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May 14, 2019

VIA FEDERAL EXPRESS

Vincent L. Murray II
Manager, Audit and Analysis Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re. EWB16637 (Karlene Petitt) – Delta's Non-Compliance with SMS Obligations

Dear Mr. Murray:

By letter dated September 8, 2016, you conveyed that the FAA's Flight Standards Service had completed its investigation of the air carrier safety allegations in the above-referenced matter and determined that a violation of an order, regulation or standard of the FAA related to air carrier safety had occurred. Having obtained a copy of the underlying investigatory report, we understand that the only violation substantiated by the FAA's Flight Standards Service related to non-compliance with pilot scheduling requirements under 14 CFR Section 117.11(a) and (b).

Ms. Petitt's AIR 21 complaint was based in large part on her submission, on January 28, 2016, of a written report to Steve Dickson, Delta's Senior Vice President of Flight Operations, and Jim Graham, Delta's Vice President of Flying Operations. Many of the issues raised by Ms. Petitt in this report were never investigated by the FAA, including her allegation that Delta was in violation of its Safety Management Systems (SMS) obligations under 14 C.F.R. Part 5.

Approximately seven weeks after her submission of the January 28 report, Delta grounded Ms. Petitt and ordered her to undergo a compulsory mental health evaluation. A tortuous psychiatric review process, stretching out over seventeen months, confirmed Ms. Petitt's mental health fitness and she is currently flying for Delta Air Lines as a First Officer on the B777. Her AIR 21 trial concluded on May 1, 2019. Although the case must still be briefed by the parties prior to the rendering of final decision, Administrative Law Judge Scott Morris stated at the conclusion

of the hearings that he was “deeply troubled” by Delta’s actions. Judge Morris urged Delta to seek a settlement in order to avoid a published decision that would reflect poorly on the carrier.

From Ms. Petitt’s perspective, among the most troubling aspects of the hearing was the depth of Delta’s non-compliance of its SMS obligations.

SMS Requirements

A Part 121 carrier is required to adopt and implement an FAA-approved SMS program that complies with 14 C.F.R. Part 5. 14 C.F.R. §§ 5.1, 5.3. The carrier SMS program must, at minimum, contain the following components: (1) safety policy, (2) safety risk management, (3) safety assurance, and (4) safety promotion. 14 C.F.R. § 5.3. A minimum requirement of the safety assurance component of the carrier’s SMS program is provision for:

Investigations of reports regarding potential non-compliance with regulatory standards or other safety risk controls....

14 C.F.R. § 5.71(a)(6). Another minimum requirement of a carrier’s SMS safety assurance component is the development of a:

reporting system in which employees can report hazards, issues, concerns, occurrences, incidents, as well as propose solutions and safety improvements.

14 C.F.R. §5.71(a)(7). A minimum requirement of the SMS safety promotion component is the carrier’s development of practices that:

Ensure[] that employees are aware of the SMS policies, processes, and tools that are relevant to their responsibilities.

14 C.F.R. § 5.93(a). As the FAA explained in the preamble to its SMS Final Rule:

The participation of line employees is critical in developing improvements in functions that directly impact their job tasks.

80 Fed. Reg. 1307, 1315 (January 8, 2015).

Part 5 also requires that the carrier designate an “accountable executive” for its SMS program who has final authority over the carrier’s operations, financial resources, human resources, and ultimate responsibility for safety performance. The accountable executive must ensure that the SMS program is properly implemented and performing in all areas of the certificate holder’s organization. 14 C.F.R. §5.25(a) and (b).

Evidence of Delta’s Non-Compliance with its SMS Obligations

The sworn testimony produced by the AIR 21 process confirmed a disturbing ignorance of SMS at all levels of Delta’s operations.

Delta's SMS program designates the carrier's Chief Executive Officer as the "accountable executive" required under 14 C.F.R. Part 5 with the Sr. Vice President Flight Operations acting as Divisional SMS Accountable Executive for Flight Operations. (Attachment A at Section 5.7).

Nevertheless, CEO Ed Bastian testified on February 27, 2019, that he "no idea" what the core components of the SMS program were. (Attachment B - Bastian Dep. at 22). When asked what his personal involvement was in SMS compliance, he responded: "I don't have one." (*Id.* at 23). When asked whether he had been, at any time, the SMS accountable executive, he responded: "I'm not sure what accountable executive means." (*Id.* at 27-28).

Similarly, Sr. Vice President Flight Operations James Graham identified not himself or CEO Bastian, but rather the Sr. Vice President of Corporate Safety, Security and Compliance as the SMS Accountable Executive. (Trial Tr. 1099-1100, 1124).¹

Captain Davis, who in 2016 held the position of Delta Airlines Regional Director and Chief Pilot for the Western Region, testified, on December 11, 2018, that did not know the specifics of the Delta SMS program or whether it was an FAA requirement. (Attachment D - Davis Dep. at 118). He was not aware of who the SMS manager was or who served as the Seattle base safety coordinator. (*Id.* at 119). When asked whether he had ever received SMS training, he responded: "I don't know." (*Id.*).

Individual Delta line pilots testified concerning the general lack of knowledge regarding the SMS program at the carrier:

Q: Do you have any -- have you ever discussed SMS with other pilots at Delta?

A: Well, a little bit. Usually when I say SMS they say: "What is that? Is that part of the airplane?"

Q: Well, to the extent you have knowledge of SMS, to what do you attribute having obtained that knowledge?

A: Because I know Karlene.

Q: You don't recall any training from Delta on SMS?

A: Not that I can recall, certainly nothing extensive.

(Trial Tr. at 155). The lack of knowledge extended to pilot union representatives.

Q: Could you describe the SMS training that you've received from Delta?

¹ All references to trial transcripts are attached in page order as Attachment C.

A: I'm involved with ALPA so the Safety Management System I know about, relative to ALPA. I believe there's probably a module about SMS when it first came out, but I couldn't tell you any aspect of what that was.

(Trial Tr. at 269).

Please let us know if we can assist you by providing any required transcripts, witness contacts, or other information.

Thank you for your consideration.

Sincerely,

/s/ Lee Seham

Lee Seham

cc: Peter Carter, Esq
Delta Air Lines, Inc.

Rachel Samuda, Esq.
Air Line Pilots Association

Delta Pilots Association