



respondent's repair station certificate, and modified the sanction from revocation to the imposition of a \$1250 civil penalty. For the reasons discussed below, we grant the Administrator's appeal and affirm the emergency order of revocation.

In the six-page emergency order of revocation (a copy of which is attached to this opinion and order), the Administrator essentially alleged that, over a two-year period, respondent overhauled or repaired, and then returned to service, 100 navigational antennas when it did not have available the appropriate technical data (e.g., data issued by the manufacturer or approved by the Administrator) necessary to accomplish that work. In addition, it was alleged that respondent had failed to maintain adequate work records in that several work orders were either missing or unaccounted for. The Administrator alleged violations of 14 C.F.R. 43.13(a), 43.13(b), 145.51, 145.53, 145.55, 145.57(a), 145.57(b), and 145.61.<sup>2</sup>

The factual circumstances underlying the alleged regulatory violations fall into six general categories. The evidence, the law judge's findings, and our conclusions with regard to each category are discussed separately below.

King ADF antennas. KA42B. Exhibits A-3 through A-11 establish that respondent repaired or overhauled nine King KA42B ADF antennas. The Administrator's sole witness in this case

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<sup>2</sup> These regulations are set forth in an appendix to this opinion and order.

(Safety Inspector Gary Benson) testified that there is no technical data available from the manufacturer of the antenna, or approved by the Administrator, which allows repairs to be made to these antennas. (Tr. 24, 28-9, 61, 63.) The Administrator also introduced into evidence a letter from the manufacturer addressed to another FAA inspector confirming that the antennas are not field repairable, although they can be tested in accordance with a Service Memo. (Exhibit A-14). In response, respondent's primary witness and general manager (Thomas Coffee) testified that his repair station did possess installation and maintenance manuals for these antennas,<sup>3</sup> and that the manuals did not state whether the unit was repairable. (Tr. 98-100.) He did not, however, produce the manuals themselves.

KA44B. Exhibits A-15 through A-63 indicate that respondent overhauled or repaired 46<sup>4</sup> King KA44B ADF antennas with serial numbers above 24275, by adjusting the amplifier board. In support of his position that this work was also performed without the requisite technical data, the Administrator introduced into evidence a Service Aid published by the manufacturer of the antenna stating that antennas above serial number 24275 are

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<sup>3</sup> See Exhibit R-1, an internal maintenance manual log sheet, listing relevant manuals to which respondent subscribed. (Tr. 98.)

<sup>4</sup> Although the Administrator introduced 49 work orders pertaining to this type of antenna, two do not identify the serial number as being within the class of antennas to which repairs are prohibited (Exhibits A-27 and A-38) and one does not list any prohibited repairs (Exhibit A-63). (Tr. 69-70.) Accordingly, only 46 work orders identify potential violations on their face.

"sealed" and "cannot be repaired." (Exhibit A-64.) Although the Administrator conceded that a Service Aid is not a mandatory document which requires compliance, it was argued that the manufacturer's statement in that document that the antennas cannot be repaired showed that no manufacturer's data pertaining to repair of those antennas would exist. (Tr. 65, 136-7.)

In reply, Mr. Coffee contended that the manufacturer's manuals allowed for repairs to these antennas without reference to serial numbers, but he did not produce any such manuals. He also testified that the manufacturer had recently informed him that it was "possible" to make field repairs and adjustments to antennas above serial number 24275, and introduced evidence purporting to show that another repair station quoted him a price to repair an antenna above that serial number. (Tr. 106; Exhibit R-2.)

The law judge did not address the persuasiveness of Mr. Coffee's testimony. Rather, he concluded that the Administrator had not met his burden of proof with regard to the two sets of King antennas because the Administrator presented no published "hard data" to show that the work was not done in accordance with appropriate technical data. (Tr. 160-1.) He stated, "[i]f there's technical data out there, that's . . . mandatory on these folks, the burden of proof . . . is on the Administrator to bring that forth, to show that they weren't worked on in compliance with that data." (Tr. 161.) The law judge found that neither the letter to the FAA inspector (regarding the KA42B antennas)

nor the non-mandatory Service Aid (regarding the KA44B antennas) constituted such proof. We disagree.

In our judgment the Administrator presented sufficient prima facie evidence that no technical data was available with regard to repairing the King antennas. In order to overcome the Administrator's evidence, respondent had only to show evidence of the existence of the technical data alleged by the Administrator to be non-existent. However, respondent presented no such evidence.<sup>5</sup> Even assuming the repair station's former chief inspector (Ronald Roscoe)<sup>6</sup> removed some of the repair station's manuals from the premises when he abruptly departed from the company at about the time of the FAA's April, 1993, inspection -- as Mr. Coffee suggested (Tr. 132-3) -- this should not have presented an insurmountable barrier to respondent's procuring other copies of relevant technical data in order to prove that such data exists.

