U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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Washington, D.C. 20591

MAY - 4 2012

James W. Johnson
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Dear Mr. Johnson,

This letter is in response to your February 6, 2012 request for interpretation of 14 C.F.R. §§ 121.481 and 121.483 as they relate to a flight that has been rescheduled by a certificate holder and whether that rescheduled flight needed to be flown by an augmented crew.

In your fact scenario, a flight was originally scheduled to operate from London, Heathrow (LHR) to Newark, NJ (EWR), using a B-777 aircraft with a scheduled flight time of 8 hours. Due to a mechanical problem with a B-767 aircraft that was scheduled to operate on a domestic charter flight, the certificate holder reassigned the B-777 to the domestic charter and substituted a B-757 for the LHR-EWR flight. The scheduled flight time using the B-757 would be 8 hours and 30 minutes. The certificate holder assigned two pilots to the B-757 flight, based upon the original B-777 scheduled flight time. The certificate holder knew at the time of the rescheduled flight that the B-757 flight time would be 8 hours and 30 minutes. Additionally, the certificate holder was aware of the need to assign another aircraft to the trip 23 hours prior to the scheduled departure and deadheaded a crew to LHR.

Section 121.481(a) provides in pertinent part that a certificate holder may schedule a pilot to fly in a crew of one or two pilots for up to 8 hours during any 24 consecutive hours without a rest period during those 8 hours. If a pilot in a crew of one or two pilots is scheduled for more than 8 hours in any 24 consecutive hours, § 121.481(b) requires an intervening rest period at or before the end of eight hours of scheduled flight duty. Section 121.483(a) provides in pertinent part that certificate holder may schedule a pilot to fly in an airplane that has a crew of two pilots and at least one additional flight crewmember for up to 12 hours in any 24 consecutive hours.

Applying these provisions to your fact scenario, the B-777 flight was originally scheduled under § 121.481(a) as a two-pilot operation because the flight could be scheduled for 8 hours or less based on the performance capabilities of the aircraft. The

substitute aircraft, a B-757, was not capable of operating that same flight in 8 hours or less due to the different performance characteristics of the B-757, resulting in a new schedule of 8 hours and 30 minutes. Section 121.481(a) does not permit a two-pilot crew to operate a flight of more than 8 hours in flag operations.

The only exception to the 8 hour flight time limitation of § 121.481(a) has been what is known as the "circumstances beyond the control of the certificate holder" rule, which is found in § 121.471(g) of subpart Q (the domestic flight and duty rules) and has been consistently applied in similar circumstances to flag and supplemental operations. *See*, Nov. 8, 1990, Letter to John H. DeWitt, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (stating that "past Agency interpretations have applied the same 'circumstances beyond the control of the air carrier' rule to flight time questions concerning flag air carriers and supplemental air carriers & commercial operators"). The question then becomes whether the rescheduled flight using the B-757 fell within the guidelines for what the FAA considers to be a circumstance beyond the control of the certificate holder. For the reasons explained below, we find that the circumstances causing the rescheduling and substitution of aircraft in this instance were within the certificate holder's control.

The FAA has said that "an air carrier will not be in violation of the limits on scheduled flight time if the air carrier's schedule is based on realistic assumptions about the circumstances of the flight, and the delay is due to circumstances truly unforeseeable or beyond the carrier's control." *See*, Legal Interpretation from Rebecca B. MacPherson to Kevin McCabe (Mar. 10, 2011) The FAA has also said that "because ATC or weather delays, are sometimes known well in advance of the day of a flight's operation, and mechanical problems may be within a carrier's control, those conditions do not automatically trigger an excuse of the carrier violation of § 121.471(a)(4)." *See,* Legal Interpretation from Rebecca B. MacPherson to Patrick M. Ryan (Feb. 23, 2006).

In this case, the certificate holder elected to use the aircraft originally scheduled for the LHR-EWR flight to substitute for an aircraft with a mechanical problem that was scheduled for a domestic charter. This was completely unrelated to the circumstances of LHR-EWR flight and the certificate holder could have used any number of aircraft in its fleet to substitute for the domestic charter. This decision was entirely within the certificate holder's control. As a result, the scenario presented would not fall within the "circumstances beyond the control" rule. This determination is also supported by the fact that the certificate holder knew of the situation 23 hours in advance of the scheduled departure of the LHR-EWR flight and deadheaded a crew to LHR to operate the B-757 substituted for the flight.

In deciding to substitute a B-757 aircraft for the flight, the certificate holder was then under a duty to determine the impact of that change on the circumstances of the flight, including the scheduled flight time. Unless the B-757 was capable of operating the same schedule, adjustments to the flight plan, including the number of flight crewmembers to operate the flight, needed to be made. Based on the rescheduled flight time of 8 hours and 30 minutes, the new LHR-EWR flight with the B-757 should have been flown with

an augmented crew under § 121.483(b). *See*, Legal Interpretation to R.M. Barrett from Donald P. Byrne (May 22, 1991) (stating that § 121.481 would not apply to a flight of over 8 hours, without an intervening rest period).

We appreciate your patience and trust that the above responds to your questions and concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Robert Frenzel, Manager, Operations Law Branch, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200