

SERVED: July 11, 1997

NTSB Order No. EA-4571

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 11th day of July, 1997

BARRY L. VALENTINE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14894
v.)	
)	
RASMARK JET CHARTER, INC.,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision issued by Administrative Law Judge William R. Mullins, at the conclusion of an evidentiary hearing held on May 28 and May 29, 1997.¹ In that decision, the law judge affirmed most of the regulatory violations contained in the Administrator's

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

emergency order, revoking the Part 135² air carrier operating certificate held by respondent, Rasmark Jet Charter, Inc. (Rasmark). The law judge did not, however, affirm an allegation of a violation of FAR § 135.179(a).³ He concluded that Rasmark did not lack the care, judgment, and responsibility to hold an air carrier operating certificate and then modified the sanction of revocation by assessing, instead, a \$13,000 civil penalty.

The sole issue raised by the Administrator is, whether the law judge erred in modifying sanction, "thereby finding Respondent qualified to hold a Part 135 air carrier operating certificate." Respondent has filed a brief in reply, urging the Board to affirm the law judge's initial decision. For the reasons that follow, we deny the Administrator's appeal.

Rasmark has been in operation since 1982. It's President and Director of Operations is Mark Rasmussen. The company employs about twenty people and has six aircraft, including 4 Lear Jets and a Falcon 20. The maintenance and maintenance record-keeping concerning three of the Lear Jets and the Falcon 20 are the subject of this proceeding. According to the Administrator, Rasmark's maintenance program is so poor, that it evidences Rasmark lacks the care, judgment, and responsibility that is required of a Part 135 operator in order to hold an air

² Federal Aviation Regulations (FAR), 14 C.F.R. Part 135.

³ Section 135.179(a) prohibits the takeoff of an aircraft with inoperable instruments or equipment.

carrier operating certificate.⁴ The Administrator's complaint alleges numerous maintenance and maintenance record-keeping deficiencies, as outlined below.⁵ Rasmark admits to many of the facts underlying these allegations.⁶

Regarding Civil Aircraft N45MR

-the left engine was required to receive a hot section inspection at 1000 hour intervals. [It received one on April 27, 1994 at 13,188.7 hours and then not until June 15, 1996, at 14,510 hours.]

-the engine was overhauled on September 5, 1985 at 9995.2 hours and not again until 15,067.8 hours. [It is to be overhauled every 5000 hours.]

-the engine has 6 life limited components due replacement during the engine overhaul. The engine was therefore operated without replacement of these parts.

-the aircraft had 8 discrepancies noted on July 20, 1994 [but was returned to service on July 23, 1994 with the notation "This aircraft was found to be in an airworthy condition per Rasmark AAIP," without explanation of what corrective actions had been taken].

⁴ The Administrator's reliance on Administrator v. Wisler, NTSB Order EA-3591 (1992), is clearly misplaced. The language cited in the appeal brief relates to whether there existed sufficient evidence to withstand a motion to dismiss the complaint as stale. The question here is whether a preponderance of the evidence establishes that Rasmark lacks qualifications to hold an air carrier operating certificate.

⁵ The Administrator alleged violations of FAR Sections 91.403(a),(b) and (c); 91.405(a) and (b); 91.407(a)(2); 91.417(a); 135.3(a), 135.21(a), 135.25(a)(2), 135.63(c), 135.143(a), 135.179(a), 135.179(a), 135.411(a)(1), and 135.419(g). These sections generally set forth the responsibilities of a Part 135 operator to maintain its aircraft in an airworthy condition, to preclude the operation of unairworthy aircraft, and to insure that proper maintenance records are kept.

⁶ Those facts that were admitted by Rasmark are set forth in brackets.

-on July 20, 1994 both engines were approved for return to service after a 300 hour inspection without entry of a repair for a discrepancy noting that the engines would not make maximum RPM. Engines were then operated 87 more hours.

-the right engine was removed from aircraft, reinstalled with no record of repair, and then operated another 72.1 hours. On June 15, 1996 the right engine was inspected and major maintenance was performed by a repair station. No record of any interim inspections.

-on October 4, 1996, JetCorp, a repair station, recorded discrepancies, and no record of repair for these discrepancies exists.

-an inspection of the barometric altimeter was to be performed in August 1996, but was not noted as performed until April 1997. [The aircraft was operated in instrument weather conditions during the interim.]

-air data systems required 24 month inspection/certification and were due in August 1996 but no record of being performed until December 24, 1996, and the aircraft was operated during that period.

Civil Aircraft N47MR

-the primary aileron control cable and the primary elevator control cable have a service life of 2400 hours. They were replaced on August 16, 1992 at 8,754 hours and not replaced at 11,361.5 hours.

-a work order to Bombardier repair station indicated 37 discrepancies that were marked "do not work," by Rasmark. None were ever documented as repaired. [Rasmark operated the aircraft with the discrepancies not corrected.]

