

SERVED: October 8, 1997

NTSB Order No.: EA-4600

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 30th day of September, 1997

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14129
v.)	
)	
PAUL J. BUCKEL,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William A. Pope, issued on November 28, 1995, granting respondent's motion to dismiss at the conclusion of the Administrator's case, upon

finding that the Administrator had not presented a *prima facie* case.¹ We deny the appeal.²

The Administrator's complaint alleged that respondent had violated 14 C.F.R. 43.13(b) of the Federal Aviation Regulations.³ The Administrator sought a 10-day suspension of respondent's mechanic certificate(s).

FAA airworthiness/air safety inspector Steve Ketzner was the Administrator's only witness. Mr. Ketzner, who the law judge determined qualified as an expert in aviation maintenance, testified that he performed a ramp inspection on a Cessna U206, operated by Alaska Island Air, on August 26, 1994. He wrote a list of what he termed "discrepancies." One of the items on the list, the sole subject of this complaint, read "Emergency door handle loose (inner) ...".

¹ The initial decision, an excerpt from the hearing transcript, is attached.

² We grant the Administrator's motion to strike, as the identified material from respondent's reply brief contains impermissible new evidence.

³ Section 43.13(b), Performance rules (general), reads:

(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).

Respondent, a mechanic with Alaska Island Air, flew to the site in response to Mr. Ketzer's inspection. Mr. Ketzer returned the following day to see if the discrepancies he had noted had been corrected. He found that respondent had repaired some of the items, but that the door handle was in the same condition as the prior day.

Respondent admitted in his answer to the complaint that "he received a note listing 13 items," but he denied that there was a discrepancy with the door handle. Mr. Ketzer testified that, when he inspected the door handle, it was wobbling in every direction, and that he felt "extreme" play. Tr. at 41-42. He stated that, although there was no set standard for tightness of the handle, a mechanic would look for "security of attachment," and that the state of the door handle on the Cessna was not equivalent to its original condition. Tr. at 44-45. He concluded that the condition of the door handle made the aircraft unairworthy.

The law judge found that the Administrator had made a *prima facie* showing that respondent was aware of the list when he repaired the aircraft and that respondent did not repair the door handle. However, at the close of the Administrator's case, the law judge dismissed the complaint, finding that the Administrator failed to establish "through approved manuals or other directives how much looseness is permitted before attachment of a door handle can be

considered unairworthy because its condition does not meet performance standards for maintenance operations." Tr. at 136-137.

Prima facie evidence is a question of fact. It is that factual evidence that is sufficiently strong for an opponent to be called upon to answer it. The Administrator's entire premise here was that the door handle was "too loose" to be securely attached, was not equal to its original condition, and therefore was not airworthy. As the Administrator notes, there may be many unairworthy conditions that are not, as a practical matter, quantifiable, but are cognizable by a mechanic. But, by the same token, and as we have on many occasions noted, aircraft parts are subject to continual wear and tear, and common sense and fairness dictate that an aircraft, or a part, does not literally have to be "equal to its original ... condition" to comply with § 43.13(b). See Administrator v. Calavaero, Inc., 5 NTSB 1099, 1100-1101 (1986). Given the dearth of direct and convincing evidence on the condition of the handle, we do not think it was an abuse of discretion for the law judge to grant respondent's motion to dismiss the Administrator's complaint.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's motion to strike is granted, and the Administrator's appeal is denied.

HALL, Chairman, FRANCIS, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. FRANCIS, Vice Chairman, did not concur and submitted the following dissenting statement:

I can not concur in the Board's opinion and order in this case in which the enforcement action was dismissed before all the evidence was introduced. Where there is a dispute about the clarity or scope of a standard - or more particularly a dispute about the existence of a standard as in this case - it would seem to be prudent to obtain more evidence, rather than less evidence, to resolve any ambiguity and determine the appropriate standard. I would remand the case to the administrative law judge to do so.