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Ms. Karen Gorman
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US Office of Special Counsel
1730 M Street, NW , Suite 300
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RE: OSC Files DI-11-1675 & DI-11-1677

Dear Karen,

Attached, please find a copy of my comments for the most recent Agency response in the above referenced matters. Unlike my first round of comments, these will be brief, as quite frankly I get the overwhelming impression that the Agency has no intention of correcting what is obviously a systemic problem.

If you require additional information, or clarification of any comments, please don't hesitate to ask.

Thank you in advance for your time,

Brian J. Gault

The comments contained below reflect new information provided by the Agency concerning the corrective action taken in reference to OSC Files DI-11-1675 & DI-11-1677. It also reflects assertions made by the Agency within the materials concerning application of FAAO 7110.65 Paragraphs 5-8-3, 5-8-4 and 5-8-5. Any reference to "the materials" or "materials provided" incorporates information provided in an April 16th Memorandum from H. Clayton Foushee to Ronald Engler and a March 29th email response from the Agency to questions posed by the OSC.

After reviewing the above mentioned materials, there are three main issues that I feel warrant comment. They are as follows:

1. In response to Allegation One, the Agency clearly indicates that changes to DTW missed approach procedures will meet or exceed the standard set forth in FAAO 7110.65 Paragraph 5-8-5. Furthermore, the Agency contends that no change is necessary to the verbiage of 5-8-5, and that DTW is operating in concert with other major facilities within the NAS. The Agency also contends that 5-8-3 and 5-8-5 are mutually exclusive, and not dependent on each other in simultaneous operations. In short, it is my opinion that these assertions are untrue.
2. In response to Allegation Two, the Agency seems to rely on DTW Local Controllers (LC) providing an alternate radar vector to a missed approach/go around in lieu of utilizing the published missed approach procedures. The obvious flaw in this logic is that the Agency also indicates that the reason Mr. Sugent was assigned an OE was because he "vectored the missed approach aircraft into the same airspace as his simultaneous departure had already been vectored." This analysis by the Agency ignores the plain language contained in 5-8-5.
3. In response to Allegation Three, the Agency contends that there have been no additional OEs committed at DTW since the filing of the complaint. This is also patently untrue based on the plain language of 5-8-5.

The Agency contends that the new DTW missed approach procedures will comply with FAAO 7110.65 Paragraph 5-8-5, and that no change is necessary to the language of the rule, or any other paragraph within the Order. The Agency also contends that Paragraphs 5-8-3 and 5-8-5 are mutually exclusive of each other. Finally, the Agency contends that DTW is operating in a manner consistent with other large facilities within the NAS.

As discussed *ad nauseum*, Paragraph 5-8-5 allows simultaneous arrivals and departures on parallel or non-intersecting runways (with criteria for spacing between the centerlines) if the departure course diverges immediately by at least thirty (30) degrees from the missed approach course (note, not the published missed approach course), until standard separation is applied.

The 7110.65 takes great pains to define numerous concepts in great detail, however, it never defines what constitutes "divergence." Adding to the confusion over the definition of divergence is the fact that 5-8-5 is accompanied by a diagram that shows only one aircraft per side of a runway centerline.

In my first set of comments, I asked for clarification from the Agency over whether or not two aircraft could be in a same direction turn under 5-8-5, with less than standard separation, in a situation where the tower was unable to provide visual separation. The Agency has declined to clarify this situation, and further has indicated that no change is necessary to the verbiage (or, presumably the diagrams) to the existing 7110.65.

However, one can infer that the Agency *did* in fact provide clarification to the 7110.65 by allowing the new DTW published missed approach procedures to be implemented. These procedures will require go around aircraft to make a hard, climbing turn inside the projected course of a departing aircraft, resulting in two aircraft conceivably being in a same direction turn in a scenario as described above. Therefore, implicitly, the Agency has arguably determined that the verbiage of 5-8-5 is the controlling portion of the standard of separation, and that the associated diagram is illustrative in nature.

The Agency also contends that other facilities within the NAS are operating in a similar manner to DTW. However, that contention is laughable at best, because prior to the above referenced complaints, DTW had claimed they were "uninformed" about how to properly apply the 7110.65. As pointed out in numerous documents associated with these cases, even the FLMs at DTW were unsure of how to correctly apply 5-8-5. Is the Agency asserting that the NAS is operating under the chaos theory, whereby each facility does whatever it wants and then claims ignorance of the rules if a problem arises?

