What Do Terrell Owens and FedEx Have in Common?

The Philadelphia Eagles football team's management suspended wide receiver Terrell Owens on Nov. 5, 2005, for publicly dissing his teammates and management, and for fighting with another player. Eagles management decided they'd had enough of the talented but serially problematic Owens and told him they no longer desired his services. Owens publicly apologized to the Eagles, but the franchise found his act of contrition too little, too late.

CAPT. JOHN BEATTY (FEDEX, RET.)

COPYRIGHT © ASSOCIATED PRESS

Sports writers, football fans, and the general public awaited the outcome of Owens's last hope to return to the gridiron as an NFL player during the 2005 season—his union's appeal to a professional arbitrator, Washington, D.C.-based attorney Richard I. Bloch, selected by the NFL Players Association and management to resolve the issue. On November 23, Bloch issued his decision, denying Owens's grievance to be reinstated to the Eagles' active roster or released to sign with another team.

While Owens's foibles made national news, few people knew of nor would care about the "Opinion and Award" that Bloch issued on Oct. 11, 2005, in another arbitration. But that was a memorable day for two FedEx Express pilots. As neutral arbitrator and chairman of a three-man System Board of Adjustment, Bloch cast the swing vote to overturn the termination of the two pilots for their roles in an A310 landing overrun accident.

On June 28, 1999, the two pilots were the flight crew of FedEx Flight 77S on a leg from Cebu to Manila in the Philippines. While the airliner was entering the downwind leg for Runway 24 at Manila's Ninoy Aquino International Airport, air traffic control asked the pilots if they could land on Runway 6. The first officer, the pilot flying, used speedbrakes to hasten the descent. The captain, dealing with a relatively high workload at the time, asked ATC for a 360-degree turn. He received no response to the request. Because of adverse weather approaching the airport, the captain advised the first officer to continue to land on Runway 6. The first officer set the autobrakes to "low."

The crew reacted quickly and landed in the touchdown zone, but their A310 failed to stop on the 11,768-foot runway or the 490-foot paved overrun. The airplane hit an ILS localizer antenna system before it stopped short of a road. FedEx alleged that damage to the airplane and airport equipment exceeded $20 million.

FedEx management responded by suspending the two pilots with pay and waited for the Philippine government to investigate the accident. Almost 4 years later, after not receiving detailed information or a final report from the Philippine officials, FedEx management launched its own investigation in July 2003. On May 19, 2004, management fired the two pilots, who appealed the termination. The company upheld the decision on July 8, 2004.

The Railway Labor Act, which governs labor practices for ALPA and other transportation unions, mandates that an appeal process called a System Board of Adjustment be written into collective bargaining agreements. In the airline industry, the System Board usually consists of a union representative, a management representative, and a neutral arbitrator. The union and management jointly select the "neutral" from a list of several arbitrators named in the current labor contract, or go to a highly respected professional group, the National Association of Arbitrators, to retain the services of an arbitrator.

ALPA appealed the pilots' firing to the System Board, which held hearings over 10 separate days between August 2004 and March 2005. Darrell Green, an attorney and contract administrator who works out of the FedEx MEC office in Memphis, represented the captain; Jim Johnson, supervising attorney in ALPA's Legal Department, represented the first officer.

Because the collective bargaining agreement prohibits management from using flight data recorder or cockpit voice recorder information for discipline or discharge, the System Board relied on the pilots' testimony and that of expert witnesses and an air traffic controller.

Among several reasons for firing the two pilots, FedEx management said that the pilots failed to arm the speedbrakes for landing, did not follow through on their request for permission to make a 360-degree turn, did not complete checklists, and failed to maintain situational awareness—which included failing to check the ECAM display to confirm ground spoiler deployment after touchdown. Management argued that the pilots did not begin manual braking until too late.

The A310's autobrake system, when set in the "low" position, incorporates a delay of 4-8 seconds between touchdown and the onset of braking. The first officer testified that he began pushing on the brakes about 8 seconds after touchdown, and that he "never pushed so hard on the brakes in [his] life"—but without effect.

Bloch said, in his Opinion and Award, that "the Board is faced with two dramatically differing analyses and conclusions concerning the progress of the flight and the supposed actions or inactions of the pilots. The company's conclusion requires the assumption that two experienced pilots either ignored or delayed initiation of manual braking, or, alternatively, that the speed of the aircraft made manual braking impossible." ALPA, he noted, assumed that "braking was initiated in a timely manner and that continuous, aggressive braking should have stopped the aircraft in ample time." ALPA argued that the lack of braking action was caused by a mechanical failure.

"Central to this dispute," Bloch observed, "are the various assumptions concerning landing distance." FedEx management provided landing distance calculations derived by a company project engineer. ALPA hired Thomas Yager, a NASA engineer and internationally recognized expert on runway friction, aircraft tires, and braking, to analyze the particulars of the accident.

ALPA is proud of the fight waged to return the FedEx pilots to work.

Bloch noted that the management engineer admitted that he presumed that the aircraft was overweight, assumed no speed bleedoff in the landing flare, and made other unrealistic assumptions in his calculations.

"The Union's expert witness," Bloch wrote, used "a somewhat broader series of variables to calculate stopping distance, including consideration of aerodynamic forces, ground tire coefficient of friction, rolling resistance derived from empirical data at NASA's test track facility, and the percentage of weight on main and nose wheels, among other items. Concluding that the lack of spoiler deployment, in this particular case, was not a factor in stopping distance, Mr. Yager calculated that, assuming a worst-case scenario,…the aircraft would still have come to a stop some 7,000-8,000 feet down the runway, with wheel braking…. According to Yager, the pilots could have applied maximum manual brakes as late as 2,000 feet from the end of the runway and still have [stopped] on the runway."

Moreover, the arbitrator declared, "It is, at the least, improbable that two experienced airline pilots, clearly and undisputedly aware they had no autobrakes, would fail to immediately attempt to apply the manual brakes, that they would allow the aircraft to continue for as much as 15 to 20 seconds before braking."

While Bloch did credit the company on some points, he added that "the evidence…tends to show that, with timely and fully effective manual braking, the plane could have stopped in time. On the critical question of whether (1) the pilots waited too long to begin manual braking or (2) the lack of spoiler deployment devitalized the manual braking to the point of non-existence, the evidence against the grievants is meaningfully mixed and ultimately inconclusive.… [T]he discharges lacked just cause."

Each pilot, said Bloch, "is to be reinstated to active service."

In the final analysis, ALPA is proud of the fight waged to return the FedEx pilots to work after a serious aircraft accident but disappointed that they were not made fully whole for the time off. More attention and credit should have been paid to a number of factors including the last-minute runway change; aircraft touchdown in the landing zone at landing speed; widely reported problems and deactivation of Airbus A310 thrust reversers; alarmingly little information about the other systems affected by thrust reversers deactivation; and most importantly, brake failure. Obviously, Airbus, FedEx, and Philippine air traffic controllers played a significant role in the circumstances surrounding this accident.—*Jan W. Steenblik, Technical Editor*