SERVED: April 16, 2015

NTSB Order No. EA-5744

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 16h day of April, 2015

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. RICHARD L. BOETA, Respondent.	)	Docket SE-19349

OPINION AND ORDER

1. *Background*

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montaño, issued August 7, 2014.[1] By that decision, the law judge affirmed the Administrator's order, finding respondent violated 14 C.F.R. §§ 91.180(a)(1) and (2)[2] and

[1] A copy of the law judge's initial decision, an excerpt from the hearing transcript, is attached.

[2] Section 91.180(a)(1) and (2) provides, "[N]o person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

Part 91, Appendix G, section 4(b)(1)[3] by operating a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace without authorization.[4] The law judge affirmed the Administrator's suspension of respondent's airline transport pilot (ATP) certificate for a period of 60 days. We deny respondent's appeal.

A. Administrator's Order

The Administrator's order of suspension, issued July 13, 2012, alleged respondent operated, as pilot-in-command, a Beechjet 400-A (hereinafter, "N497RC"), on a flight from Sugar Land Regional Airport to Palm Beach International Airport on September 8, 2011. The parties agreed respondent filed a flight plan prior to the flight indicating N497RC was authorized to operate in RVSM airspace, and respondent operated N497RC in RVSM airspace during the flight. At the time of the flight, however, N497RC was not authorized to operate in RVSM airspace. Therefore, the Administrator's order alleged respondent violated the above listed regulations.

(continued..)

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator or the country of registry to conduct such operations."

[3] Part 91, Appendix G, section 4(b)(1) provides, "No person may show, on the flight plan filed with air traffic control, an operator or aircraft as approved for RVSM operations, or operate on a route or in an area where RVSM approval is required, unless: (1) The operator is authorized by the Administrator to perform such operations."

[4] "Within RVSM airspace, air traffic control (ATC) separates aircraft by a minimum of 1,000 feet vertically between flight level (FL) 290 and FL 410 inclusive. RVSM airspace is special qualification airspace; the operator and the aircraft used by the operator must be approved by the Administrator." 14 CFR Part 91, Appendix G, section 1.

B. Facts

In 2009, respondent was hired by Capital Aerospace, Inc., as an independent contractor to pilot N497RC.[5] Redi-Carpet Properties, LLC, owned N497RC and Capital Aerospace managed the aircraft. Capital Aerospace entered into an agreement with USAC Airways 691, LLC, (USAC), a part 119 carrier, to place N497RC on USAC's Operations Specifications[6] (OpSpecs); this listing provided RVSM authorization for N497RC under part 135.[7] In accordance with the agreement, USAC also helped Capital Aerospace prepare the necessary documents to apply for its own part 119 air carrier certificate with OpSpecs for part 135 operations.[8] Respondent completed the proving runs and pilot training necessary for the Federal Aviation Administration (FAA) to place N497RC on USAC's OpSpecs.[9] The pilot training included part 135 check rides, OpSpecs training, and RVSM training.[10]

USAC also entered into a dry-lease agreement with Redi-Carpet to lease N497RC on an exclusive basis. Under the agreement, USAC would operate the aircraft for charter jet services under USAC's air carrier certificate and its RVSM Maintenance Procedures Manual.[11] USAC

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[5] Tr. 174-75.

[6] Air carriers conducting operations under 14 C.F.R. Part 135 are required to have an operating certificate and operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted. 14 CFR § 119.33(a), (b)(3); Administrator v. Gorman, NTSB Order No. EA-5334 at 1, n.2 (2007).

[7] Tr. 164-66.

[8] Id. 221.

[9] Tr. 169-70.

[10] Tr. 167-70, 279-81.

[11] Tr. 172.

maintained operational control of N497RC during the time the aircraft was on its OpSpecs and dispatched all flights for the aircraft by issuing a computer generated dispatch sheet.[12]

As a result of disagreements between USAC and Capital Aerospace, USAC stopped dispatching flights for N497RC after March 20, 2011.[13] USAC terminated its agreement with Capital Aerospace and with Redi-Carpet and, on May 10, 2011, notified the FAA that N497RC was to be removed from USAC's OpSpecs.[14] By June 12, 2011, N497RC was no longer listed on USAC's OpSpecs and, as a result, was no longer approved for RVSM operations.[15]

Prior to the flight on September 8, 2011, respondent conducted pre-flight inspections and checklists and filed a flight plan indicating N497RC was RVSM authorized.[16] Capital Aerospace dispatched the flight with a print trip sheet.[17] Respondent operated the aircraft in RVSM airspace during the flight. When respondent landed N497RC at Palm Beach International Airport, FAA Aviation Safety Inspectors Michael Ohannesian and Nestor Pedraza performed a ramp inspection of the aircraft. During the ramp inspection, respondent informed the inspectors the flight was conducted under part 91 and the owner was on-board the aircraft.[18] The inspectors

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[12] Tr. 172, 179.

[13] Tr. 183-84.

[14] Exh. R-6.

[15] Exh. A-3 at 1.

[16] Tr. 328.

[17] Exh. R-11.

[18] Tr. 53-53, 84

asked respondent for the RVSM letter of authorization;[19] however, respondent could not produce the document.[20] Respondent informed the inspectors he would contact Capital Aerospace to have the RVSM letter of authorization faxed to him. A short time later, respondent informed the inspectors the flight was not a part 91 flight but rather was a part 135 flight.[21] The FAA inspectors then asked respondent for the OpSpecs for the flight, and respondent, again, contacted Capital Aerospace to have the documents faxed.[22] While waiting for the fax, Mr. Ohannesian searched FAA's database and discovered USAC's OpSpecs listed N497RC at one time, but USAC's most recent OpSpecs did not include the aircraft.[23] Respondent failed to produce a letter of authorization showing he was authorized to operate N497RC in RVSM airspace or OpSpecs showing the aircraft was approved for RVSM operations.

C. Law Judge's Oral Initial Decision

The law judge determined the Administrator proved respondent operated N497RC in RVSM airspace without the proper authorization. The law judge found USAC did not dispatch the September 8, 2011 flight nor did USAC have operational control over the flight, and noted respondent was aware USAC was not involved with flight and was aware USAC had not dispatched a flight for N497RC since March 2011.[24] The law judge credited the testimony of

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[19] To demonstrate RVSM authorization for flights conducted pursuant to Part 91, the aircraft operator is required to have a letter of authorization and an FAA approved RVSM maintenance program. Tr. 95, 263.

[20] Tr. 53, 85.

[21] Tr. 55, 87.

[22] Id.

[23] Tr. 54.

[24] Initial Decision at 442-43, 450.

Messrs. Michael Ohannesian and Nestor Pedraza; FAA Operations Safety Inspector Charles McKinley; John Beck, the owner and chief pilot of USAC; and David Barrera, a consultant with Capital Aerospace.[25] The law judge did not find credible respondent's testimony the OpSpecs were onboard the aircraft at the time of the subject flight; that he did not provide the OpSpecs to the FAA inspectors because they did not specifically ask for it; that he was told by Anthony Bell and Mr. Barrera of Capital Aerospace that N497RC was RVSM compliant; and that he reasonably relied on the OpSpecs for N497RC.[26]

At the hearing, respondent raised five affirmative defenses, all of which were rejected by the law judge.[27] The law judge also rejected respondent's argument he was entitled to a waiver of sanction because he had filed a timely report pursuant to FAA's Aviation Safety Reporting Program[28] (ASRP) and his conduct was inadvertent. The law judge noted the parties did not dispute respondent filed the report in a timely manner, and the parties agreed no evidence existed to show the violation was deliberate. The law judge, however, found the violation was not

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[25] Id. at 438, 446, 449, 455-56.

[26] Id. at 448, 457-59.

[27] The first four defenses argued the Administrator failed to state any claim upon which relief may be granted and made proximate cause, and contributory negligence claims. Respondent's fifth defense was he reasonably relied on the fact USAC's air carrier certificate and OpSpecs *previously* authorized the operation of N497RC in RVSM airspace. Id. at 451-59.

[28] Under the ASRP, the Administrator may waive the imposition of a sanction, despite the finding of a regulatory violation, as long as certain requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46D at 4, ¶ 9c (February 26, 1997). The Program involves filing a report with the National Aeronautics and Space Administration ("NASA"), which may obviate the imposition of a sanction by the FAA where: (1) the violation was inadvertent and not deliberate; (2) the violation did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in any prior FAA enforcement action to have committed a regulatory violation for the past five years; and (4) the person completes and mails a written report of the incident to NASA within 10 days of the violation. Advisory Circular 00-46D, which was cancelled by Advisory Circular 00-46E, issued on December 16, 2011, was in effect at the time respondent filed a report with NASA pursuant to the ASRP.

inadvertent.[29] Therefore, the law judge concluded respondent was not entitled to a waiver of the sanction pursuant to the ASRP.

