Sept. 22, 2003

Mr. Daniel J. Wells

Dear Mr. Wells:

We have received your four letters to the Office of the Chief Counsel, dated August 30, 2003, seeking, among a whole host of other things, a legal interpretation of the phrase "adequate sleeping quarters" in 14 C.F.R. §121.485.

Below, we will address the issue of "adequate sleeping facilities" raised in your request. We will also ask you to respond to a series of questions concerning the "flight time" issue you raised in your letter, dated October 16, 2001, to us. As you will recall, we responded to your October 16, 2001, letter by sending you a couple of previously issued interpretations concerning "flight time" and we forwarded your letter to the FAA's offices in Houston to review the recordkeeping issues.

We note that section 121.485(a) states that each certificate holder conducting flag operations "shall ...provide adequate sleeping quarters on the airplane whenever a pilot is scheduled to fly more than 12 hours during any 24 consecutive hours." (Emphasis added.) The FAA has previously stated in regard to the meaning of the phrase "adequate sleeping quarters on the airplane" that a passenger seat, even if it reclines, is not considered to be adequate sleeping quarters; and that the phrase generally means a bunk or a berth, but that it is a matter of safety policy to consider each air carrier's means of compliance on its individual merits. *See* April 22, 1986, Letter to William W. Edmunds, Jr., from John Cassady, Assistant Chief Counsel, Regulations and Enforcement Division [1986-14](copy enclosed).

To the extent that the certificate holder realistically scheduled the operation to fall within the parameters of section 121.485 (i.e., flight time of more than 12 hours), the certificate holder must provide crew rest facilities that meet the Agency's requirements for "adequate sleeping quarters." However, to the extent that the certificate holder realistically scheduled the operation to be 12 hours or less of flight time, but due to unforeseen circumstances the *actual* flight time exceeds 12 hours, we note that the operation is not converted to one under section 121.485. In the latter situation, the requirement for compliance with section 121.485's provisions for crew rest facilities is not triggered.

In your August 30, 2003, correspondence with this office, you wrote that you had sent Continental Airlines a letter dated November 29, 2001, and a letter dated January 14, 2002, on this issue. Please provide copies of those letters to the FAA's CMO in Houston. Additionally, to the extent that your letters do not contain the date, flight number, scheduled flight time and actual flight time for the flight where a crew rest facility was placarded inoperable, please provide that information and supporting documentation to the FAA's CMO in Houston.

In regard to your October 16, 2001, letter, you made several very general allegations regarding conflicts between you and Continental on the proper logging of "flight time." Based on the information you provided, the FAA's CMO could not substantiate your very general assertions. In your October 16, 2001, letter, you mentioned a "very recent" flight on which the company listed a total "duty day" for you of 10:42. You asserted, however, that the "actual duty time was almost-three times" 10 hours and 42 minutes. You did not provide that date or flight number for that flight to this office. But now, in another letter dated August 30, 2003, for the first time, you have provided the FAA's Office of the Chief Counsel with additional details of the "recent flight". You reveal it was Flight 5 from London to Houston on September 11, 2001. You state that as a result of the terrorist attacks on September 11, 2001, your flight was diverted to Gander, New Foundland.

You are well aware of the fact that "flight time" is not the same as "duty time" or "duty day." Despite providing additional details about that flight, FAA personnel, who will be processing your Part 13 complaint, will probably need additional information. For example, please provide responses to the following to the Enforcement Docket (AGC-10) and to the FAA's Houston CMO:

1. Although you assert that you were "crew" on Flight 5 on September 11, 2001, please confirm that you were a flight crewmember on that flight.

2. Where and when did your "duty day" begin on September 11, 2001?

3. How much "flight time" had you accumulated in that "duty day" up to the time that your aircraft was instructed to land in Canada?

4. Did the aircraft come to rest after landing, shut down, and pull off to the side? Explain.

5. How much "flight time" had you accumulated in that "duty day" up to the time that the aircraft came to a complete stop?

6. How long did you and the other flight crewmembers stay on board the aircraft at the airport in Canada?

7. Precisely how long was the aircraft stopped while you were on board waiting for the opportunity to leave the aircraft?

8. Did you leave the aircraft to sleep at a hotel, motel, home or other rest facility in New Foundland?

9. If so, how long were you away from the aircraft?

10. Please specify each "flight time" limitation and "rest requirement" under the Flag rules you believe was actually violated by Continental Airlines in regard to your pilot duties with the carrier on and about September 11, 2001. Explain how you believe "flight time" should be calculated under the Federal Aviation Regulations for purposes of that flight.

11. Did the flight crewmembers inform Continental's dispatchers that they had been on the aircraft for many hours in Gander?

12. Did Continental require you and the other flight crewmembers to takeoff the aircraft from Gander without having had the opportunity to have a rest period in New Foundland? Explain.

13. Did you "operate" the aircraft out of Gander, and, if so, when?

Your other allegations in that Part 13 complaint, including your allegations about recordkeeping problems at Continental, are being investigated by Flight Standards Service and will be reviewed by FAA attorneys in the Enforcement Division.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel for Regulations