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NTSB Order No. EA-3850

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 2nd day of April, 1993

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JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12952
v.)	
)	
RICHARD L. BLANTON,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins issued in this proceeding on February 24, 1993, at the conclusion of an evidentiary hearing.¹ By that decision the law judge reversed an emergency order of the Administrator revoking respondent's mechanic certificate for his alleged violations of sections

¹An excerpt from the hearing transcript containing the initial decision is attached.

43.12(a)(1) and 43.13(a) and (b) of the Federal Aviation Regulations, "FAR," 14 CFR Part 43.² For the reasons discussed below, we will deny the appeal.³

The January 6, 1993 Emergency Order of Revocation, as amended on February 5, alleged, inter alia, the following facts and conclusions respecting the respondent:

1. You are now, and at all times mentioned

²Sections 43.12(a)(1) and 43.13(a) and (b) provide as follows:

"§ 43.12 **Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

"§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness)."

³The respondent has not filed a reply brief.

herein were, the holder of Mechanic Certificate No. 1917495 with Airframe and Powerplant ratings.

2. On or about July 24, 1992, while employed at Dynair Tech of Arizona, you signed off on Task Card N72-30 (Dynair Card 0982-01-R035) for work accomplished on the No. 2 engine of Civil Aircraft N508EA, a Boeing 757-225.

3. On this task card you indicated that you inspected the HPC6 lockplates, installed the No. 6 fuel nozzle, and closed and secured the thrust reverser cowls.

4. The Boeing 757 Maintenance Manual (RB .211 Engines) indicates that an internal inspection must be performed whenever a fuel nozzle is installed.

5. The Task Card N72-30 (Dynair Card 0982-01-R035) specifies that the inspection of the HPC6 lockplates must be accomplished by employing a good quality flexible boroscope through the burner aperture.

6. You signed off this task card as described herein in paragraph 2, indicating you performed these tests.

7. In fact, you did not perform the required Boroscope inspection.

8. Your actions, as described in paragraph 2 herein, constitute maintenance, preventive maintenance, or alteration of an aircraft, engine, or appliance.

9. You made or caused to be made your signature as described herein in paragraphs 2 and 6 in a fraudulent or intentionally false manner.

10. Your actions caused the condition of the aircraft, aircraft engine, or appliance worked on to not equal its original or properly altered condition.

11. Incident to the above, on July 25, 1992, during a maintenance ground operation check, aircraft N508EA had an engine fire which caused substantial damage to said aircraft.

These allegations, the emergency order asserts, demonstrate that respondent presently lacks the qualifications necessary to hold a mechanic certificate. The law judge's disagreement with that conclusion rests on his findings that respondent had not intentionally falsified any task card and that the other regulations charged by the Administrator were not applicable.

Respondent admits that, notwithstanding the entries he made on the task cards, he did not perform a boroscope inspection of the HPC6 lockplates on the aircraft's number 2 engine. In this connection, respondent testified that when he began his shift as lead mechanic for the "C" check that Dynair Tech, his employer, was performing on the aircraft's engine, he was advised by a representative of USAir, the aircraft's owner, that such an inspection was not needed because the engine had recently been overhauled by Rolls Royce, the engine's manufacturer.⁴ According to the respondent, he believed that the way to reflect the prior accomplishment of the inspection, consistent with his company's recordkeeping requirements, was to sign off the task cards for the obviated procedure.⁵ Unbeknownst to the respondent at that

⁴On appeal, the Administrator suggests that respondent should have independently determined whether the overhaul at Rolls Royce made the boroscope inspection unnecessary. The Administrator did not, however, attempt to show that such an inspection was required for a newly overhauled engine.