-a torque ring on the engine was not replaced when it had 7113 engine cycles, when it was to be replaced at 6775 cycles.

-an aircraft discrepancy log indicated on February 5, 1997, that the autopilot was unusable, would not hold altitude, and had an apparent trim runaway. Corrective action was taken and noted. [The note also said a test flight would occur, but it never did.]

-the Airplane Flight Manual (AFM) in the aircraft was outdated. [Aircraft operated 41 flights nonetheless.]

-the aircraft weight records fail to show that the aircraft was weighed every 36 months. [The aircraft was operated with outdated aircraft weight records.]

-the basic operating weights of the aircraft in 1992 could not be reconciled with BOWs for 1995, 1996, and 1997.

Civil Aircraft N25TK

-[an AD requiring an inspection of the flapper valve was issued by the FAA.] The AD does not appear to have been complied with, and the aircraft was operated 736.7 hours beyond the mandated 50 hour interval after issuance of the AD.

-engine components that were life limited were operated after exceeding their limits.

-the engine was operated 1978.9 hours between hot section inspections that are required at 1500 hour intervals.

-Rasmak substituted the aircraft manufacturer's inspection program for the FAA Approved Aircraft Inspection Program (AAIP) for this aircraft, without FAA approval.

-[the aircraft was operated with discrepancies that had not been corrected.]

-[on December 8, 1996 and January 18, 1997, an engine fire warning light illuminated during climb, but was not reported to the FAA as required.]

-discrepancies noted were deferred for repair in accordance with the MEL, but then extended beyond the allowable period. The aircraft was operated during that time.

-[the aircraft was operated 43 flights between March 1, 1997 and April 9, 1997, with incorrect weight records.] Weight records dated 1992, 1993, 1995, and 1997 are inconsistent with each other.

Civil Aircraft N25MR

-the aircraft overflowed the requirement for a 200 hour inspection by 64.3 hours. It received a 300 hour inspection not provided for in the AAIP.

-the aircraft had a 2400 hour inspection on March 26, 1990 at 7096.2, and another was not noted until April 10, 1997,

at 19617.8. Life limited parts - the aileron and elevator control cables were therefore overflown by 1121.6 hours.

-[the Airplane Flight Manual (AFM) was outdated.] The aircraft operated with the AFM out of date.

-the aircraft weight records were incorrect, the aircraft operated nonetheless, and the aircraft was operated at a weight heavier than its approved maximum ramp weight on 2 flights.

Notwithstanding Rasmark's willingness to stipulate to many of the facts, Rasmark's former Director of Maintenance, Larry Vaughan, testified that actually all required inspections were performed, albeit some late, and all deficiencies were corrected or deferred for correction, in accordance with the Minimum Equipment List (MEL). Vaughan insists that any aircraft that was not airworthy was grounded until it was repaired.

Vaughan's claims are to some extent corroborated. Rasmark's dispatcher testified that a current status board was maintained so that she would know which aircraft were available and which aircraft were grounded for maintenance or repair. A Rasmark mechanic, Ed Brown, testified that he repaired every deficiency noted in the complaint with regard to the Falcon Jet. As to the deficiencies noted for Civil Aircraft N47MR, Vaughan's unrebutted testimony was that these were minor problems that did not make the aircraft unairworthy, and that in fact each problem

noted had been corrected, when the aircraft was available.⁷ Where repairs were made but not documented, Vaughan admits responsibility.⁸

Vaughan also testified that he believed he had the authority to defer discrepancies "at will." He claims that Rasmark's aircraft and records were inspected at the end of 1994 by now-retired FAA Principal Maintenance Inspector (PMI) Lopez. Vaughan claims he showed Lopez records where Vaughan extended deferrals on his own, and Lopez never challenged his actions. He also testified that he believed his authority was derived from Rasmark's Operations Manual (TR-277).⁹ Vaughan testified that it was common practice to ask a repair station to not work on the simple discrepancies so that they could be repaired by Rasmark's mechanics at much less cost.

Vaughan did admit that he delayed an engine overhaul of Civil Aircraft N45MR, and that one hot section inspection for the same engine was late. Vaughan testified this was done at

⁷ Vaughan explained that the aircraft had just had a 12 year/12,000 hour inspection, and he questioned the quality of the work done. He obtained a ferry permit and took it to Bombardier so that that repair station could check the aircraft thoroughly. The list was extensive because Bombardier listed everything that the other repair station had failed to do, regardless of whether the deficiency affected the aircraft's airworthiness.

⁸ Vaughan's mechanic certificate will apparently be suspended for 90 days.

⁹ Administrator's Exhibit 50, the AAIP for N25MR, does state that Rasmark need only "adhere as closely as possible" to all recommended inspection intervals (not to exceed +20 flight hours for hourly inspections or +2 weeks for calendar inspections). See para. H, Page 9-4.