D. Issues on Appeal

Respondent presents several arguments on appeal. First, respondent contends the law judge erred in evidentiary determinations. Respondent next contends the law judge erred in making credibility determinations and failed to evaluate and apply the testimony of witnesses at the hearing. Respondent also asserts the law judge erred in holding respondent failed to establish his affirmative defense of reasonable reliance. Lastly, respondent argues the law judge erred in finding respondent was not entitled to a waiver of sanction under the ASRP.

2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.[30]

A. *Evidentiary Rulings*

Respondent argues the law judge erred in two respects concerning evidentiary rulings: he contends the law judge failed to give proper weight to Exhibit R-13[31] and the law judge

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[29] The law judge stated:

> [Respondent's] conduct is indicative and establishes that he did not determine if his aircraft was RVSM compliant before he flew in RVSM airspace, where jets fly at high speed at reduced vertical separation; he simply did not check. I find that [r]espondent is therefore not entitled to a waiver of sanction, as I cannot find that his violation was inadvertent.

Initial Decision at 463-64.

[30] Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

[31] Exhibit R-13 contained notes from a September 27, 2011 telephone interview of Mr. Beck and Larry D'Oench, USAC Director of Operations, conducted by FAA Aviation Safety Inspectors Don Riley and Steve Neilsen. Respondent also contends the law judge erroneously indicated in an initial order that all exhibits were entered into evidence without objection, even though

improperly limited the scope of cross-examination of witnesses to those issues raised on direct examination.

First, we reject respondent's argument the law judge gave improper weight to Exhibit R-13. Respondent offers no basis for this argument other than to state Exhibit R-13 supported his claims and undermined Mr. Beck's credibility. The law judge questioned the relevance of Exhibit R-13 during the hearing but admitted it into evidence. Respondent's counsel questioned Mr. Beck about the contents of Exhibit R-13, specifically a notation that someone at USAC was "angered" by the fact Capital Aerospace had not applied for its own air carrier certificate as had previously been agreed.[32] As discussed below, we find the law judge's determination concerning Mr. Beck's credibility was not arbitrary or capricious. Further, the law judge considered all the evidence, both oral and documentary, in rendering his initial decision. Therefore, this argument is without merit.

We afford our law judges wide latitude in conducting hearings. In this regard, we will only overturn a law judge's evidentiary ruling when the appealing party can show the law judge's ruling amounted to an abuse of discretion, and resulted in prejudice to the party.[33] Here,

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(continued..)
Exhibit R-13 was entered into evidence over the Administrator's attorney's objection. Appeal Br. at 8.

[32] Tr. 197.

[33] See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)); Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001); see also Lackey v. FAA, 386 Fed.Appx. 689, 2010 WL 2781583 (9th Cir. 2010).

respondent cites three instances where the law judge sustained the Administrator's objection, ruling respondent's questions went beyond the scope of direct or redirect examination.[34]

In each instance, we find the law judge applied the correct standard concerning the scope of cross examination. The Federal Rules of Evidence state the scope of cross-examination "should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination."[35] Respondent takes issue with the law judge's ruling on two objections, in which the law judge found questions by respondent's counsel on cross-examination exceeded the scope of direct examination.[36] A review of the record establishes the law judge did not err, as the questions were beyond the scope of direct examination.[37] The law judge did not abuse his discretion in issuing these rulings. On the third occasion cited, respondent's counsel questioned FAA Aviation Safety Inspector Pedraza about the possibility that a pilot could file a flight plan not identifying an aircraft as RVSM authorized and obtain air traffic control permission for

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[34] Respondent cites five instances in his appeal brief. Appeal Br. at 4. However, two of the cited instances concern the same objection, and one of the cited instances concerns an objection overruled by the law judge. Therefore, respondent only cites three occasions where the law judge sustained the Administrator's objection on the basis of scope.

[35] Federal Rule of Evidence 611(b).

[36] Appeal Br. at 4-5.

[37] During the first cited objection, respondent's counsel questioned Mr. Ohannensian about the usual FAA practice concerning issuance of part 91 and part 135 RVSM authorizations. We agree with the law judge that this question went beyond the scope of Mr. Ohannensian's direct examination, which focused on the facts surrounding the ramp check. During the second cited objection, respondent's counsel sought to elicit testimony from Mr. Ohannensian concerning whether Mr. Beck disclosed to Mr. Ohannensian the reasons N497RC was removed from USAC Airways' OpSpecs. We agree with the law judge that this question went beyond the scope of Mr. Ohannensian's redirect examination, which focused on whether the OpSpecs authorized another operator, besides USAC Airways, to operate in RVSM airspace and if a pilot would have had more information than a single OpSpecs page to determine RVSM authorization. Tr. 69, 76.

RVSM operations.[38] The law judge sustained the Administrator's objection on the basis that the question went beyond the scope of Mr. Pedraza's direct examination, which focused on the ramp check.[39] We agree. The law judge also noted the question involved operational procedures, which Mr. Pedraza previously testified he was unable to answer.[40]

Respondent does not state with specificity how the law judge's rulings were prejudicial; respondent only asserts the rulings precluded testimony on cross-examination that "likely would have provided additional evidentiary support."[41] We find none of the occasions cited involved questions or matters affecting the credibility of the witnesses nor was the testimony critical to respondent's appeal. After a careful review of the transcript of this hearing, we find the law judge's conclusions with regard to the scope of the testimony and the cross-examination did not amount to an abuse of discretion and did not prejudice respondent.

B. *Witness Testimony*

1. *Credibility Determinations*

Respondent alleges the law judge erred in crediting the testimony of Mr. Beck and in rejecting his own testimony as lacking credibility. We will not overturn a law judge's credibility determination unless a party can establish the credibility determination was arbitrary and capricious.[42] We find no evidence the law judge's credibility determinations here were arbitrary and capricious; therefore, we affirm the law judge's credibility determinations.

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[38] Tr. 95.

[39] Tr. 98-99.

[40] Tr. 99.

[41] Appeal Br. at 4.

[42] Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), aff'd, 472 Fed.Appx. 2 (D.C. Cir. 2012).

Respondent argues the law judge erred in determining Mr. Beck's testimony was credible. To support his argument, respondent cites an "obvious lie"[43] told by Mr. Beck during his direct examination when he appeared to give conflicting testimony about when USAC developed a standard termination agreement. Respondent also cites an inconsistency in Mr. Beck's testimony concerning whether he was angry with Capital Aerospace or Mr. Bell during the relevant time period. While the law judge did not specifically note Mr. Beck's testimony concerning the creation of USAC's termination agreement process, the law judge credited Mr. Beck's testimony that he informed Mr. Bell of the removal of N497RC from USAC's OpSpecs and he tried to contact respondent by phone to request respondent return the OpSpecs and the general operating manual for N497RC but respondent did not return his calls.[44] In making this credibility determination, the law judge noted he asked respondent why Mr. Beck would make false statements under oath and respondent replied he did not know.[45] The law judge also noted Mr. Beck had nothing to gain by making false statements, and did not find Mr. Beck to be reprehensible, as portrayed by respondent, after listening to Mr. Beck's testimony under direct and cross examination.[46] In reviewing the record, we find no evidence the law judge's credibility determination concerning Mr. Beck's testimony was arbitrary and capricious.

Additionally, the law judge found respondent's testimony lacked credibility. Respondent testified the OpSpecs were onboard N497RC at the time of the subject flight and he did not provide the OpSpecs to FAA Inspectors Ohannesian and Pedraza because they did not

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[43] Appeal Br. at 10.

[44] Initial Decision at 455-56.

[45] Id.

[46] Id.

specifically ask for it. The law judge found this testimony not credible or logical.[47] We agree, as not providing OpSpecs when the FAA inspectors asked to see the RVSM authorization for N497RC would be illogical. Respondent also testified Messrs. Bell and Barrera told him N497RC was RVSM compliant.[48] In discrediting respondent's testimony, the law judge cited respondent's inability to state with specificity what Mr. Bell and Mr. Barrera said and when they allegedly said it, as well as the fact respondent's counsel did not ask Mr. Barrera during the hearing whether he told respondent N497RC was still RVSM compliant.[49] The law judge also found respondent had a self-interested motive to contend he did not know N497RC was no longer on USAC's OpSpecs and was not RVSM compliant.[50] Therefore, we affirm the law judge's credibility determinations.

