

SERVED: April 13, 2006

NTSB Order No. EA-5218

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 12th day of April, 2006

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket No. SE-17354
)	
MILLENNIUM PROPELLER SYSTEMS, INC.,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent and the Administrator have appealed from the oral initial decision of Administrative Law Judge William R. Mullins in this matter,¹ following an evidentiary hearing held from October 13 through October 17, 2005. The law judge ordered

¹ The law judge's initial decision is attached.

a six-month suspension of respondent's air agency certificate, which included propeller, limited-specialized service, and limited non-destructive inspection ratings.

The Administrator's Second Amended Complaint, dated August 19, 2005, which revoked respondent's certificate,² contains eight counts:

- Count One alleges 19 separate violations involving the way in which respondent kept parts and equipment housed and labeled, the lack of calibration of some items used for measuring and repairing, and the status of some reference resources that appeared to be out-of-date. Based on this information, the Administrator alleges violations of 14 C.F.R. §§ 145.103(a)(1)(2)(i)-(iii)³ and 145.207(a).⁴
- Count Two alleges violations involving respondent's alleged lack of compliance with the Hartzell Aluminum Blade Manual

² The Administrator's order declared this revocation an emergency under 49 U.S.C. § 46105(c). However, respondent has waived the applicability of accelerated time limits for emergency proceedings, so we review this appeal pursuant to the time limits in 49 C.F.R. pt. 821, subpt. H.

³ Title 14 C.F.R. § 145.103(a)(1)(2)(i)-(iii) provides that each certificated repair station must provide (1) housing for the facilities, equipment, materials and personnel consistent with its ratings; and (2) facilities for properly performing the maintenance, preventive maintenance, or alterations of articles or specialized services for which it is rated. In addition, § 145.103(a) requires (i) sufficient work space and areas for the proper segregation and protection of all articles; (ii) segregated work areas for potentially hazardous operations such as painting, cleaning, welding, avionics and electronic work, and machining; and (iii) suitable segregation means for the storage and protection of all articles.

⁴ Title 14 C.F.R. § 145.207(a) requires certificated repair stations to follow a repair station manual that the FAA has deemed acceptable.

in overhauling two propeller blades; specifically, the Administrator charges respondent with not meeting the minimum thickness requirements for Hartzell blades and with using an unapproved cold-rolling machine when overhauling the blades. The Administrator alleges violations of 14 C.F.R. §§ 43.13(a)⁵; 145.151(b),⁶ (c),⁷ and (d)⁸; and 145.57(a).⁹

- Count Three alleges that respondent's employees were not qualified for the work that respondent assigned them

⁵ Title 14 C.F.R. § 43.13(a) requires each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance to 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 that the Administrator has accepted.

⁶ Title 14 C.F.R. § 145.151(b) requires repair stations to "[p]rovide qualified personnel to plan, supervise, perform, and approve for return to service the maintenance, preventive maintenance, or alterations performed under the repair station certificate and operations specifications."

⁷ Section 145.151(c) requires certificate holders to "[e]nsure [they have] a sufficient number of employees with the training or knowledge and experience in the performance of maintenance, preventive maintenance, or alterations authorized by the repair station certificate and operations specifications to ensure all work is performed in accordance with part 43" of the Federal Aviation Regulations (found in title 14 of the Code of Federal Regulations).

⁸ Section 145.151(d) requires certificate holders to "[d]etermine the abilities of its noncertificated employees performing maintenance functions based on training, knowledge, experience, or practical tests."

