

SERVED: January 24, 2011

NTSB Order No. EA-5568

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 24th day of January, 2011

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18645
v.)	
)	
JAMES L. ROBERTS,)	
)	
Respondent.)	
)	
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ORDER DENYING RECONSIDERATION

The Administrator seeks reconsideration of our opinion and order in this case, NTSB Order No. EA-5556, served October 20, 2010.¹ In that opinion, we affirmed the law judge's oral initial decision finding the Administrator failed to prove the Gulfstream II aircraft (hereinafter, "N840RG") unairworthy under 14 C.F.R. § 21.181, and we reversed the law judge's decision

¹ The Administrator also filed a motion for a stay of the proceedings related to respondent's application for fees pursuant to the Equal Access to Justice Act. This motion is moot as respondent withdrew his application pending resolution of this petition.

that respondent failed to perform proper maintenance on the aircraft and to make proper logbook entries under 14 C.F.R. §§ 43.13(a) and 43.9(a)(1). In his decision, the law judge reduced respondent's sanction from a 120-day suspension to a 60-day suspension of his mechanic certificate with airframe and powerplant ratings and inspection authorization. As a result of our findings, no basis for sanction remained.

Both parties initially appealed the law judge's decision. Respondent appealed the law judge's determination that the Administrator proved the § 43.13(a) and § 43.9(a)(1) allegations of the complaint. The Administrator appealed the law judge's finding regarding airworthiness as well as the reduction in sanction. We granted respondent's appeal, and denied the Administrator's appeal.

In the Board's original opinion, we found the Administrator failed to prove respondent violated § 43.13(a) or § 43.9(a)(1). The Administrator specifically pleaded that on or about May 9, 2008, when respondent "returned N840RG to service ... the aircraft was not in an airworthy condition in that it had fuel leaks that were not repaired in an acceptable manner." See Administrator's Complaint at 1.² The FAA inspectors examined the aircraft on April 24, 2008, identified a leak, but never determined the rate of the fuel leak for N840RG under the Gulfstream maintenance manual (GMM), and thus did not determine if the rate exceeded that permitted under the GMM. Respondent's logbook entry for May 9, 2008, indicated he leak-checked the aircraft before returning it to service, and found no leaks at that time. As the Administrator failed to prove the aircraft was leaking on the date respondent returned it to service, we also concluded the Administrator failed to prove respondent's logbook entry was insufficient or the aircraft required repair.

The Administrator filed this petition for reconsideration of our opinion and order reversing the law judge's finding of violations of 14 C.F.R. §§ 43.13(a) and 43.9(a)(1). The

² Respondent's witness, Mr. Richard Screen, noted Gulfstream II aircraft typically leak because they are wet wing aircraft. A "wet wing" is an aircraft structure and fuel system design technique where an aircraft's wing structure is sealed and used as the fuel tank, thus eliminating the need for fuel tanks or fuel bladders. Mr. Screen further explained leaks were not problematic under the Gulfstream maintenance manual if the rate of the leak was less than 2 drops per minute.

Administrator specifically "asks the Board to reconsider its analysis and conclusions in this case in two respects that are critical to aviation safety." Pet. at 1. The two issues the Administrator raises are: respondent failed to document the methods used to check for leaks and locations of the leaks as required by the GMM, and the Administrator fulfilled the burden of proof by providing evidence of omitted documentation of leak classification on the May 9, 2008 return to service. Respondent opposes the Administrator's arguments, and urges us to deny the petition.

Section 821.50(c) of our Rules of Practice requires petitions for reconsideration "state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon." Furthermore, § 821.50(d) provides the Board will not consider, and will summarily dismiss, repetitious petitions for reconsideration.

The Administrator's petition asserts our original decision contained incorrect factual and legal conclusions. Although the petition appears largely repetitious, we will address the non-repetitious assertions.

In this petition, the Administrator asserts, for the first time, "[i]t was [r]espondent's duty to document the location of known leaks" regardless of whether the aircraft was leaking on May 9, 2008—the date respondent returned it to service. Pet. at 7. The Administrator further contends "[t]he [c]omplaint d[id] not allege that the aircraft was leaking on May 9, nor was that the intent of the allegation." *Id.* We find this argument completely contrary to the arguments the Administrator asserted both at the hearing and on appeal before this Board. In fact, the Administrator's entire case focused on whether the aircraft was leaking when respondent returned it to service. We find the Administrator's current contention—that respondent should have recorded any *known* leaks and the rate of those *known* leaks regardless of whether the aircraft *actually* was leaking on May 9, 2008—inconsistent with the Administrator's charge and previous litigation positions. Presuming, as found in this case, an aircraft was not leaking on a given day, the Administrator cannot expect a mechanic to record the location of a non-existent leak, let alone record the rate of leak for the non-existent leak.

We also find the Administrator's petition mischaracterizes the facts by arguing the Board erred in holding respondent properly checked the aircraft because "[5] to [7] days after

[r]espondent's return of N840RG to service, the repair station found 3 fuel leaks that required repairs." Pet. at 3, quoting Exhibit R-14. While Mr. Screen, respondent's witness from the repair station, acknowledged his repair station made these repairs, he additionally testified the aircraft was in an airworthy condition when it arrived at his facility, and also noted the rate of the leaks his repair station found and repaired did not require repair in the technical sense under the GMM. Tr. at 351, 356, 359.

Finally, the Administrator states "[he] is very concerned that this decision could give mechanics the belief they can ignore a history of fuel leaks on an aircraft without ever recording or measuring the leaks as the GMM accepted by [the] Administrator clearly requires." Pet. at 4. To be clear, our decision below does not stand for the proposition mechanics can ignore maintenance manual or FAR requirements concerning maintenance, nor does it imply recording such maintenance in a logbook is unnecessary. Rather, as we stated in our opinion and order, we have long held maintenance records need to be unequivocally accurate, and must describe adequately the work performed on an aircraft. EA-5556 at 8. In this case, we found respondent made a logbook entry noting he found no leaks on the date he returned the aircraft to service. We further held the Administrator failed to prove this entry was incorrect or inaccurate. Our decision simply held the Administrator to his burden of proof, and the Administrator's petition presents no reason to disturb that finding.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition for reconsideration is denied.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above order.