2. *Interpretation of Testimony*

In support of his argument that the testimonies of Messrs. Ohannesian, McKinley, Beck, and Barrera did not support the law judge's findings of fact, respondent asserts the record shows these witnesses actually supported respondent's contention that he was not obligated to ensure the aircraft was eligible for RVSM operations prior to taking off and conducting such operations. Respondent points to Mr. Ohannesian's statement that without more, someone reading the version of the OpSpecs provided at the hearing would conclude N497RC was still approved for RVSM operations. However, Mr. Ohannesian also testified a pilot would have had other

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[47] Id. at 448.

[48] Tr. 328-332, 347.

[49] Initial Decision at 456-58. Respondent cites Tr. 259:8-16 to support the statement that Mr. Barrera informed respondent N497RC was RVSM authorized prior to the September 8, 2011 flight; however, the transcript shows Mr. Barrera provided no such testimony.

[50] Id. at 456.

methods, in addition to the OpSpecs, available to determine if an aircraft was authorized for RVSM operations.[51]

Respondent also claims Mr. McKinley's testimony supports respondent's position on appeal. Mr. McKinley testified when changes to OpSpecs or the general operations manual are made by an air carrier, new OpSpecs would be provided to the pilots and placed inside the aircraft.[52] Mr. McKinley also testified it is the responsibility of the pilot-in-command to ensure, among other things, the required documents are onboard the aircraft, including the authorization to operate in RVSM airspace.[53] Respondent argues the testimony of Mr. Beck contradicted that of Mr. McKinley because Mr. Beck testified USAC's preflight checklist does not require the pilot-in-command to determine the validity of RVSM documentation.[54] Irrespective of whether USAC's preflight checklist required the pilot-in-command to check documentation concerning RVSM operations before each flight, § 91.180(a)(1) and (2), and Part 91, Appendix G, section 4(b)(1) of the Federal Aviation Regulations are clear that no person may operate an aircraft in RVSM airspace without authorization. Based on the plain language of the regulations and the totality of the evidence in the record, we find respondent's argument without merit.

Respondent argues Mr. Beck's testimony that he did not provide written notice to Capital Aerospace, Redi-Carpet, or respondent that N497RC had been removed from USAC's OpSpecs did not support the law judge's findings. We disagree. Mr. Beck testified he notified Mr. Bell via telephone that N497RC was being removed from USAC's OpSpecs and he sent an email to

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[51] Tr. 72-73.

[52] Tr. 110.

[53] Tr. 108-09.

[54] Appeal Br. at 8; Tr. 219.

Mr. Bell on the same day asking Mr. Bell to provide a letter stating Capital Aerospace wanted N497RC removed from the OpSpecs.[55] Mr. Beck also testified respondent never contacted him after N497RC was removed to inquire why respondent was continuing to operate N497RC even though respondent was not receiving dispatch sheets from USAC.[56] Mr. Beck further testified Capital Aerospace ceased providing USAC with flight duty records, maintenance records, or other periodic reports that Capital Aerospace would have provided had USAC continued operating N497RC on its OpSpecs.[57] Mr. Barrera testified he and Capital Aerospace knew the relationship with USAC had ended, that flights were no longer going to be dispatched by USAC, and discussions were held with the pilots about converting to part 91 flights.[58] Mr. Barrera's testimony combined with the fact respondent did not contact USAC after N497RC was removed from the OpSpecs corroborate Mr. Beck's testimony and support the law judge's findings of fact. We find respondent's arguments in this regard are without merit.

C. *Reasonable Reliance*

As an affirmative defense, respondent asserted he reasonably relied upon representations made by Messrs. Bell and Barrera that N497RC was RVSM authorized prior to the subject flight, and he reasonably relied upon the documents supplied by USAC, including the OpSpecs and the general operations manual. Our doctrine of reasonable reliance is one of narrow applicability.[59]

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[55] Tr. 186.

[56] Tr. 212.

[57] Tr. 212-13.

[58] Tr. 255.

[59] Administrator v. Angstadt, NTSB Order No. EA-5421 at 18-19 (2008), aff'd Angstadt v. FAA, No. 09-1005, 348 Fed.Appx. 589 (D.C. Cir. Sept. 24, 2009) (per curiam); see also Administrator v. Kooistra, NTSB Order No. EA-5588 at 13 n.14 (2011).

In Administrator v. Fay & Takacs,[60] the Board held if a particular task is the responsibility of another, and "if the [pilot-in-command] has no independent obligation (e.g., based on operating procedures or manuals) *or* ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found."[61]

In the case *sub judice*, the law judge determined respondent did not rely on statements either Mr. Bell or Mr. Barrera made. Respondent was unable to say when Mr. Bell and Mr. Barrera told respondent that N497RC was RVSM authorized; respondent only recalled it was sometime before the flight. Respondent also did not recall if they both informed him at the same time or on different occasions. Respondent provided no corroborating testimony from any other witness, including from Mr. Barrera who testified on respondent's behalf. Therefore, we find respondent's reasonable reliance argument without merit.

Respondent also argues he reasonably relied on the OpSpecs and general operations manual provided by USAC.[62] The law judge found respondent failed to determine if his aircraft was RVSM compliant before he flew in RVSM airspace.[63] We affirm this determination, as respondent provided no credible evidence showing he checked the OpSpecs and the general operations manual prior to takeoff to determine whether N497RC was RVSM compliant. The record establishes respondent could not locate the OpSpecs or general operating manual when

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[60] NTSB Order No. EA-3501 (1992).

[61] Id. at 10 (emphasis in original).

[62] The law judge's ruling focused on respondent's reliance on representations and actions by Mr. Beck as this was the focus of closing arguments by respondent's counsel. Tr. 376-83, 391-93; Initial Decision at 458.

[63] Initial Decision at 464.

FAA inspectors initially asked him for the documents. Based on these facts, we find respondent did not reasonably rely upon the OpSpecs or general operating manual.

Even assuming *arguendo* respondent relied on the OpSpecs or general operating manual, respondent cannot meet the reasonable reliance test as set forth in Fay & Takacs. Respondent, as pilot-in-command, had an independent obligation to ensure N497RC was RVSM authorized before filing a flight plan indicating the aircraft was RVSM authorized and before operating in RVSM airspace.[64] The record establishes respondent was aware USAC did not dispatch the flight and the flight was not under the operational control of USAC. These facts provided a sufficient basis for respondent to question the validity of the version of the OpSpecs and general operations manual available to respondent. For all these reasons, we find respondent's affirmative defense lacks merit.

D. *Waiver of Sanction*

Lastly, respondent argues the law judge was obligated to waive the sanction for respondent's violations under the ASRP. The law judge carefully considered the application of the ASRP to the facts of the instant case, and concluded, although respondent timely filed a report with NASA, his operation of N497RC in RVSM airspace without authorization was not inadvertent. We agree. As discussed above, we reject respondent's reasonable reliance arguments. Respondent's failure to verify RVSM compliance prior to take off was not inadvertent, as respondent chose not to check the status of N497RC's RVSM authorization prior to the September 8, 2011 flight.

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[64] 14 C.F.R. §§ 91.3(a) ("The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft"); 91.180(a); Part 91, Appendix G, section 4(b)(1).

Respondent also argues he is entitled to a waiver of sanction under the ASRP because he was at all times courteous and cooperative with the FAA inspectors during the ramp check, the aircraft was capable of RVSM operations on the day of the subject flight, and he had learned from his mistake. These arguments fail to provide a basis for waiver of sanction under the ASRP. Pilot cooperation and courtesy during FAA inspections is expected and does not warrant a waiver of sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The law judge's oral initial decision is affirmed; and

3. The 60-day suspension of respondent's ATP certificate shall begin 30 days after the service date indicated on this opinion and order.[65]

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT and WEENER, Members of the Board, concurred in the above opinion and order.

[65] For the purpose of this order, respondent must physically surrender his ATP certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

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UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, vs. RICHARD L. BOETA, Respondent.	Docket No.: SE-19349 JUDGE MONTAÑO

U.S. Tax Court Courtroom
Casey U.S. Federal Courthouse
515 Rusk Avenue
Houston, Texas

Thursday,
August 7, 2014

The continuation of the above-entitled matter came on for hearing, pursuant to Notice, at 8:00 a.m.

BEFORE: ALFONSO J. MONTAÑO
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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1 P R O C E E D I N G S

2 (8:09 a.m.)

3 ADMINISTRATIVE LAW JUDGE MONTAÑO: Good morning. We are
4 on the record in the Administrator's case. The case is captioned
5 Administrator versus Richard Lawrence Boeta, and the docket number
6 is SE-19349. We are reconvening this morning so that I can issue
7 my Oral Initial Decision.