Accordingly, we find that the Administrator established 55 violations of 14 C.F.R. 43.13(a), 145.51, 145.53, and 145.57,<sup>7</sup>

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<sup>5</sup> Even assuming, as Mr. Coffee testified, that (with regard to the KA42B antennas) some sort of manuals were available and (with regard to the KA44B antennas) it is "possible" to make field repairs to the antennas, we do not view this as establishing that the specific repair work here at issue was accomplished in accordance with published or approved technical data, or even that such data exists.

<sup>6</sup> Mr. Roscoe's was the "authorized signature" on each of the 100 work orders at issue in this case.

<sup>7</sup> The Administrator alleged, in addition to these regulations, violations of 14 C.F.R. 43.13(b) and 145.55. However, regarding section 43.13(b), we agree with the law judge that it does not automatically follow from the fact that work

with regard to the two sets of King antennas.

Collins 137X-1 fixed loop antennas. Respondent's records indicate that it repaired a Collins 137X-1 antenna which "failed [an] isolation test," by disassembling it and aligning the isolation circuit to the manufacturer's specifications. (Exhibit A-65.) It is undisputed that this work is contrary to the manufacturer's instructions, which state that the antenna should be replaced in such a case, and contain no data for repairing the antenna. (Exhibit A-66.) Indeed, Mr. Coffee testified that it is not possible to disassemble this unit, and opined that Mr. Roscoe (who signed the work order) must have inadvertently written incorrect information on the work order. (Tr. 111.)

The law judge concluded that Mr. Roscoe had either falsified the work order or made a mistake in filling it out, and that because falsification would not have been within the scope of Mr. Roscoe's employment, the company should not be held liable for that act. (Tr. 162-3.) While we do not necessarily subscribe to this reasoning, we will uphold the law judge's finding that no violation of the cited regulations occurred, because it is based in part on a credibility finding that the prohibited repair work

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was not done in accordance with published technical data that the item worked on was not in a condition at least equal to its original or properly altered condition. We note that the Administrator presented no evidence on this point, and the assertion in his appeal brief that antennas were returned to respondent for warranty repairs at a higher than normal rate is completely unsubstantiated in the record. Further, regarding section 145.55, although the law judge found a violation of that section (apparently based on a finding that respondent lacked relevant manuals at the inspection), no testimony was elicited on the record to support this charge.

was not actually performed.<sup>8</sup>

Collins 137A series (-6A, -5, -4, -6) fixed loop antennas.

Respondent has not appealed from the law judge's findings that the repair work performed on four Collins 137A antennas was not performed in accordance with approved technical data in that the manufacturer's overhaul manual clearly states that these antennas are sealed units and cannot be repaired. (Exhibits A-67 through A-70; Exhibit A-71.)<sup>9</sup>

Collins ANT-60 ADF antennas. Exhibits A-72 through A-104 indicate that respondent repaired 33 ANT-60 ADF antennas, primarily by removing and replacing the amplifier board. It is undisputed that the manufacturer's maintenance manual contains no data on repairs, and states that defective antennas are to be returned to a Collins Avionics Service Center for repair. (Exhibit A-105.) In defense of these alleged violations, Mr. Coffee testified that the manufacturer sells amplifiers for this antenna for repair purposes, and that another repair station (Avionics Specialist, Inc.) has recently repaired some antennas of this make and model for respondent. (Tr. 118, 122; Exhibit R-5.) In rebuttal, Inspector Benson testified that, although not a Collins Service Center, Avionics Specialist is authorized by the

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<sup>8</sup> We note that respondent was not charged with falsification, but only with performing repairs without the appropriate technical data.

<sup>9</sup> Although respondent introduced a manufacturer's Service Bulletin giving instructions for the replacement of the connector to reduce corrosion, there is no evidence that the repairs evidenced by the work orders at issue here were limited to this connector replacement.

FAA to perform repairs on this antenna. (Tr. 146-7.)

It is unclear whether the law judge's findings of violations were based on respondent's use of Avionics Specialist to repair some antennas, or based on respondent's own repair of 33 of these antennas. We affirm the findings of violations based on the latter basis. Not only is respondent's recent use of Avionics Specialist outside the parameters of the complaint in this case, but we see no violation inherent in that use since the testimony established that, unlike respondent, Avionics Specialist has approval from the FAA to repair these antennas.