⁹ Title 14 C.F.R. § 145.57(a) requires each certificated repair station to perform its maintenance and alteration operations in accordance with the standards in 14 C.F.R. pt. 43. This section also requires repair stations to maintain, in current condition, all manufacturers' service manuals, instructions, and service bulletins that relate to the articles that it maintains or alters.

because they did not receive vision examinations at three-year intervals, and because the stockroom manager failed to ensure that reconditioned parts were labeled and recorded, as respondent's repair station manual required. As a result, the Administrator alleges that respondent violated 14 C.F.R. § 145.151(b).¹⁰

- Count Four alleges that a McCauley propeller that respondent had overhauled and returned to service did not comply with McCauley's overhaul requirements, in six different areas; due to these alleged discrepancies, the Administrator charges respondent with violations of 14 C.F.R. §§ 43.13(a)¹¹ and (b),¹² and 145.57(a).¹³
- Count Five alleges that respondent altered a Hamilton Standard propeller with a Little Giant Propeller Seal Kit, but did not complete FAA Form 337, as required; in addition, Count Five alleges that respondent installed unserviceable bearings on the Hamilton propeller. The Administrator charges respondent with violations of 14 C.F.R. §§ 43.9(a)(4)¹⁴ and 43.13(b)¹⁵; and 14 C.F.R. Part 43, Appendix B.¹⁶

¹⁰ See supra note 6.

¹¹ See supra note 5.

¹² Title 14 C.F.R. § 43.13(b) requires each person maintaining or altering, or performing preventive maintenance to do their 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)."

¹³ See supra note 9.

¹⁴ Title 14 C.F.R. § 43.9(a)(4) requires each person who maintains, performs preventive maintenance, rebuilds, or alters a propeller to make an entry into the maintenance record containing the signature, certificate number, and kind of certificate held by the person approving the work.

Appendix B to Part 43 provides that each person performing a major repair or alteration complete FAA Form 337, give a signed copy of the 337 Form to the aircraft owner, and forward a

- Count Six alleges that respondent performed an overhaul of a Beech propeller and approved the propeller for subsequent service after installing an unapproved part (piston) in the propeller. Based on this information, the Administrator charges respondent with violations of 14 C.F.R. §§ 43.13(a) and (b), and 145.57(a).¹⁷
- Count Seven alleges that respondent performed an overhaul of a McCauley propeller and approved the propeller for subsequent service after making an unauthorized repair (i.e., drilling an oversized screw hole, filling it with an unidentified metal, and re-drilling it). For this, the Administrator charges respondent with violating 14 C.F.R. §§ 43.13(a) and (b), and 145.57(a).¹⁸
- Count Eight alleges that respondent performed an overhaul of a Beech propeller and approved the propeller for subsequent service, even though the blade measurements on the propeller did not meet the minimum standards of thickness, and that maintenance records contained several erasures or changes to the thickness measurements. Based on these allegations, the Administrator charges respondent with violating 14 C.F.R. §§ 43.13(a) and (b), and 145.57(a).¹⁹ In this Count, the Administrator also alleges that respondent incorrectly described work on maintenance records as an "overhaul," even though the company did not disassemble, clean, inspect, repair or reassemble each of the propellers as necessary. In this regard, the

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copy of the 337 Form to the local FAA Flight Standards District Office within 48 hours after the aircraft is approved for subsequent service.

¹⁵ See supra note 12.

¹⁶ See supra note 14. We note that the Administrator's complaint cites this Form 337 provision as *Annex B*. We will presume that the Administrator means *Appendix B*.

¹⁷ See supra notes 5, 12, and 9, respectively.

¹⁸ See supra notes 5, 12, and 9, respectively.

¹⁹ See supra notes 5, 12, and 9, respectively.

Administrator charges respondent with violating 14 C.F.R. § 43.2(a)(1) and (2).²⁰

The law judge, after reviewing the Administrator's and respondent's arguments and receiving evidence, found that the Administrator had met her burden with regard to Counts One, Three, Six, Seven, and portions of Counts Two and Four. The law judge, however, did not find that any of these violations amounted to a revocable offense, and instead ordered a six-month suspension of respondent's repair station certificate. Both parties appeal the law judge's order. We deny both parties' appeals.

