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NTSB Order No. EA-3507

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 4th day of February, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

GEORGE DEWEY BASS, JR.,

Respondent.

)
Docket SE-8872

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge William E. Fowler, Jr. on August 24, 1989, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an order of the Administrator suspending respondent's Airline Transport Pilot certificate for 7 days for his alleged violation of section 121.303(d) of the Federal Aviation Regulations ("FAR"), 14 CFR

¹ That portion of the hearing transcript that contains the initial decision and order is attached.

Part 91.² For the reasons that follow, we will grant the appeal and reverse the law judge's decision.

The facts are not in dispute. On April 25, 1986, respondent was pilot-in-command ("PIC") of Delta Air Lines Flight 97, from Atlanta, GA to Miami, FL. When the flight left Atlanta, the number one engine high pressure valve, isolation valve, and cross pressure bleed valve were inoperative. Delta's minimum equipment list ("MEL") prohibited operation of this aircraft (an L-1011) with these three valves inoperative.³

The valve switches were placarded inoperative on the instrument panel, and were listed in the aircraft's maintenance log as "MCO."⁴ Delta maintenance personnel had so recorded the items both at takeoff of the immediately prior flight and at its arrival at Atlanta, where respondent Bass and his crew boarded. This MCO listing, however, was in error, as an MEL violation may not be listed MCO, but instead must be corrected immediately or the aircraft grounded for lack of airworthiness.⁵

In his preflight check, respondent's second officer reviewed

² FAR section 121.303(d) generally prohibits takeoff of aircraft whose instruments or equipment fail to comply with airworthiness requirements.

³ The valves were not truly "inoperative." They were required to be and were opened to start the number one engine, and then were closed.

⁴ That is, "maintenance carryover," by which maintenance may be deferred because the defect causes no immediate safety or airworthiness risk.

⁵ The Administrator also took action against the mechanic, the pilot-in-command of the inbound flight, and against Delta Air Lines.

the logbook, placards, and MCOs. He did not check the three MCO valves against the MEL, reasoning (in part) that Delta maintenance personnel would not have twice given MCO clearance had there been an MEL violation. He studied the operating manual regarding the effect of the inoperative valves.

The second officer reported the MCO to respondent, as required by the operating manual, and noted that maintenance had cleared the aircraft. The two discussed the matter, including adjustments to account for the inoperative valves. At the hearing, the second officer testified that the failure to check the MCO against the MEL was error on his part. Tr. at p. 80.

The issue in this proceeding is whether under these circumstances respondent, as the PIC, violated FAR § 121.303(d). The Administrator urges that respondent cannot avoid responsibility here and that it was incumbent on him, after being told that the placarded items were MCOs, to ensure he could operate the aircraft in compliance with the MEL. The law judge, in affirming the Administrator and the sought 7-day suspension, found that, despite the benefits of crew teamwork and delegation, respondent could not delegate his responsibility as PIC for compliance with the FAR. The law judge suggested, as argued by the Administrator, that respondent should have inquired further about the placards. For a number of reasons, we reverse.

A punitive sanction such as a suspension may not be imposed without a violation of the FAR. Administrator v. Babbitt, 1 NTSB 1305, 1307 (1971). Although we agree with the Administrator

that, overall, the responsibility for safe operation of an aircraft rests with the pilot-in-command, we have in the past recognized that the complexity of air travel and technology requires that duties be delegated and not individually confirmed by the PIC. Administrator v. Lusk, 2 NTSB 480, 482 (1973) (an airline captain cannot be required personally to verify every representation made to him by any member of the flight or ground crews). As a result, we have declined to hold the PIC culpable for FAR violations caused by the action (or inaction) of another, when the PIC had no reason or basis to look behind or to question either that other individual's representation or performance of assigned duties. See, e.g., Lusk, supra; Administrator v. Thomas, 3 NTSB 349 (1977); Administrator v. Dickman and Corrons, 3 NTSB 2252 (1980); and Administrator v. Leenerts, NTSB Order EA-2845 (1988). Compare Administrator v. Hughes, NTSB Order EA-2866 (1989).⁶

We reject the Administrator's analysis that, because only the PIC can determine if his aircraft is airworthy and, because this aircraft was not airworthy, respondent violated the FAR. Such an analysis ignores the practical need for the approach

⁶ A number of the cases cited by the parties (such as Administrator v. Louthan, 3 NTSB 928 (1978)), while addressing questions of reasonable reliance, also involve situations where the responsibility for the violation was directly that of the PIC (pursuant to company manuals). Those cases are not directly on point here, as there is no dispute that in this proceeding the direct responsibility for MCO/MEL matters lay with the second officer, not the PIC. Other cited cases (such as Administrator v. Howerton, NTSB Order EA-2941 (1989)) also involve a PIC's failure to perform duties specifically assigned to him.

discussed in Lusk, and would substantially undermine the import of cases such as Thomas and Dickman. The Administrator offers no good reason to alter standards in such a dramatic manner, removing the PIC's ability reasonably to rely on crewmembers whenever the assigned duty affects airworthiness. Thus, contrary to the Administrator's contention, we view this as a case such as Thomas, involving the PIC's right to rely on his crewmembers.