8 ORAL INITIAL DECISION AND ORDER

9 ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been a
10 proceeding under the provisions of 49 USC Section 44709, formerly
11 Section 609 of the Federal Aviation Act, and the provisions of the
12 Rules of Practice in Air Safety Proceedings of the National
13 Transportation Safety Board. This matter has been heard before
14 this Administrative Law Judge, and as provided by the Board's
15 Rules, I've elected to issue an Oral Initial Decision.

16 Pursuant to notice dated May 1, 2014, two hearings were
17 conducted in this case. The first was conducted on July 8, 2014,
18 in Miami, Florida, during which the Administrator presented his
19 case in chief. The second hearing was conducted on August 5 and 6
20 in Houston, Texas, and this Oral Initial Decision is being issued
21 on August 7.

22 The Administrator was represented by one of his staff
23 counsel, Counsel Christopher R. Stevenson, Esquire. He is with
24 the Office of Regional Counsel, Southern Region, Federal Aviation
25 Administration. And the Respondent was represented by Mr. Gary

1 Evans, Esquire.

2 The parties were afforded a full opportunity to offer
3 evidence, to call, examine and cross-examine witnesses, and make
4 arguments in support of their respective positions. I will not
5 discuss all of the evidence in detail, but I have, however,
6 considered all of the evidence, both oral and documentary, and
7 that which I do not specifically mention is viewed by me as being
8 either corroborative or as not materially affecting the outcome of
9 this decision.

10 The Respondent appealed the July 13, 2012 Order of
11 Suspension. The Order of Suspension by the Administrator was
12 filed as the complaint in this matter on July 27, 2012. The
13 Federal Aviation Administration alleges that the Respondent
14 violated Federal Aviation Regulations 91.108(a)(1) [sic], which
15 reads that, no person may operate a civil aircraft in airspace
16 designated as Reduced Vertical Separation Minimum airspace unless
17 the operator and the operator's aircraft comply with the minimum
18 standards of Appendix G of this part.

19 The Administrator alleges that Mr. Boeta also violated
20 Section 91.108(a)(2) [sic], which reads that, no person may
21 operate a civil aircraft in airspace designated as Reduced
22 Vertical Separation Minimum (RVSM) space unless the operator is
23 authorized by the Administrator or the country of registry to
24 conduct such operations.

25 And the Administrator alleges that Mr. Boeta violated

1 Section 91, Appendix G, 4(b)(1), which reads that, no person may
2 show, on the flight plan filed with air traffic control, an
3 operator or aircraft as approved for RVSM operations, or operate
4 on a route or in an area where RVSM approval is required, unless
5 the operator is authorized by the Administrator to perform such
6 operation.
7 The Administrator ordered the suspension of any and all
8 air transport pilot certificates held by the Respondent for a
9 period of 60 days.
10 AGREEMENTS
11 There were some agreements in the case prior to the
12 commencement of this proceeding. The Administrator filed his
13 complaint, and the Respondent filed an answer to that complaint.
14 In that answer to the complaint, the Respondent admitted
15 allegations in paragraph 1, 2, 3 and 4. The Respondent denied the
16 factual allegations in paragraph 5 and 6, as well as denying the
17 violations cited by the Administrator.
18 As to the exhibits in this case, the Administrator moved
19 for the admission of Exhibits A-1 through A-6, which were admitted
20 into evidence without objection from the Respondent. And the
21 Respondent moved for the admission of his exhibits in the
22 following order: R-1, R-2, R-3, R-5, R-8, R-7, R-9, R-6, R-10,
23 R-14, R-13, R-15, R-4, and R-11. Those exhibits were admitted
24 into evidence without objection from the Administrator.
25 DISCUSSION

1 The Administrator presented the testimony of three
2 witnesses: Michael Ohannesian, Nestor Pedraza and Charles
3 McKinley. I will talk about the witness testimony first, and once
4 that's completed, then I will discuss how that testimony is
5 analyzed in terms of the decisions I have to make in this case.
6 The first witness to testify for the Administrator was
7 Michael Ohannesian. He is the aviation safety inspector who
8 performed the ramp check in this case on September 8, 2012. He is
9 an A&P certified mechanic. He also has an inspection authority
10 certificate. He also has a private pilot's certificate. He began
11 his aviation career in the military as a mechanic, working on
12 helicopters, and when he left the service he worked for various
13 private contractors. He worked for the Department of State for a
14 period of time, and he now works for the FAA. He has worked on
15 both rotorcraft and fixed-wing aircraft.
16 He testified that he was asked to perform the ramp
17 inspection in this case by his managers and that ramp check took
18 place on September 8, 2011. He testified that he and Aviation
19 Safety Inspector Pedraza performed the ramp inspection at Palm
20 Beach International Airport. When they arrived at the airport,
21 the flight had already landed. He and Mr. Pedraza interviewed the
22 flight crew and checked their medical and pilots' certificates.
23 He then testified that he spoke to the Respondent who said that
24 the Respondent told him he worked for a management company, and he
25 indicated that the owner of the plane was on board the aircraft.

1 He testified that the Respondent told him the process
2 was that when the owner wanted to fly the aircraft or use the
3 aircraft to fly, the owner would contact the management company.
4 The management company would contact the flight crew and the
5 flight would take place. Inspector Ohannesian testified he asked
6 the Respondent if the flight was a Part 91 or Part 135 flight.
7 The Respondent informed him that it was a Part 91 flight, and
8 since the owner was on board and the Respondent said he was
9 working for a management company, he asked for the RVSM letter of
10 authorization, Reduced Vertical Separation Minimums.
11 The Respondent searched for the document in the aircraft
12 for some time and could not find it, so he contacted the
13 management company. Mr. Ohannesian then testified he went to the
14 FBO and looked up the aircraft on his laptop computer. He found
15 that the aircraft had been on an air carrier certificate at one
16 time, so he called the principal maintenance inspector for that
17 carrier, who informed Inspector Ohannesian that the aircraft was
18 no longer on the 135 certificate.
19 Mr. Ohannesian testified that Mr. Boeta returned with
20 faxed copies of an RVSM maintenance manual or program which had
21 not been approved by the FAA. Mr. Boeta told him that he
22 misspoke, that the flight was actually a 135 flight. Inspector
23 Ohannesian then therefore asked Mr. Boeta for the op specs for the
24 135 flight, and Mr. Boeta returned with a faxed copy of those op
25 specs after he contacted his employer.

1 Inspector Ohannesian testified that he knew that the op
2 specs were not current because he had just pulled the most recent
3 documents up on his computer and had spoken to the principal
4 maintenance inspector for the air carrier. He testified that he
5 took photos of the logbooks and recalled that there was an
6 inconsistency with the flight logs because they did not match the
7 carrier name. He testified that he had no other conversations
8 with the Respondent, but at the time Respondent was unable to
9 demonstrate that the aircraft was certified to fly either under
10 the op specs or with a letter of authorization in RVSM airspace.
11 On cross-examination, he testified he was requested by
12 management to perform the ramp check. He does not remember who
13 specifically ordered him to perform the ramp check. He testified
14 he had no personal knowledge as to why this aircraft was targeted
15 for a ramp check, but stated it could be a number of reasons,
16 surveillance or perhaps some other activity. He testified he had
17 no personal knowledge as to why the aircraft was chosen for the
18 ramp inspection. He was assigned the task, he testified, and
19 performed the ramp inspection and requested the documents, as he
20 testified earlier.
21 He testified on cross-examination that he was not aware
22 of any problems with the aircraft being on the previous air
23 carrier certificate. Inspector Ohannesian was shown Respondent
24 Exhibit 1 and testified that the aircraft in issue here, N497RC,
25 was identified, and based on that document, the aircraft was

1 suitable for operation under USAC Airways' carrier certificate
2 based exclusively on that document.
3 He was asked to review Exhibit A-2, and testified anyone
4 reading that document would conclude that the aircraft was listed
5 on USAC Airways' operating air carrier certificate and had been
6 approved for operation in RVSM airspace. Inspector Ohannesian
7 testified that that information was correct, but he could not tell
8 if that information on Exhibit A-2 was the most current
9 information.
10 The inspector testified that the aircraft would remain
11 on the certificate until there was a request to remove it. The
12 request to remove it would come to him, Inspector Ohannesian. He
13 would process the removal of the aircraft from the certification
14 and he would inform the FAA and management of USAC Airways that
15 the aircraft had been removed. He testified that he prepared his
16 ramp inspection report after the inspection, and in response to
17 Mr. Boeta's counsel's questions, Mr. Ohannesian said Mr. Boeta was
18 cooperative, cordial, and courteous.
19 Inspector Ohannesian testified he did not recognize the
20 name John Beck. When asked whether it made a difference because
21 the owner was on board the aircraft, Inspector Ohannesian
22 testified that it really did not make a difference during the ramp
23 check. Inspector Ohannesian was asked to assume that if an
24 aircraft was still under USAC Airways' air carrier certificate, it
25 would be appropriate for aircraft 497RC to fly in RVSM airspace.

