⁴ and referenced other cases therein.⁵

The normal sanction in this case would be to dismiss the Complaint in its entirety.⁶ As set forth in footnote 11 of Administrator's "Order Dismissing Complainant's Appeal"⁷:

As the ALJ's written order dated October 27, 2004, makes clear, this is not the first time that an ALJ has traveled unnecessarily to a scheduled hearing because the ALJ did not get word of a settlement. All counsel are expected to take all steps necessary to avoid sending ALJs on unnecessary hearing trips after the parties reach settlements. In particular, when settling a case, the agency attorneys should send the Hearing Docket the order assessing civil penalty reflecting the settlement and the withdrawal of the complaint. Agency attorneys also should send both documents directly to the ALJ expeditiously. Finally, if an agency attorney does not receive an order dismissing a case that has been settled, the agency attorney should contact the ALJ's office prior to the scheduled hearing

⁴ In The Matter of Robert Harris FAA Docket No. CP03EA0001. DMS No. FAA-2002-14236., Orders dated October 18, 2004 and October 27, 2004. In the Matter of Lewis Drake & Associates FAA Docket No. CP03SO0045. DMS. No. FAA-2003-16379. February 26, 2005.

⁵ See USAIR, Inc., FAA Docket CP90NE0359, Trans World Airlines, Inc., FAA Dockets CP90GL0085, CP90CE0110, CP90CE0114, CP90CE0134, Order of Administrative Law Judge Burton S. Kolko, served April 8, 1992, p. 2 ("[T]he agency, which has the burden of moving forward with its prosecution, has not moved forward.").

⁶ See "Order Dismissing Complainant's Appeal", In The Matter of Robert Harris, FAA Docket No. CP03EA0001. DMS No. FAA-2005-14, August 15, 2005.

⁷ *Id.*

date to check on the case status.

Also, all attorneys should be mindful of the fact that due to security concerns, the processing of mail delivered by the U.S. Postal Service - as opposed to delivery by a private expedited courier - to the Hearing Docket and the Office of Hearings has been, and most likely will continue to be, significantly delayed. Counsel should take those delays into consideration when deciding how to file or serve documents.

This matter will be rescheduled for hearing.

WHEREUPON, this matter will be reset for hearing at which time both counsel and witnesses are expected to appear.

A handwritten signature in black ink, appearing to read 'R. C. Goodwin', written over a horizontal line.

Richard C. Goodwin
U.S. Administrative Law Judge

Attachment(s) – Service List

SERVICE LIST

ORIGINAL & ONE COPY

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Att: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014¹

ONE COPY

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The Honorable Richard C. Goodwin
Administrative Law Judge
Office of Hearings, M-20
Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590
TEL: Attorney-Advisor (202) 366-6941; Legal Assistant 6-5121
FAX: (202) 366-7536

¹ Service was by U.S. Mail. For service in person or by expedited courier, use the following address:
Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building -- Room
2014, Washington, DC 20591. Att: Hearing Docket Clerk, AGC-430.