Collins 437X radio altimeter antennas. Exhibits A-106 through A-109 establish that respondent removed and replaced the connector on four Collins 437X antennas. It is undisputed that the manufacturer's instruction manual states that the connector "is an integral part of the antenna and cannot be replaced," and that if the antenna fails any test it should be replaced. (Exhibit A-110.) Mr. Coffee conceded that his repair station had no approved data for this repair, but demonstrated at the hearing that the connector could indeed be replaced by removing four screws. (Tr. 125.) He contended that it is "common knowledge in the industry that [the connectors] can be replaced." (Tr. 138.)

The law judge found the regulatory violations established for this set of allegations, noting, "[the fact] that apparently everyone in the business does it . . . does not relieve this corporation, and Mr. Roscoe of their responsibility for doing that when the manual . . . says it can't be done." (Tr. 164.)

We agree.

Missing or unaccounted for work orders. Inspector Benson testified that, upon inspection of respondent's records in May 1993, he discovered that a number of work orders were either missing or unaccounted for. Specifically, he found that, in ten instances, work order numbers for work which was logged as completed and "shipped," were missing from respondent's records.

In addition, he found that seven work orders were completely unaccounted for. (Tr. 56-7; Exhibit A-111.) At the hearing Mr. Coffee produced some of the missing work orders,<sup>10</sup> and testified that it had been Mr. Roscoe's responsibility as the Chief Inspector to maintain the work order log book, and that he (Mr. Coffee) had no reason to believe that the records were not in order. (Tr. 129-30.)

In dismissing the recordkeeping allegations, the law judge was apparently under the impression that respondent had produced all of the missing work orders. (Tr. 165.) However, since that is not the case, we find that, with regard to the four missing work orders,<sup>11</sup> the Administrator established a violation of section 145.61.

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<sup>10</sup> The package contains six of the missing work orders, and five of the unaccounted for work orders. Accordingly, four work orders are still missing and two remain unaccounted for.

<sup>11</sup> We do not find any violation, however, with regard to the work order numbers which are unaccounted for because there is no indication that they represent any work that was actually done. The cited regulation requires only that a repair station maintain records of "all work that it does." 14 C.F.R. 145.61.

Respondent did not appeal the violations upheld by the law judge, or the imposition of a \$1250 civil penalty. The only issues before us are the Administrator's appeal of the law judge's dismissal of many of the alleged regulatory violations, and the modification of the sanction from revocation to a civil penalty.

Having found, as discussed above, that respondent repaired and approved for return to service 96 navigational antennas without appropriate technical data, and that respondent failed to keep four required records,<sup>12</sup> the only issue remaining for our consideration is the appropriate sanction for these violations. In modifying the revocation sought by the Administrator to a \$1250 civil penalty, the law judge cited the fact that Mr. Roscoe, who signed all of the work orders at issue as respondent's chief inspector, was the "bad actor." He concluded that, although the corporation should be held responsible for its employee's actions, it "should not be put out of business, just because one individual has fouled up."<sup>13</sup> (Tr. 168.)

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<sup>12</sup> We view the recordkeeping violation as de minimis with respect to determining the appropriate sanction.

<sup>13</sup> The law judge also mentioned he thought it was "unusual" that Inspector Benson had not discovered these violations during his regularly scheduled twice-yearly inspections, and suggested that he had "let[] them go through five or six inspections" before seeking revocation. (Tr. 167.) We note, however, that there is no indication in the record that Inspector Benson became aware of the violations here at issue during any of his previous regular "spot" inspections.

Even though Mr. Coffee appeared to be suggesting, during some parts of his testimony, that the unauthorized antenna repairs were performed without his knowledge or approval and that Mr. Roscoe alone bore responsibility for those repairs,<sup>14</sup> Mr. Coffee's testimony as a whole established quite the opposite. Far from indicating that he, as respondent's General Manager, disapproved of the unauthorized repairs, Mr. Coffee attempted to defend the propriety of those repairs, in effect endorsing and ratifying Mr. Roscoe's actions. Mr. Coffee, himself an experienced former avionics technician (Tr. 89), demonstrated a detailed knowledge of many of the specific repairs at issue in this case. (See e.g., Tr. 101-4, 110-1, 118-9, 125.)

In our judgment, the unauthorized repairs cannot be characterized as discrete and unauthorized actions of an errant employee. Rather, we hold that they were performed with the implicit approval of respondent's General Manager, and under the aegis of respondent's certificate.<sup>15</sup>

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<sup>14</sup> Mr. Coffee indicated that since he was occupied with the sales and promotional aspects of the business, Mr. Roscoe "had a free hand" in the operational activities of the repair station, and was not required to seek Mr. Coffee's approval on most matters. (Tr. 96-7.) Mr. Coffee's wife, who served as President of the company, also testified that Mr. Roscoe "basically ran the shop." (Tr. 143.) Mr. Coffee also testified that Mr. Roscoe was "entirely responsible" for repairing the King KA42B antennas (Tr. 99-100), and that he had recently discovered that Mr. Roscoe and another employee -- with whom he worked closely on all his repairs -- had developed their own handwritten procedures for use in repairing specific antennas (Tr. 127; Exhibit R-6).