1 He responded yes, but that he would have expected to have been
2 provided a copy of the general operating manual and excerpts from
3 the op specs of that aircraft to demonstrate that indeed it was
4 appropriate to fly 497RC in RVSM airspace. He testified that the
5 Respondent did not have that information when he asked for it and
6 the Respondent had to have the information faxed to him.
7 Inspector Ohannesian testified the documents are usually
8 in the aircraft, such as the op specs and the general operating
9 manual, but he could not identify the regulations that required
10 that the documents remain in the aircraft.
11 On redirect, Inspector Ohannesian testified that the
12 documents he was shown on cross provided that USAC Airways could
13 conduct flights under their 135 certificate and that the aircraft
14 was RVSM-certified. He testified that no one else could make the
15 RVSM flights and that was for the exclusive uses of the
16 certificate holder and that certificate holder was USAC Airways.
17 On recross, Mr. Ohannesian was shown R-2, his
18 inspector's statement. In reviewing the report, he agreed that
19 the document refreshed his recollection, that he had spoken to
20 Mr. John Beck at one point. He testified also that he prepared
21 the report of his ramp check the day after the ramp check was
22 accomplished.
23 The next witness for the Administrator was Aviation
24 Safety Inspector Nestor Pedraza. He testified he was in the Air
25 Force for 26 years, retired in 1999, then worked for American

1 Eagle for 11 years as a maintenance supervisor, then as a quality
2 control supervisor. He joined the FAA in 2010. He has a
3 powerplant and airframe mechanic certificate. He was one of the
4 inspectors, he testified, that conducted the ramp check of
5 aircraft 497RC.
6 He testified he interviewed the passengers of the
7 flight, and then he did a walk-around of the aircraft. He then
8 went to assist Aviation Safety Inspector Ohannesian. When he
9 approached Mr. Ohannesian, who was talking to the Respondent, he
10 heard the Respondent inform Inspector Ohannesian that he was
11 flying at an altitude of 41,000 feet. Mr. Ohannesian asked him if
12 the flight was a Part 91 flight or Part 135 flight. The
13 Respondent told Inspector Ohannesian that the flight was a Part 91
14 flight.
15 Ohannesian then asked for the letter of authorization
16 for RVSM. He testified that the Respondent returned to the
17 aircraft to look for the letter of authorization for RVSM but
18 could not find it. He testified that the Respondent said that he
19 would have the information faxed to him. The Respondent then
20 brought the fax to Inspector Ohannesian and Inspector Pedraza at
21 the FBO. Inspector Pedraza was asked to review Exhibit A-1, which
22 he identified as the RVS maintenance procedures for USAC Airways.
23 When asked whether the Respondent said anything about
24 the document, Inspector Pedraza stated that the Respondent said at
25 the time he handed the information to Inspector Ohannesian that

1 the flight was not a Part 91 flight but was a Part 135 flight.
2 According to Inspector Pedraza, Inspector Ohannesian then asked
3 Respondent for the operations specification. The Respondent
4 indicated that he would have those documents faxed as well.
5 Inspector Pedraza reviewed Exhibit A-2 and identified that
6 document as the op specs provided by the Respondent.
7 He testified he also took photographs of the
8 airworthiness certificate, the registration for the aircraft, and
9 the flight manifest and flight logs. He testified he did not find
10 any documents in the aircraft that referred to USAC Airways.
11 On cross-examination, he testified he was approached by
12 Inspector Ohannesian and had been informed that they had been
13 asked to perform the ramp check in this case. He testified that
14 Inspector Ohannesian was his trainer at the time. He testified he
15 spoke to the passengers, and he remembered speaking to the owner,
16 Mr. Caress. The passengers had told Inspector Pedraza they were
17 guests of Mr. Caress and that he was paying for the flight.
18 Inspector Pedraza testified that he used the checklist
19 for the ramp check inspection and that the checklist was the same
20 for Part 91 and Part 135 ramp inspections. He was asked to assume
21 that the aircraft was still on a 135 certificate that belonged to
22 USAC Airways and that the owner was on board. Inspector Pedraza
23 testified that the flight could have been flown as a Part 91 or
24 Part 135, but the op specs and other required documents still had
25 to be on board because the aircraft was a Part 135 aircraft. He

1 testified that the documents had to be on board whether the flight
2 was a 135 flight or a Part 91 flight.
3 Inspector Pedraza was asked to review Respondent's
4 Exhibit 3 and Administrator's Exhibit 2, and he testified that the
5 documents appeared identical. He testified he did not recognize
6 the name John Beck when he was asked about that. Inspector
7 Pedraza testified that he had contacted air traffic control after
8 the ramp inspection to obtain the flight plan that had been filed
9 in this case and the altitudes for the flight in issue. There was
10 no redirect or recross of Inspector Pedraza.
11 The Administrator's last witness was Charles McKinley.
12 He is employed by the FAA as an operations safety inspector. He
13 works at the FSDO in Miramar. He has an ATP certificate, and he
14 has type ratings in the Sabreliner, Learjet, King Air 300 and 1900
15 series. He has a CFI. He is a certified flight instructor for
16 single- and multi-engine land, as well as instrument rating. He
17 also has an airframe and powerplant certificate. He has 30 years'
18 experience in aviation, both in corporate and charter aviation.
19 He was provided information in this case and he wrote the
20 enforcement report.
21 He was shown the Administrator's Exhibit A-3 and was
22 asked to describe it. He described the documents as being the op
23 specs or operations specifications for USAC Airways. He testified
24 that the documents indicated that A003 allowed the air carrier to
25 use CE-414-A in its air carrier operation. D085 in that

1 Administrator's Exhibit A-3 lists the serial number and the N
2 numbers of the aircraft that can be used under the 135
3 certificate. The documents indicate that as of July 11, 2011,
4 USAC Airways had only one aircraft, and that aircraft was a Cessna
5 414. The inspector testified that that was a different aircraft
6 from the aircraft, the Beechcraft aircraft at issue in this case,
7 497RC.
8 Inspector McKinley identified Exhibit A-4, which is a
9 letter of investigation which he sent to the Respondent, and he
10 identified Exhibit A-5 as the Respondent's written request. The
11 Respondent, Inspector McKinley testified, in his response, the
12 Respondent stated that he was the pilot-in-command for the flight
13 on September 8, 2011, and that he, being the Respondent, believed
14 the aircraft was on a 135 certificate and still RVSM-compliant.
15 The Respondent had attached copies of the op specs issued to USAC
16 Airways in 2009. He attached those documents to his response to
17 Inspector McKinley's letter of investigation.
18 Inspector McKinley testified that the pilot-in-command
19 must check certain documents to confirm that the required
20 documents are up-to-date and are on board for the flight. He
21 testified that the pilot-in-command must check the airworthiness
22 certificate, the registration certificate, the operations
23 limitations, which are usually in the aircraft flight manual. The
24 pilot-in-command must ensure the weight and balance information is
25 on the aircraft, that there is a radio station license if flying

1 internationally, and if the aircraft is flying in RVSM airspace,
2 that that RVSM authorization is on board as well.
3 He testified that under Part 91, a letter of
4 authorization would document the RVSM compliance for that flight.
5 If the aircraft was certified for a 135 carrier certificate, the
6 pilot-in-command would find the RVSM authorization in the general
7 operating manual and in the op specs that should be in the
8 airplane. He testified that the general operating manual or the
9 op specs in a 135 setting -- in that setting, the pilot would
10 receive copies of any changes and would insert those copies into
11 the aircraft documentation. That's how the pilot-in-command would
12 be informed as to any changes as to the op specs or the general
13 operating manual.
14 On cross-examination, Inspector McKinley testified he
15 was not familiar with the regulation that required the op specs
16 and general operating manual for a 135 aircraft to be carried on
17 the aircraft on a Part 91 flight. He testified that if USAC 135
18 certificate was still in effect on the day of the alleged
19 violation, the aircraft could have been flown as a Part 91 or as a
20 Part 135 flight. However, he did testify that USAC Airways had
21 the exclusive use of the 135 certificate and RVSM that was
22 attached to that certificate.
23 He testified, when asked about notification of any
24 changes between the owner and pilots and other individuals when
25 there's been a change or removal of an aircraft from the 135 op