Respondent's appeal. Respondent appeals the law judge's conclusion that the Administrator met her burden with regard to Counts One and Four, and argues that the Administrator lacked standing to bring the charges alleged in Count Five. With regard to Count One, respondent argues that the Administrator

²⁰ Title 14 C.F.R. § 43.2(a)(1) and (2) states that a certificate-holder may not describe a propeller as being "overhauled" unless the certificate holder: (1) has used methods, techniques, and practices acceptable to the Administrator, and has disassembled, cleaned, inspected, repaired as necessary, and reassembled; and (2) has tested the part in accordance with approved standards and technical data, or in accordance with current standards and technical data acceptable to the Administrator, which have been developed and documented by the holder of the type certificate, supplemental type certificate, or a material, part, process or appliance approval under 14 C.F.R. § 21.305.

did not prove three of the violations she alleged. These three allegations state that respondent did not comply with its Domestic Repair Station Manual ¶ 7.16 regarding: (a) an O-ring C3317-4426-1 in Bin 902-53-1 in a plastic bag with no label; (b) an O-ring (Part Number 1633-72) that was loose in a bin with no protective bag or label; and (c) an O-ring in a plastic bag on a gray metal inventory shelf with black writing on the bag, but no identification label.

Respondent's argument regarding Count One is not persuasive. Respondent asserts that the Administrator "has produced no evidence that the O-rings were labeled or stored improperly." Resp't Appeal Brief at 3. Such a statement disregards the testimony of witnesses Robert White and Oscar F. Thomas, both of whom inspected respondent's propeller shop. At the hearing, Inspector White authenticated Exhibit A-58, which was a statement he authored to another inspector regarding the violations that compile Count One. In his testimony, Inspector White specifically addressed: O-ring C3317-4426-1 located in Bin 902-53-1, testifying that he observed the O-ring in a plastic bag with no label (Transcript (Tr.) 340); O-ring marked Part Number 1633-72, testifying that he saw the O-ring loose in a bin, without a protective bag or proper label (Tr. 341); and O-

ring "PRP6227-47, 278 blade seals," which did not have an identification label (Tr. 341).

On cross-examination, respondent's counsel repeatedly questioned Inspector White with regard to whether respondent's Domestic Repair Station Manual specifically required the parts in question to be labeled or placed in a bag. Tr. 350-53. Respondent's argument that the manual only requires a label when the item in the bag is perishable ignores the first sentence of the applicable section of the manual:

A suitable system is used to insure stock control, segregation, and identification in order that personnel will be able to determine the adequacy of the stock, the location of parts, the proper identification of parts, and that the parts do not deteriorate or become contaminated with foreign matter prior to use.

Exhibit A-55 at 7-4. The three allegations regarding the O-rings that respondent did not properly store or label constitute a violation of § 145.207(a), which requires respondent to follow its Repair Station Manual, as storing O-rings loose in a bin or with no discernable label does not ensure that respondent's employees can locate and identify the parts, as required in the manual. Moreover, at least two witnesses testified regarding the improper storage of these parts.²¹ Therefore, we deny

²¹ In addition to Inspector White's testimony, Inspector

respondent's appeal as to the law judge's finding that the Administrator proved each violation contained in Count One.

Respondent also appeals the law judge's finding that the Administrator met her burden for ¶ 9(a) in Count Four. Specifically, respondent asks the Board to find that respondent could not have safely followed the McCauley manual's instructions with regard to installing counterweights on a McCauley propeller, because such instructions were incorrect and resulted in an unsafe propeller, as demonstrated by McCauley's subsequent revision of installation instructions. Respondent cites expert testimony and McCauley's "Letter of Correction" as proof that respondent was correctly installing the counterweights, despite the manual's contrary instructions. In this regard, respondent asks the Board to make a policy decision regarding whether a repair shop's completion of what the shop deems a "safe" repair may override a manual's contrary instructions.

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Thomas testified that many parts in the shop were neither segregated nor properly stored (Tr. 241), and that respondent's propeller shop contained many parts that were not adequately labeled (Tr. 241-42). Respondent's counsel did not clarify or rebut Inspector Thomas's understanding of the Repair Station Manual's requirements on cross-examination. See Tr. 245-48.

We are not inclined to devise such a policy in this context. However, we note that the law judge found only a "technical" violation based on the mis-installation of the counterweights, and we agree with this finding. Tr. 700. Respondent did not use the methods, techniques, and practices described in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by McCauley, or other methods, techniques, or practices that the Administrator had accepted.