The bottom line is that there is obviously still confusion concerning the correct usage of separation rules within the 7110.65. If, as pointed out in my initial comments, two aircraft are prohibited from being on the same side of the centerline, then the interrelationship between 5-8-3 and 5-8-5 is absolutely relevant, and further analysis and discussion is required. However, if two aircraft are able to be in a same direction turn on the same side of the centerline, then the Agency's contention that there is no conflict between 5-8-3 and 5-8-5 becomes a valid argument. Either way, without direct clarification and clear direction from the Agency about how to correctly apply the rules, how is a facility supposed to develop local procedures?

The Agency seems to heavily rely on LC at DTW utilizing alternate, pre-coordinated missed approach procedures in lieu of the published missed approach procedures. However, the Agency gives conflicting information whether that procedure is allowable in their analysis of Mr. Sugent's OE.

The Agency appears to be playing a Three Card Monte game with its analysis of the missed approach procedures at DTW. Although I agree that each missed approach/go around is slightly different, there is no provision within the 7110.65 that absolves controllers of delineated separation rules at their whim and pleasure. On the contrary, there are very specific instances when a controller would be allowed to deviate from established separation standards, namely emergency situations, etc. While a go around/missed approach *can* place aircraft in very close proximity depending on when an aircraft executes a go around (speed, ability to "clean up" the airplane, turning capabilities, etc. all taken into

account), a go around/missed approach is not considered an emergency situation. Therefore, absent extenuating circumstances (such as an emergency), a controller would be expected to adhere to standard separation standards.

To illustrate the Agency's contradicting policies on go around/missed approach procedures, consider that within the same email sent to OSC/IG in response to questions for clarification, the Agency appears to approve of the new published missed approach procedures implemented at DTW, while considering Mr. Sugent's actions unallowable. With respect to the new go around/missed approach procedures, the Agency boasts that they *exceed* the required separation standards under the 7110.65. However, little, if any, analysis is offered by the Agency as to *why* the new procedures comply with the 7110.65. In subsequent paragraphs, the Agency attempts to differentiate Mr. Sugent's OE from the missed approach procedures used at DTW. The Agency's flawed arguments and analysis make assumptions that an error only occurs when an arriving aircraft goes around. However, nothing could be further from the truth, as shown in the plain language of 5-8-5 as listed above.

The Agency's discussion of Mr. Sugent's OE also determines that the error occurred because Mr. Sugent "vectored the missed approach aircraft into the same airspace as his simultaneous departure aircraft had already been vectored." Plainly stated, under 5-8-5, if an aircraft goes around at or near the approach runway with a simultaneous departing aircraft on takeoff roll or airborne on a parallel runway, with the departing aircraft being turned toward the arrival (both on the same side of the centerline), ***then both aircraft will logically have to be in the same airspace***. The lack of clear guidance about what is different between Mr. Sugent's OE and the pre-coordinated missed approach procedure at DTW continues to leave controllers in the untenable position of being unclear about when they can and will be charged with an OE.

The Agency contends that there have been no additional OEs committed at DTW since the filing of the above complaints.

Paragraph 5-8-5 of the 7110.65 makes no mention of whether an aircraft has gone around or executed a missed approach. Paragraph 5-8-5 very clearly states that a departure course must diverge from the missed approach course by a minimum of thirty (30) degrees in order to comply with the required separation standard. The Agency, for whatever reason, has unilaterally determined that this clearly stated requirement is not applicable as long an aircraft does not execute a go around/missed approach.

Stated another way, an aircraft going around and being in close proximity to a departing aircraft is not what causes an OE to occur under 5-8-5; rather, an error will occur as soon as a controller issues takeoff clearance with less than thirty (30) degrees divergence from the missed approach course and the departing aircraft begins takeoff roll.

The smoke and mirrors assertion that no additional errors have occurred is nothing short of an outright fabrication of the truth.

Conclusion

The issues presented at DTW are not facility specific. The issues at DTW are directly related to a lack of clear national guidance concerning the correct application of the 7110.65. Contrary to the Agency's assertions, these issues are not easily resolved with a "wave of the hand" and a Jedi mind trick. Without someone in a decision making capacity finally making a determination about how the separation of the 7110.65 should be applied, then the flying public will continue to be placed in situations where they will be subjected to differing safety standards, determined by which airport they fly in and out of.