<sup>15</sup> Because we have found that the management of the respondent company knew or should have known of the inappropriate actions and repairs being performed by its employee, Mr. Roscoe, and because the company's management at least implicitly approved

Further, we agree with the Administrator that the impact on aviation safety of such unauthorized repairs is not trivial. The reliability of a repair station's work depends in large part upon its adherence to the approved techniques and practices which are set forth in published technical data. (See Tr. 29.) Mr. Coffee indicated that most of respondent's work involved repairs of navigational equipment used on corporate or commercial aircraft (Tr. 94), equipment which is clearly critical to flight safety. In view of the large number of violations established in this case, and the obvious importance of insuring the highest degree of safety in connection with maintenance performed by repair stations,<sup>16</sup> it is our conclusion that respondent has demonstrated a lack of qualifications to hold a repair station certificate.<sup>17</sup>

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of those activities, we need not reach the question of whether the company could have been held vicariously liable for the acts of its employee.

<sup>16</sup> As the Civil Aeronautics Board (our predecessor agency) stated in an early case involving the revocation of a repair station's certificate, "[t]he lives and safety of persons using the aircraft depend upon the integrity of the repair station operator." Propeller Service Corp., Air Agency Certificate, 13 CAB 242, 243 (1953).

<sup>17</sup> The FAA's Sanction Guidance Table indicates that the appropriate sanction, per violation, when a repair station maintains or alters an article without using required technical data ranges from a maximum civil penalty (\$750 to \$1000) to a 30-day suspension. However, the accompanying general guidelines make clear that "[w]henever multiple violations demonstrate a lack of qualifications or reason to believe that the certificate holder may lack qualifications, a remedial sanction such as revocation or suspension pending demonstration of qualifications is appropriate." See FAA Order No. 2150.3A, Appendix 4.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted; and
2. The emergency revocation of respondent's repair station certificate is affirmed.

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

**§ 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 methods, 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).

**§ 145.51 Privileges of certificates.**

A certificated domestic repair station may—

(a) Maintain or alter any airframe, powerplant, propeller, instrument, radio, or accessory, or part thereof, for which it is rated:

(b) Approve for return to service any article for which it is rated after it has been maintained or altered;

(c) In the case of a station with an airframe rating, perform 100-hour, annual or progressive inspections, and return the aircraft to service; and

(d) Maintain or alter any article for which it is rated at a place other than the repair station if—

(1) The function would be performed in the same manner as when performed at the repair station and in accordance with §§ 145.57 to 145.61;

(2) All necessary personnel, equipment, material, and technical data is available at the place where the work is to be done; and

(3) The inspection procedures manual of the station sets forth approved procedures governing work to be performed at a place other than the repair station.

However, a certificated repair station may not approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance after major repair or major alteration unless the work was done in accordance with technical data approved by the Administrator.

## APPENDIX

### **§ 145.53 Limitations of certificates.**

A certificated domestic repair station may not maintain or alter any airframe, powerplant, propeller, instrument, radio, or accessory for which it is not rated, and may not maintain or alter any article for which it is rated if it requires special technical data, equipment, or facilities that are not available to it.

### **§145.55 Maintenance of personnel, facilities, equipment and materials.**

Each certificated domestic repair station shall provide personnel, facilities equipment, and materials at least equal in quality and quantity to the standards currently required for the issue of the certificate and rating that it holds.

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### **§145.57 Performance standards.**

(a) Except as provided in §145.2, each certificated domestic repair station shall perform its maintenance and alteration operations in accordance with the standards in Part 43 of this chapter. It shall maintain current condition, all manufacturers' service manuals, instructions, and service bulletins that relate to the articles that it maintains or alters.

(b) In addition, each certificated domestic repair station with a radio rating shall comply with those sec-

tions of Part 43 of this chapter that apply to electric systems, and shall use materials that conform to approved specifications for equipment appropriate to its rating. It shall use test apparatus, shop equipment, performance standards, test methods, alterations, and calibrations that conform to the manufacturers' specifications or instructions, approved specification, and, if not otherwise specified to accept good practices of the aircraft radio industry.

### **§ 145.61 Performance records and reports.**

Each certificated domestic repair station shall maintain adequate records of all work that it does, naming the certificated mechanic or repairman who performed or supervised the work, and the inspector of that work. The station shall keep each record for at least two years after the work it applies to is done.