Finally, respondent appeals the Count Five charge, arguing that the Administrator's complaint on this Count was stale.²² However, respondent's argument on this Count addresses the possibility that the Board will reverse the law judge's conclusion that the Administrator did *not* meet her burden on this Count. The Administrator has not appealed the law judge's finding on Count Five. Therefore, the Board is not required to review the merits of the law judge's conclusion on Count Five. As such, respondent's conditional appeal on this Count is moot, because the law judge never found a violation of Count Five, and we will not reverse this conclusion.

²² Rule 33 of our rules of practice, codified at 49 C.F.R. § 821.33, sets forth our rule regarding stale complaints.

The Administrator's appeal. The Administrator's appeal principally focuses on the sanction the law judge imposed on respondent: the Administrator argues that six months is an inadequate sanction, given respondent's apparent indifference toward FAA regulations regarding repairs and alterations of propellers. In addition, the Administrator contends that the law judge erred when he did not make a finding regarding whether respondent had violated 14 C.F.R. § 43.2(a)(1) and (2) (Count Eight).

With regard to sanction, the Administrator argues that revocation of respondent's certificate is appropriate because respondent lacks qualifications necessary for maintaining an air agency certificate, and that the Board must defer to this sanction policy of imposing revocation upon a certificate-holder in cases involving a lack of qualification.²³ We disagree with the Administrator's analysis of when such deference is required:

²³ The Administrator relies on FAA Order 2150.3A, Compliance and Enforcement Program at 24-26 (1994), available at [http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/79cb479888aa5a8a86256d0f00676576/\\$FILE/2150.3a_part2.pdf](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/79cb479888aa5a8a86256d0f00676576/$FILE/2150.3a_part2.pdf). Subsection 206(c)(4) of the Order provides guidance on standards for revocation:

In cases involving businesses, revocation should be sought whenever there is a demonstration of a lack of qualifications. Revocation would normally be appropriate, for example, in cases involving deliberate or flagrant violations or the falsification of records.

a lack of qualification is a factual finding that does not command deference.²⁴ The Administrator has presented nothing that persuades us to reverse the law judge's finding that respondent's violations did not demonstrate a lack of qualification; in fact, the law judge reversed several violations that the Administrator included in her complaint, and the Administrator has not appealed from those. The Administrator's argument that revocation is appropriate in light of the published sanction policy guidance, which mandates revocation when a respondent lacks qualifications, avoids the real issue of whether respondent's violations in fact demonstrate a lack of qualification. In this regard, the Administrator has not cited any sanction policy guidance or case law that identifies revocation as the only appropriate sanction for the violations at issue here.

The Administrator also argues that the law judge did not issue a finding regarding whether respondent violated 14 C.F.R. § 43.2(a)(1) and (2), which the Administrator alleged in her Second Amended Complaint. The law judge's oral decision did not address this allegation; therefore, pursuant to 49 C.F.R. §

²⁴ Title 49 U.S.C. § 44709(d)(3) requires the Board to defer to the Administrator's validly adopted interpretations of FAA law and regulations, and to written sanction policy guidance, but not to the Administrator's factual findings.

821.49(b), the Board will issue a finding with regard to this violation. The Administrator's appeal brief cites Counts Two and Seven as occurrences in which respondent incorrectly claimed to have "overhauled" a propeller in violation of 14 C.F.R. § 43.2(a)(1) and (2). However, the Administrator's Second Amended Complaint only lists a 14 C.F.R. § 43.2(a)(1) and (2) violation under Count *Eight*. As such, we will not read the allegation involving § 43.2(a)(1) and (2) as one that should apply to any Count other than Count Eight. The law judge found the other allegations and underlying facts in Count Eight had not been established, and the Administrator did not appeal from this finding. Therefore, we do not find a violation of § 43.2(a)(1) and (2) as applied to the allegations contained in Count Eight.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is denied; and
3. The law judge's initial decision and the six-month suspension of respondent's air agency certificate is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.