



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

August 25, 2014

Mark McCloud
Acting President
UPS Airlines
1400 North Hurstbourne Parkway
Louisville, KY 40224

RE: UPS Airlines' Failure to Abide by National Transportation Safety Board's Party Agreement in Investigation of UPS Flight 1354 Accident in Birmingham, AL, August 14, 2013, DCA12MA133

Dear Mr. McCloud,

As you know, the National Transportation Safety Board (NTSB) engages parties to participate in accident investigations. Those parties provide valuable technical assistance to the NTSB in its investigative activities.

The NTSB is greatly concerned with UPS Airline's failure to consult with us prior to its posting of an online comment on the Air Cargo World (ACW) website on August 14, 2014, in response to ACW's previous day posting of an Independent Pilots Association's (IPA) press statement entitled "UPS Pilots Call for End of Part 117 Carve-out on Anniversary of Fatigue Crash." Statements in the UPS online comments impermissibly prejudice the results of the NTSB's continuing investigation of the accident and its forthcoming findings and probable cause statement regarding the accident. As discussed further below, United Parcel Service (UPS) Airlines' failure to consult with us directly violates NTSB regulations, applicable guidance, and the Certification of Party Representative agreement signed by Captain Reed Potecha on August 15, 2013. As a result, although we recognize the fact-gathering portion of the UPS 1354 accident investigation is now complete and both UPS and IPA have provided their analysis and opinions regarding the accident facts in their party submissions to the investigation, the NTSB is hereby removing UPS's party status in this investigation.

As soon as possible after the September 9, 2014, Board Meeting on the UPS 1354 accident, Acting Chairman Hart and senior agency officials would like to meet with senior UPS Airlines officials to discuss further our expectations for UPS to again serve as a party in any future NTSB investigations. In addition, although we are mindful that UPS is no longer subject to our party requirements for the UPS 1354 accident investigation, we will continue to monitor closely any public statements UPS may issue prior to the upcoming Board Meeting. We will take into account any such statements when we address, during our requested meeting, our

expectations for UPS's ability to serve as a party in any future NTSB investigation. I request that UPS promptly contact me at (202) 314-6616 to schedule this meeting.

The NTSB's requirements for parties' participation in its accident or incident investigations are codified in Title 49 *Code of Federal Regulations* Part 831, and, in particular, in section 831.11. Further, dissemination of accident information is governed by Title 49 *Code of Federal Regulations* Part 831, §831.13.

The document entitled "Information and Guidance for Parties to NTSB Accident and Incident Investigations," which was incorporated by reference in the Certificate of Party Representative agreement signed by Captain Potecha, elaborates further on the NTSB requirements with which UPS failed to comply:

- All participants in the investigation (i.e., party representatives, party coordinators, and/or the larger party organization) must be responsive to the direction of NTSB representatives and may lose party status if they do not comply with their assigned duties and activity proscriptions or instructions, or if they conduct themselves in a manner prejudicial to the investigation.
- Limitations on parties commenting publicly on possible findings of the investigation, including the probable cause of the accident, will remain in effect until after the Board adopts the final report. (Section VII)
- Prior to the NTSB's adoption of the final report, only appropriate NTSB personnel are authorized to publicly disclose investigative findings, and, even then, the release shall be limited to verified factual information identified during the course of the investigation. In addition, party participants or their respective organizations must refrain from providing opinions or analysis of the accident outside of the participants in the investigation. Failure to abide by these requirements may lead to removal of a party from the investigation. Any questions on this policy may be directed to the NTSB's investigator-in-charge (IIC) on an investigation, or to the NTSB's Public Affairs Office at 202-314-6100. (Section VIII)

Our limitations on parties' ability to make public statements concerning an accident prior to release of our Board's final report is an important safeguard for our investigative process. Parties' compliance with these and other NTSB requirements are essential to ensuring objective, rigorous, and complete accident investigations and preventing loss of public confidence in the NTSB's investigative process and its ability to develop recommendations to improve transportation safety. These limitations also prevent unfairness to other parties to the investigation. For all these reasons, we require parties seeking to disseminate information to the media to first consult with our IIC and the Office of Public Affairs, which will work with you on public statements.

Please be advised that we will place a copy of this letter in the public docket for the UPS 1354 accident investigation. In addition, please note that we are similarly concerned with IPA's

violation of our party requirements in issuing its August 13, 2014, press release without prior consultation with us. As a result of IPA's action, the NTSB has also removed it as a party to the UPS 1354 accident investigation and requested to meet with senior IPA officials to discuss our expectations for IPA to again serve as a party in any future NTSB investigations.

In closing, we wish to point out that the NTSB appreciates UPS's participation in the UPS 1354 accident investigation and in previous investigations. We look forward to UPS's ability to participate meaningfully in future NTSB investigations.

Sincerely,

A black rectangular redaction box covering the signature of David K. Tochen.

David K. Tochen
General Counsel

cc: Scott Casey, Esq.