Rasmussen's direction, a claim which Rasmussen denies.¹⁰ Vaughan also testified that Civil Aircraft N47MR was not grounded when the primary aileron control cable, the elevator control cable, and an engine torque ring were due to be replaced, because it would have cost Rasmussen a loss of revenue.

The law judge appears to have determined that these admitted violations were mitigated because they could only be established with reconstructed records that may have contained inaccurate dates as to the last replacement of these items. We have been offered no reason to reject this view. As the record reveals, in November 1993, shortly before Vaughan was hired by Rasmussen, the United States Customs Service had seized 60 boxes of records from Rasmussen offices, including all of its maintenance records, airframe and engine logbooks.¹¹ Vaughan testified that with the assistance of PMI Lopez, he attempted to reconstruct the

¹⁰ Although not referred to in his decision, we think the law judge must have considered, as we have, the transcript of a taped conversation between Vaughan and FAA counsel (Exhibit R-5) where Vaughan insisted that he could not strike a deal with the Administrator, even under the threat of revocation of his mechanic's certificate, because he simply did not "have" anything on Rasmussen. At the hearing, after already receiving a deal for a 90-day suspension, Vaughan testified that Rasmussen had directed some of his actions, and that Rasmussen was the final authority on grounding aircraft and delaying inspections in order to delay the expenditure of money. Vaughan also testified that he would not take all the blame for this situation. (TR-261).

¹¹ The seizure was based on criminal allegations against Rasmussen that have not resulted in charges.

maintenance records.¹² In May 1995, Customs was ordered to return the records. Vaughan described them as being in poor shape, unorganized, and just thrown in boxes. Some records were missing. Vaughan testified that he researched the records thoroughly, presumably so that they could be reconciled with the temporary records he had. His success in doing so is questionable, at best.

Vaughan's testimony severely undermines the Administrator's contention that Rasmak should be liable for his acts. To the extent that violations did occur, it is clear from this record that they were more the result of Vaughan's misunderstanding of the regulations, rather than a systematic effort on the part of Rasmak to circumvent the FAR. It was reasonable for Rasmak to rely on the expertise of its Director of Maintenance. We decline to hold Rasmak equally liable for all of Vaughan's actions.

We recognize that Board precedent typically holds a Part 135 operator responsible for the supervision of its maintenance program, and we have not hesitated in the past to revoke Part 135 operating certificates for far less than the allegations presented here. However, we think this case is distinguishable. The issue before us is whether Rasmak knew or should have known of the inappropriate actions of its employee. In Administrator v. Oklahoma Executive Jet Charter, Inc. and Alan Curtis, NTSB

¹² According to Mr. Rasmussen, a temporary system had already been set up with the help of the PMI, so that Rasmak could

(continued...)

Order EA-3928 (1993) at 8, ftn. 10, we rejected the proposition that a company is always equally culpable for the violations of its employee. See also, Administrator v. Missouri Aerotech Industries, Inc., NTSB Order EA-3999 (1993), where we held the company responsible because it had at least implicitly authorized the actions of its employee, noting that the General Manager in that case attempted to defend his employees' actions when he testified before the law judge.

In this proceeding, Rasmussen testified that he did not direct the actions of Vaughan. He also testified that Vaughan told him that he had received FAA approval to follow the manufacturer's inspection program instead of the AAIP. (TR-334). This testimony was not rebutted. We think that, with his maintenance records in shambles, Rasmussen hired a highly experienced Director of Maintenance (DOM) and relied on his DOM's expertise to bring Rasmussen's program into compliance. We simply find it remarkable that a Director of Maintenance with over 26 years' experience in aircraft maintenance, including service as DOM with several other charter operations, could be so ignorant of the applicable rules and regulations. This finding is implicit in the law judge's decision, and we believe it was based largely on his observation of the demeanor of the witnesses. As we noted in Administrator v. Oklahoma Executive Jet Charter, Inc.

(...continued)
continue its operations.

and Alan Curtis, NTSB Order No. EA-3928 (1993), we place a great deal of "reliance on the law judge's ability to sort out a host of issues and nuances which can be observed at trial...." Id. at 9.

The law judge also placed great significance on the fact that the remainder of Rasmark's operation, including pilot qualification and training, dispatch, and operations, was found to be in compliance with Part 135. And, as the law judge highlighted in his initial decision, the Administrator neither alleged nor proved that Rasmark falsified its maintenance records. While we are concerned that there is evidence that Rasmark did operate unairworthy aircraft, we cannot disagree with the law judge's conclusion that under these specific circumstances a \$13,000 civil penalty assessed against the operator will suffice as a sanction for these violations.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The initial decision assessing a \$13,000 civil penalty against Rasmark is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.