⁵Respondent was apparently not alone in his confusion over what to do with a task card that related to maintenance that did not need to be done. One of the Administrator's own witnesses, the Director of Quality Control at Dynair, testified that when he first went to work for that company in July 1992, he found instances where blocks were being signed off on task cards not to show that the signer had accomplished the work, but in the

time, however, was that the No. 6 fuel spray nozzle on the number 2 engine had earlier been removed and reinstalled during the previous shift, and that whoever was responsible for the work had not thereafter performed an adequate internal inspection, if one had been performed at all, to ensure that the nozzle was correctly aligned with the combustion liner heat shield.⁶ When, according to respondent, he subsequently discovered that the nozzle had been installed, he interviewed the mechanic who had done the work and was advised that the installation was performed "step by step by the manual." See Respondent's Exh. R-1; see also, tr. at 68.⁷

Respondent at the hearing essentially conceded supervisory responsibility for the faulty installation of the nozzle. He vigorously denied, however, that his sign off on the task cards was meant to suggest that he had actually performed the inspection to which those cards relate. The law judge credited

(..continued)

mistaken belief that the cards could not otherwise be closed out or tallied if they contained any unfilled-in blocks. See tr. at 94-95. The appropriate way to account for task cards that did not need to be filled out was, this witness indicated, to withdraw them from the "C" check package and have them "pulled" off the tally sheet.

⁶According to an excerpt from a Boeing 757 maintenance manual in Adm. Exh. C-6, the nozzle is in the proper location when its "shroud ring ...[is] concentric with [the] burner rear seal bore, and ...[the shroud ring face is] approximately flush with [the] rear face of [the] burner seal."

⁷The record does not suggest, and the Administrator does not argue, that the respondent needed to do more, in connection with his supervisory role, to verify that the nozzle had been installed correctly, notwithstanding the mechanic's assurances.

his testimony.⁸ While the Administrator on brief reviews the evidence of record that could be supportive of a finding that respondent had intentionally falsified the task cards, he has not identified any basis for rejecting the law judge's favorable assessment of respondent's testimony.⁹ Since, as the law judge recognized, the Board has held that an intent to falsify must be found to sustain a charge that an airman has made or caused to be made an intentionally false or fraudulent statement, his dismissal of the alleged violation under FAR section 43.12 was appropriate. See, e.g., Administrator v. Aviance, NTSB Order EA-3805 at p. 9, n. 14 (served February 12, 1993)(Construing similar prohibition against false statements in FAR section 61.59).

We are also unpersuaded by the Administrator's contention that the law judge erred in dismissing the charges under FAR section 43.13.¹⁰ The law judge in effect concluded that that regulation was inapplicable because respondent's effort to cancel

⁸Given the apparent lack of necessity to perform a boroscope inspection on an overhauled engine and the advice that respondent had received from his mechanic after the sign offs that the installation of the nozzle had been performed in accordance with the appropriate procedures, it seems to us that the respondent's entries on the task cards were of doubtful materiality.

⁹The Administrator at the hearing tried to show that respondent knew, or at least should have known, that the nozzle had already been reinstalled because, for one thing, some of the task cards for the lockplate inspection had already been filled out. Respondent's testimony suggested, however, that he thought that the signature that was on those task cards was the USAir representative's, not that of one of his mechanics.

¹⁰The FAR section 43.13 charges are not alleged in the complaint to have occurred in connection with respondent's efforts, after he had signed off the task cards, to ascertain whether the fuel spray nozzle had been correctly installed.

out task cards he thought were superfluous did not amount to maintenance.¹¹ In our judgment, the Administrator's view that the respondent should be accountable under the maintenance performance standards in section 43.13 because he signed off for an inspection he admits he did not do simply reflects a disagreement with the law judge's acceptance of respondent's testimony that his entries were meant to satisfy paperwork, not maintenance, requirements. We agree with the law judge that the respondent's apparently innocent mistake concerning the proper handling of task cards did not render him liable for the proper performance of the maintenance procedure covered by the cards.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied, and
2. The initial decision reversing the emergency order of revocation is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹¹We think it worth observing, in this connection, that it is far from clear to us that a mechanic's sign offs, whether or not for work personally performed, fall within the definition of "maintenance." See 14 CFR Part 1.1: "Maintenance means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."