

ALAN ARMSTRONG

ATTORNEY AT LAW

PARK RIDGE 85 OFFICE PARK

BUILDING 5, 2900 CHAMBLEE-TUCKER ROAD

ATLANTA, GEORGIA 30341

(404) 451-0313

FAX: (404) 451-0317

March 25, 1993

Second Officer Mark S. Estabrook  
2722 Morning Woods Drive  
Cordova, Tennessee 38018

RE: MARK S. ESTABROOK adv. FAA

Dear Mark:

This letter follows receipt of your letter dated March 24, 1993, received via facsimile transmission. Also, this letter follows our three telephone conversations of March 24, 1993.

You are employed by Federal Express as a Second Officer (flight engineer). You fly in the Boeing 727 which has a 3-man crew. At about 5:26 a.m., Mountain Daylight Time, Federal Express Flight No. 527 was cleared to depart the Salt Lake City Airport via Runway 34R. The aircraft was given a rolling takeoff since the aircraft was cleared to taxi and to takeoff upon reaching Runway 34R.

Your duties as a Second Officer are outlined in the Operations Specifications of Federal Express. As the Second Officer, you must comply with a "line-up checklist" which requires that you scan the engine instruments before the aircraft begins its takeoff roll after takeoff power is applied. You complied with your duties as the Second Officer in scanning the engine instruments with your seat turned toward the starboard side of the aircraft, and you were not looking out the windshield of the aircraft at the time it was taxied onto the runway.

After you scan the engine instruments after takeoff power is applied, the Operations Specifications call for you to rotate your seat 90 degrees to the left and look forward out the windscreen of the aircraft, as do the Captain and First Officer who operate the flight controls of the aircraft.

In retrospect, it appears that the aircraft in which you were serving as Second Officer departed from Runway 32 as opposed to Runway 34R.

Against your advice, the Captain called the tower and made an admission on the radio concerning departing from the wrong runway, and the controller responded with words to the effect that it was not a problem.

Second Officer Mark S. Estabrook  
March 25, 1993  
Page Two

You, the Captain and the First Officer discussed the situation, and it was agreed that you all would simply file Aviation Safety Reports with the National Aeronautics & Space Administration (NASA) and do nothing further. Nevertheless, the Captain called the company and spoke with personnel in the Flight Safety Department.

After the Captain called the Flight Safety Department, personnel in the Federal Express Flight Safety Department called the Salt Lake City Tower and learned that a pilot deviation report is being prepared for the Flight Standards District Office in Salt Lake City. This information was obtained from Nelson Rendon, the Operations Specialist in the tower.

Interestingly, Mr. Rendon admitted that there had been two similar events of aircraft mistakenly departing from Runway 32. Apparently, the thresholds of Runway 34R and Runway 32 are poorly marked. More importantly, if Runway 32 was not in use, why were the lights for that runway illuminated? Further, if ATC had two previous alleged pilot deviations, why did it fail to alter its operating practices to preclude this happening a third time?

You do not rotate your seat into a forward-looking position until after the Captain or First Officer has advanced the throttles to the takeoff power setting. Accordingly, until takeoff power was applied, you had no reason to look out any window and were not in a position to do so. Accordingly, you were not aware of the fact that the aircraft had been positioned to depart from the wrong runway.

We had a second telephone conversation on March 24, 1993, and you overheard my conversation with Bob Giordano of the Federal Express Flight Safety Department. You hear Mr. Giordano say that your filing a statement with that department was not mandatory. You also heard him say that the FAA had requested information on the flight crew members, and Federal Express intends to provide the FAA with that information.

It is my assessment that pursuit of certificate action by the FAA is inevitable given the fact that it appears that the local Flight Standards District Office has received a report of an alleged pilot deviation.

Second Officer Mark S. Estabrook  
March 25, 1993  
Page Three

After discussing this situation at length, you are going to go out to Salt Lake City and try to get some photographs of the airport at approximately 5:00 a.m., local time. If you could fly in on a jump seat and take photographs from the airplane, that would be helpful. If you could rent a helicopter and fly above the airport taking photographs of the lights of both Runway 34R and Runway 32, that would be helpful also.

Further, if you could go to the construction outfit performing work on Runway 34L and find out who was working on the night of March 9, 1993, and interview those people, that could be helpful also.

Mr. Douglas B. Moore is a retired FAA Inspector and was a Colonel in the United States Air Force Reserve. Mr. Moore has helped me on a number of FAA enforcement cases, and I would urge you to speak with him before you travel to Salt Lake City to undertake your investigative work. Mr. Moore can be reached at (404) 439-1766.

Mark, as I understand the current situation, I am presently acting as your counselor. However, in the event the anticipated letter of investigation comes from the FAA, it would be my thought that you then allow me to become your advocate by dispatching a request for information to the FAA under the Freedom of Information Act.

Because the tower has filed a pilot deviation report with the Flight Standards District Office, we assume that tape recordings of communications between the tower and the aircraft have been preserved by the FAA. I will be happy to write the tower and request copies of the tapes at this time if you will authorize me to do so.

This file will be billed at the rate of \$200 per hour. Besides paying for my time, you will be responsible for expenses which relate to your file including, without limitation, the cost of photocopying, long distance telephone calls, travel, court reporter's fees, etc.

In the event you elect to engage Mr. Moore, you can make your financial arrangements directly with him. In the alternative, you can direct that I pay Mr. Moore and obtain reimbursement from you.

Second Officer Mark S. Estabrook  
March 25, 1993  
Page Four

You have indicated a willingness to send us \$500 in advance, and this will be placed in our trust account and billed against at the hourly rate. In the event the initial advance payment is exhausted, payment of any debit appearing in our invoices is expected within 10 days. Invoices not paid within 30 days accrue interest at the rate of 1 1/2 percent per month or 18% per annum.

Mark, after the time we spent working together on The Stick Shaker, I never expected to undertake your representation. Nevertheless, I am glad that you gave me a call when you felt the need for representation.

If the terms of this letter accurately state the basis of our agreement, please execute same in the bottom left-hand corner, keep a copy for your records and return the original to me.

Please call if you have questions.

Best regards,

  
Alan Armstrong

AA/plw

ACCEPTED BY:

\_\_\_\_\_  
Mark S. Estabrook