1 specs, Inspector McKinley testified that the FAA does not become
2 involved in any disputes or notification between the owner and the
3 carrier when the op specs are changed.
4 Inspector McKinley testified that a document
5 transferring operational control of an aircraft between an owner
6 and a carrier is usually made through a lease. He testified that
7 the FAA receives a request to change op specs all the time because
8 one party or another is not happy with the arrangement. He
9 testified that by not being an employee of USAC Airways, the
10 Respondent, Mr. Boeta, would not be allowed to use the general
11 operating manual and the op specs, which included B046 for Part
12 135 authorized flight in RVSM airspace.
13 Inspector McKinley testified that the general operating
14 manual and the op specs for the Part 135 flights were for the
15 exclusive use of USAC Airways, and those documents and the RVSM
16 authorization could not be used unless USAC Airways had
17 operational control of the flight.
18 Much of the rest of the cross-examination time of this
19 witness was consumed by objections and discussions as to relevant
20 and whether or not there was a good-faith basis for Respondent's
21 counsel's questions. In hindsight, the question as to whether or
22 not the cross-examination questions were in good faith, I find
23 after the evidence has been completed in this case, that I have a
24 question as to whether, in fact, those questions had a good-faith
25 basis. However, I made the rulings that are reflected in the

1 record and those rulings stand on their own.

2 In response to my questions, Mr. McKinley testified that

3 it is the responsibility of the pilot-in-command to ensure that

4 certain required documents are on the aircraft before each flight,

5 and the RVSM authorization has to be one of those documents.

6 That completed the Administrator's case. The second

7 case was convened in Houston, Texas.

8 The Respondent presented the testimony of two witnesses

9 at the hearing, and Mr. Boeta took the stand on his own behalf.

10 The Respondent called Mr. John Beck and Mr. David Barrera.

11 Mr. John Beck testified by telephone and was subpoenaed

12 to testify. However, because of his schedule, arrangements were

13 made to have him testify by telephone. Mr. Beck has a Ph.D. in

14 electrical engineering and a master of science in nuclear

15 engineering. Mr. Beck testified he's a pilot with an ATP

16 certificate, commercial pilot's certificate, a CFI, CFII, and has

17 a rating in several jet aircraft.

18 He testified he developed software to be used in Part

19 135 operations for weight and balance, scheduling, as well as

20 other areas of 135 operations, such as TSA flight list checks.

21 Mr. Beck stated that he started USAC Airways in 2007 as an on-

22 demand charter and cargo Part 135 carrier. He testified that he

23 also managed other charter companies remotely, and they all

24 functioned well. He said he was the chief pilot for USAC Airways,

25 and he testified that he had other business concerns as well.

1 He helped other prospective air charter companies obtain
2 135 certificates from the FAA. He prepares the necessary formats,
3 develops the necessary manuals for the companies, and he has
4 accomplished obtaining 135 certification for companies in 40
5 instances to date. He testified he became involved with Capital
6 Aerospace because the company wanted to become a 135 operation.
7 He agreed to help with the certification process and offered to
8 manage the Beechcraft aircraft 497, which they were managing,
9 under USAC Airways' 135 certificate.
10 Mr. Beck testified that he initially had dealings with
11 Mr. Tony Bell first, but then later had dealings with Mr. Craig
12 Potton, Mr. Boeta, and Mr. David Barrera. He testified that USAC
13 also conducted training to all of Capital Aerospace pilots. He
14 did so to make sure that all of the Capital Aerospace pilots were
15 qualified and current to fly the Beechcraft jet under 135
16 operations. Those flights, again, had to be under the exclusive
17 control of USAC Airways.
18 He testified that the training included a discussion of
19 the regulations that required compliance when flying RVSM. He
20 testified that USAC Airways did not distinguish between Part 91
21 flights and Part 135 flights. All flights were treated the same
22 and required the same documentation on board the aircraft.
23 Mr. Beck testified he trained Mr. Boeta along with other
24 pilots from Capital Aerospace. The Respondent had to complete a
25 ground school training, computer-based training, and he conducted

1 proving runs. Mr. Boeta was involved in conducting proving runs,
2 and Mr. Boeta had to pass a written examination and oral
3 examination conducted by the FAA.
4 Mr. Beck testified that USAC Airways and Redi-Carpet
5 entered into a dry lease agreement in which Mr. Beck agreed to
6 operate the Beechcraft jet under its 135 certificate. Pursuant to
7 the agreement, USAC would have the complete operational control,
8 and there was an agreement for rental payment for each flight.
9 The flight crews that flew aircraft 497RC were not
10 employees of USAC Airways, but the Respondent testified they had
11 to fill out the applications for employment with USAC Airways so
12 that USAC Airways had a record that Mr. Boeta and the other pilots
13 met the requirements for 135 flights, which were made under the
14 exclusive control under USAC Airways' 135 certificate.
15 The lease was to last a year. At the expiration of that
16 lease, the period would become a month-to-month rental agreement.
17 Mr. Beck identified R-10 which required that all pilots
18 had to attend training regarding operational control of the
19 aircraft and the importance of the aircraft being dispatched by
20 USAC Airways. The pilots would have to have a dispatch sheet in
21 order to fly the aircraft, that aircraft being 497RC. Mr. Beck
22 testified if you did not get a dispatch sheet, you did not fly the
23 aircraft.
24 When asked if Mr. Boeta's agency agreement had been
25 terminated, Mr. Beck testified that it had not been formally

1 terminated because he had attempted to contact Mr. Boeta by
2 telephone and Mr. Boeta would not return his telephone calls.
3 Mr. Beck testified that he requested that aircraft 497RC be
4 removed from USAC Airways' air carrier certificate. He testified
5 that he requested it be removed because of problems and a number
6 of issues with Mr. Bell, Capital Aerospace, and with Mr. Boeta.
7 He testified that Mr. Bell was supposed to submit the
8 forms that USAC Airways had prepared so that Capital Aerospace
9 could be certified as a Part 135 carrier. He testified that
10 Mr. Bell did not do so. He testified that it appeared to him that
11 Capital Aerospace simply wanted to use USAC's 135 certificate and
12 have USAC continue to manage aircraft 497RC under USAC's 135
13 certificate.
14 He testified that Mr. Boeta did not provide required
15 data as to time and that data that Mr. Boeta did provide to USAC
16 Airways contained many errors. He testified that he also found
17 out that Mr. Boeta had flown a departure procedure and the FAA had
18 an interaction with him about that departure procedure, but
19 Mr. Beck was never informed by Mr. Boeta or Capital Aerospace of
20 that interaction with FAA officials. He also testified that there
21 were repairs to aircraft that he believed were not documented in
22 the aircraft logbooks as required by the Federal Aviation
23 Regulations.
24 Based on these problems, Mr. Beck testified that he felt
25 that USAC Airways was no longer in full operational control. He

1 testified that the last dispatch of aircraft 497RC by USAC Airways
2 was on March 20, 2011, and on May 10, 2011, he asked the FAA to
3 remove aircraft 497RC from USAC Airways' 135 certificate. He
4 testified that he provided notification to Capital Aerospace by
5 telephone. He testified that he contacted Mr. Bell by telephone
6 and also contacted him in writing.
7 He again testified that there was no distinction made
8 between Part 91 flights and Part 135 flights whenever the flight
9 was made under USAC Airways' air carrier certificate, provided
10 that USAC Airways had operational control of the flight.
11 On cross-examination, Mr. Beck testified that the last
12 dispatch of 497RC was in March of 2011. He testified that the
13 pilots from Capital Aerospace would have known that they were not
14 flying for USAC Airways when they did not receive a dispatch from
15 that company. He had earlier testified that the pilots were
16 specifically trained on the importance of receiving a dispatch
17 document from USAC Airways.
18 He reiterated that neither Mr. Boeta nor Mr. Bell would
19 return his phone calls regarding the operational control issues
20 related to the operation of 497RC. He testified that USAC Airways
21 would assign a pilot-in-command to fly the aircraft under USAC
22 Airways' Part 135 certificate. The aircraft would have to have on
23 board the USAC Airways Part 135 general operations manual and
24 operations specification, and each member of the crew would also
25 have a copy of the general operating manual and operations