Here, as noted above, the second officer reported the placards and the MCO, reviewed the operating manual regarding necessary adjustments to procedures, and discussed these matters with respondent. In failing to take further action, respondent was not remiss in his overall duty, nor did he unreasonably rely on the second officer.

It was the second officer's duty to provide the PIC with the necessary airworthiness/MEL information. Respondent testified that, had the second officer instead indicated a problem or a non-routine matter, respondent would have checked the MEL. Tr. p. 45. Respondent could not be expected, as a routine matter, to second-guess information and analysis provided by the second officer in the performance of his duty if there were no particular basis or special reason to do so.

In this case, respondent expected the second officer to have greater knowledge of the matter, as this was his area of responsibility. Tr. p. 45-46. This expectation was not unreasonable. We reject the suggestion by the Administrator that respondent's general background and prior experience made him as

qualified on this subject as was his second officer. We would not expect a PIC routinely to have the same level of information as the responsible crew member, nor was it proven on this record that respondent actually had sufficient knowledge to know that the MEL prohibited operation with these valves inoperative.

Overall, no good reason has been offered suggesting why respondent should have pursued the issue. Simply because the items were placarded and MCO'ed is insufficient basis to require further inquiry, whether through "leading" questions (as suggested by the law judge and the Administrator) or otherwise.⁷ Respondent's behavior is further understood when one considers that the MCOs had been listed by two maintenance crews (in Miami and Atlanta), and the prior flight crew had not mentioned any non-routine items. In these circumstances, we will not find that the pilot-in-command violated FAR 121.303(d).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The order of suspension and initial decision are reversed.

KOLSTAD, Chairman, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. COUGHLIN, Vice Chairman, and LAUBER, Member, submitted the following dissenting statements.

⁷ The record establishes that MCOs are fairly common and that the placards would not, in and of themselves, alert a pilot to an airworthiness problem.

Notation 5642
February 6, 1992

Susan M. Coughlin, Vice Chairman, dissenting:

I cannot agree with the majority finding in this case, and voted, rather to uphold the law judge's oral initial decision, and thus, the Administrator's Order of Suspension.

I agree with the Administrator that "this...is a case where the Respondent knew or should have known that there were placarded items, and where it was his responsibility, as pilot-in-command, to determine if his aircraft was airworthy before takeoff."

The simple question that would have fulfilled this responsibility, having learned from his Second Officer that there were MCO placards on the No. 1 engine, and more importantly prompted a check of the MEL, would have been to ask, "Did you check the items against the MEL?"

Having failed to pose such a query, the Captain flew the aircraft on the assumption that it was airworthy, when in fact it was not. Since assurance of the airworthiness of the aircraft is a duty the Captain cannot delegate, I am convinced that he violated Section 121.303 (d) of the Federal Aviation Regulations.


Susan M. Coughlin

Notation 5642
February 5, 1992

John K. Lauber, Member, dissenting:

I cannot agree with the majority finding in this case, and would deny the Respondent's appeal.

Had the Second Officer reported or otherwise represented to the Respondent that he had checked the maintenance write-ups against the requirements of the Minimum Equipment List, and that the aircraft was in compliance with same, then I would readily agree with the majority. However, the Second Officer made no such statement, and it appears that both he and the Respondent assumed, for a variety of reasons, that the aircraft was airworthy when in fact it was not.

The Pilot in Command, among other things is responsible for determining that an aircraft is airworthy. Nothing in the regulations allows assumptions to be substituted for specific required actions on the part of cockpit crew members. One such specific requirement is to confirm that deferred maintenance items are in compliance with the MEL. The Second Officer, under Delta's procedures had the duty to do so. The Pilot in Command, under the FAR's, had the duty to confirm that the Second Officer had made such a check. The simple question from the Respondent to the Second Officer, "Did you check the MEL?" would have satisfied that requirement.



John K. Lauber