1 specifications. That manual, he testified, was required to be in
2 the aircraft, and those documents had the aircraft number,
3 identification number N497RC, printed on the top of each page.
4 Mr. Beck testified that Mr. Boeta was provided a copy of
5 the general operations manual and the operating specifications.
6 He testified if a pilot was asked to produce the general
7 operations manual and the operations specification, he could
8 simply obtain it from inside the aircraft. Mr. Beck testified
9 that a dispatch was issued to the captain on each flight to ensure
10 that the flight had been properly dispatched before that pilot-in-
11 command flew the aircraft.
12 He testified that if a flight was under USAC Airways'
13 135 certificate, a dispatch sheet was required both under Part 91
14 flights and Part 135 flights under the exclusive control or
15 operational control of USAC Airways. Mr. Beck also testified that
16 the pilots were to keep flight and duty records which were to be
17 submitted to USAC Airways, and this was to ensure that the pilots
18 were current and had the appropriate check rides before they flew
19 USAC Airways Part 135 flights under USAC's operational control.
20 He testified that Capital Aerospace failed to submit
21 time records as was required and requested by USAC Airways. After
22 the aircraft was removed from USAC Airways' op specs, Capital
23 Aerospace did not provide any time or maintenance records after
24 that period of time. Mr. Beck testified that only he and the
25 director of operations could dispatch aircraft, which included

1 N497RC.

2 He further testified that he had tried to recover the
3 general operations manual and op specs that were issued to
4 Mr. Boeta, but Mr. Boeta never returned his telephone calls.
5 After March of 2011, Mr. Beck testified that USAC did not provide
6 recurrent training for Mr. Boeta, and Mr. Boeta never called to
7 ask why he was no longer receiving a dispatch sheet from USAC
8 Airways to fly aircraft 497RC.

9 On redirect, Mr. Beck testified that for all flights a
10 dispatch sheet had to be issued, whether it was a Part 135 or Part
11 91 flight. He agreed that the owner of the airplane could do
12 whatever he wanted to do with his aircraft, but he testified that
13 if the owner flew the aircraft contrary to the certificate, the
14 135 certificate, that action would remove the aircraft from the
15 certificate.

16 I asked Mr. Beck a number of questions. In response to
17 my questions, he testified he trained Mr. Boeta. He also
18 testified that USAC was able to operate the aircraft in RVSM based
19 on what he described as a B046 certification, which is documented
20 in the general operations manual and op specs, so that a separate
21 letter of authorization was not required for his Part 135
22 operation. He testified that he did not require the pilots to
23 check the documentation for RVSM flight every time they flew, but
24 they were trained and retrained as to the requirement
25 periodically.

1 Mr. David Barrera then testified for the Respondent. He
2 testified that he was in the military and wanted to fly with the
3 military, was unable to do so. He worked to obtain a pilot's
4 certificate on his own and became a flight instructor in the year
5 2000. He was hired by Continental Express but was furloughed
6 during the downturn in the economy, and he returned to flight
7 instructing. He subsequently went to work for a Part 135
8 operation called World Class Aviation. He worked there for
9 approximately 1½ to 2 years.
10 In October of 2009, he was called by Tony Bell, and he
11 testified he was asked to assist Tony Bell in starting a new Part
12 135 business. He testified that he had spare time while he was
13 working for United as a pilot and he agreed to assist Mr. Bell in
14 starting up the Part 135 business. He testified he assisted and
15 advised Mr. Bell, but he received no payment for his services. He
16 testified he helped prepare the manuals for Capital Aerospace. He
17 also conducted interviews to hire employees. He testified he
18 interviewed Mr. Boeta and that Mr. Boeta had been hired as a pilot
19 for Capital Aerospace.
20 Mr. Barrera testified that Capital Aerospace had an
21 owner of an aircraft, Redi-Carpet, which could be used in a 135
22 operation. He testified that he did not possess a formal title,
23 business title, at Capital Aerospace, nor did he hold a regular
24 position. He testified that he was more of a consultant. He
25 testified he received a call from Mr. Tony Bell indicating that

1 Mr. Bell had spoken to Mr. John Beck, who could help create a Part
2 135 operation for Capital Aerospace.
3 USAC Airways and Mr. Beck would provide manuals and work
4 to create 135 operation, create the required forms for FAA
5 approval, and at the same time, the Redi-Carpet's Beechcraft jet
6 497RC could be used in USAC's Part 135 operation. Mr. Barrera
7 testified he assisted in arranging some of the flights by Capital
8 Aerospace, and he testified he acted as a bridge between USAC
9 Airways and Capital Aerospace.
10 He testified he was involved in proving runs and
11 coordinated with the FAA for those proving runs. He also
12 testified that Mr. Bell was concerned at one point that the
13 progress was taking so long for Capital Aerospace to obtain the
14 135 certificate. Mr. Bell subsequently went on to buy a company
15 that had a Part 135 certificate.
16 Mr. Barrera testified that the relationship between
17 Mr. Bell and Mr. Beck did not go well, and Mr. Barrera did his
18 best to keep things together. When the flight was arranged, he
19 testified that Mr. Bell would obtain a client, provide a quote,
20 and refer the quote to Mr. Beck for review. Mr. Barrera testified
21 that he would then help oversee getting the crew ready at Capital
22 Aerospace and notify the crews once the flight was approved. He
23 testified that there was a learning curve regarding aircraft
24 dispatches, but he could not recall if in 2010, the owner of 497RC
25 flew any Part 91 trips.

1 Mr. Barrera testified that since there was no sign of
2 the development of a 135 certificate in the near future, the
3 relationship between Capital Aerospace and USAC Airways soured.
4 He testified that there were discrepancies with maintenance not
5 being documented and Mr. Beck was concerned with that fact, or he
6 testified that Mr. Beck was concerned that maintenance was not
7 being documented.
8 Mr. Barrera, testified as to one training incident that
9 he described as the straw that broke the camel's back, when the
10 person that was required to take the training missed his flight to
11 take the training. Mr. Barrera testified that as a result, that
12 Capital Aerospace -- because of the termination of the agreement
13 between Capital Aerospace and USAC Airways, Capital Aerospace
14 still had an aircraft that operated under Part 91. He testified
15 that aircraft 497RC had been removed from USAC Airways'
16 certificate, but no one had told them of that fact.
17 He testified that USAC Airways was not dispatching the
18 aircraft 497RC, and Mr. Barrera testified that Mr. Beck had told
19 Redi-Carpet that the dry lease had been cancelled. Mr. Barrera
20 testified that he did not know the RVSM remained with the 135 air
21 carrier and only learned of this after the ramp check of
22 Mr. Boeta's flight on September 8, 2011.
23 Mr. Barrera, identified R-7, Mr. Boeta's application for
24 employment with USAC Airways, and he testified he was not sure if
25 Mr. Boeta was an independent contractor or was a full-time

1 employee of Capital Aerospace. Mr. Barrera testified that he had
2 been listed on Exhibit R-9 as the director of operations for
3 Capital Aerospace, but again, he denied he held any position at
4 Capital Aerospace.
5 On cross-examination, Mr. Barrera testified that after
6 March 20, 2011, flights were not dispatched by USAC Airways and he
7 knew that aircraft 497RC would not be dispatched as part of USAC's
8 Part 135 operation or for a Part 135 flight. He agreed that he
9 and Capital Aerospace were aware that the relationship between
10 USAC Airways and Capital Aerospace had ended. He testified that
11 he now understands that the RVSM is operation-specific, meaning
12 that only USAC Airways could use the RVSM authorization.
13 He testified he could not say that every flight after
14 March of 2011 at Capital Aerospace was flown as a Part 91 flight.
15 If the FAA looked at the aircraft logbooks, he testified that
16 Capital Aerospace had entered into some lease arrangements with
17 individuals other than the owner to meet the flight requirements
18 under Part 91. He testified he never saw those leases.
19 On redirect, he reiterated that he was aware that the
20 relationship between Capital Aerospace and USAC Airways had ended
21 because of the flights being conducted at Capital Aerospace under
22 Part 91 and that there were no more Part 135 dispatches from USAC
23 Airways. He testified that it was clear to him and everyone else
24 at the Capital Aerospace that there was no longer a relationship
25 between USAC Airways and Capital Aerospace.

1 Mr. Barrera was vague and somewhat ambiguous about his
2 role with Capital Aerospace. He's not really sure what position
3 he specifically held or what position Mr. Boeta specifically held,
4 either as a contractor or permanent employee, despite the fact
5 that he, Mr. Barrera, hired him. He appeared forthright when he
6 testified that he and others at Capital Aerospace believed the
7 relationship was over with USAC Airways, and he was very candid in
8 his testimony about short-term lease agreements with individuals
9 who were not the owner of aircraft 497RC to allow for the use of
10 aircraft 497RC.
11 Mr. Boeta then testified. Mr. Boeta testified he
12 resides in Cedar Park, Texas. He works for Jet Linx. The company
13 manages aircraft which are owned by others and coordinates charter
14 flights as well. He testified he's a captain for that company.
15 He was born in El Paso. His relatives are his brother and his
16 mother. He graduated from Embry-Riddle University and graduated
17 in 1999 with a B.S. degree, bachelor of science degree, in
18 aeronautical science.
19 He obtained his single- and multi-engine land
20 certification and his commercial ratings during his time at the
21 university. When he graduated, he had between 300 and 400 hours
22 of flight time, as well as, he testified, substantial loans which
23 he had to pay back.
24 He testified he first worked for a glider company after
25 graduation, giving scenic tours in gliders and towing gliders for

1 the company. He subsequently sat in on flights with the company
2 to gain experience, and was subsequently hired by that company.
3 He was subsequently hired by American Eagle out of Dallas, Texas,
4 and worked there for about a year. He testified that he then
5 transferred to Flight Options, which is a company that is involved
6 in fractional aircraft ownership.
7 He testified he served as second-in-command at Flight
8 Options until he was furloughed in 2008, and he spent a year
9 unemployed. A fellow employee from Flight Options informed him of
10 the opportunities that arose at Capital Aerospace. He testified
11 he met Mr. Bell and Mr. Barrera, who interviewed him and then
12 hired him.
13 When asked if he was an employee or an independent
14 contractor, he responded that it seemed to him that he was a
15 contractor because he had no pension plan or company insurance.
16 He said that Mr. Bell and Mr. Barrera had told him his job would
17 become full-time once the aircraft 497RC was placed on a Part 135
18 certificate.
19 Mr. Boeta testified he flew the owner of the aircraft in
20 497RC, as did Mr. Potton. He testified he was not sure if
21 Mr. Potton was a full-time employee or was also a consultant for
22 Capital Aerospace. He testified that he understood that aircraft
23 497RC was RVSM-capable and compliant. He testified that
24 everything seemed normal in terms of the relationship between USAC
25 Airways and Capital Aerospace to him. He also testified he was

1 involved in putting 497RC on the USAC Airways 135 certificate. He
2 testified he had helped with the proving runs and flew with the
3 FAA on board. He testified he was the second-in-command during
4 those proving runs.
5 He testified that it appeared to him that the aircraft
6 497RC was going to be placed on a Part 135 certificate, and he
7 viewed Mr. Bell and Mr. Barrera as his friends. Mr. Boeta
8 testified he went through indoctrination training with Mr. Beck
9 when the arrangement had been made with USAC Airways. He had
10 discussions regarding operation specifications during that
11 training and had an oral exam with the FAA and had passed that
12 exam. He had a Part 135 check ride, and his training included
13 RVSM computer-based training at USAC Airways.
14 He started to fly USAC Airways charter flights in
15 January of 2011. He said he was flying the owner of the aircraft
16 at that time. He testified that he did not know if those flights
17 were flown as a Part 135 or a Part 91 flight because he was not
18 the pilot-in-command. He testified he understood that aircraft
19 497RC could be flown under Part 91 and under Part 135. He
20 testified that when he was shown Exhibit A-1, he agreed that the
21 maintenance program indicated that the RVSM was applicable to both
22 Part 91 and Part 135 flights. He testified no one ever told him
23 he needed a separate RVSM for Part 91 operations. He testified he
24 had a total of 6,000 hours of flight time.
25 Mr. Boeta testified that he was not provided much

1 information as to what was going on between Capital Aerospace and
2 USAC Airways in March of 2011. He had no reason to believe that
3 anything had changed in the relationship in March of 2011 between
4 Capital Aerospace and USAC Airways. He testified he was never
5 contacted by Mr. Beck and testified that Mr. Beck had made false
6 statements during Mr. Beck's testimony under oath. He testified
7 that no one told him anything about what occurred in March or May
8 of 2011.
9 He testified that his employment with Capital Aerospace
10 worked well for him because of his father's serious illness. He
11 testified that after his father passed away, he took a month off
12 from work, and he testified that the flight in question was the
13 first flight he had taken since his father passed away. During my
14 questioning, Mr. Boeta testified that the period of time he took
15 off or the month he took off spanned a period in August and early
16 September. There were no specific dates he provided in his
17 testimony.
18 He testified that before the flight, he made the usual
19 preparations for the trip. He checked the weather, did not
20 believe anything had changed with the aircraft before his flight.
21 He was asked about the ramp check, and he testified that he had
22 experienced one ramp check in the past, but he testified that this
23 ramp check was atypical because the inspectors were very
24 aggressive. They talked to the passengers before talking to him.
25 He testified that he understood that the RVSM was no longer in

1 effect. Mr. Boeta testified that he cooperated with the aviation
2 safety inspectors that performed the ramp check.
3 He testified that there was no physical difference in
4 the aircraft before March 2011 and the day of his ramp check --
5 before March 2011, after March 2011, and the day of his ramp
6 check. He identified Exhibit R-15, which is the NASA report he
7 filed. He testified that he filed the report because he
8 understood that there was a discrepancy in the information Capital
9 Aerospace gave him and the information the inspectors had
10 regarding aircraft 497RC.
11 He testified he would not willfully violate or
12 deliberately violate any Federal Aviation Regulation. He
13 testified that there were other ways to make the flight on
14 September 8, 2011 to avoid RVSM airspace entirely. He testified
15 that he takes full responsibility for his actions and is seeking a
16 waiver of the sanction in this case. He testified that his trust
17 had been misplaced and he felt that Capital Aerospace had lied to
18 him.
19 On cross-examination, the Respondent testified he
20 accepted responsibility for the violation in this case, the
21 alleged violations in this case. He testified that he now
22 understands that the aircraft 497RC was not RVSM-compliant. He
23 agreed that his flight on September 8, 2011 was not dispatched by
24 USAC Airways. Mr. Boeta testified that he understood that the
25 flight on that day was the under the operational control of

1 Redi-Carpet. He testified that he understood that USAC Airways
2 had not dispatched a flight for 497RC since March. He testified
3 he was aware of that fact.
4 Mr. Boeta testified that he did not have the USAC
5 Airways general operating manual or the op specs for aircraft
6 497RC on board the aircraft when he made the flight. He testified
7 he did not provide these documents during the ramp check because
8 the aviation safety inspectors never asked for the general
9 operating manual or the operation specifications. They only asked
10 him for the RVSM letter of authorization.
11 He testified that after May of 2011, he had flown
12 aircraft 497RC with the owner on board. He testified he flew
13 other flights in the aircraft when the owner was not on board. He
14 said he had flown the owner of the aircraft before he filled out
15 the application for USAC Airways. He testified that there were
16 flights after May of 2011 on 497RC with passengers other than the
17 owner, Mr. Caress. He testified that Capital Aerospace provided
18 him with paperwork for the flight and lease agreements to fly the
19 passengers who, as I indicated, were not the owner, Mr. Caress.
20 He testified he did not know whether or not this arrangement was
21 proper or improper.
22 There was no redirect of Mr. Boeta. In response to my
23 questions, he testified that the op specs and the general
24 operating manual were on the aircraft 497RC, which had included
25 the Part 135 RVSM authorization. He testified that he did not

1 give the ASIs, aviation safety inspectors, these documents, again,
2 because they did not ask for those documents. They asked for the
3 letter of authorization to fly RVSM. He testified that the
4 aviation safety inspectors never asked him for that information
5 but instead told him what documents he needed to provide, such as
6 the RVSM maintenance manual.
7 I asked him about the checklist at R-15, and he
8 testified he went through it before the flight, even though it was
9 a USAC Airways checklist and he had not been dispatched by USAC
10 Airways. Mr. Boeta testified he was informed by Capital Aerospace
11 that 497RC was still RVSM-approved. He testified that that
12 information was provided to him verbally at some time before the
13 flight. When I specifically asked what position Mr. Barrera held
14 in Capital Aerospace, Mr. Boeta testified that Mr. Barrera did not
15 have a specific position assigned to him.
16 He testified that during the ramp check, that he
17 contacted Mr. Bell who told the Respondent that aircraft 497RC was
18 RVSM-compliant, because it was still on the USAC Airways Part 135
19 certificate. When I asked him if that was the information
20 received from Mr. Bell during the ramp check, why did he not
21 provide the aviation safety inspectors performing the ramp check
22 the information for the Part 135 certificate that included an RVSM
23 authorization. Again he testified that the aviation safety
24 inspectors did not ask for that information; they asked for the
25 Part 91 RVSM letter of authorization.

1 On direct examination he had testified that he had
2 misplaced his trust in Capital Aerospace and they lied to him. I
3 asked who lied to him, and he testified that Mr. Bell had told him
4 that the RVSM certificate for aircraft 497RC was still valid and
5 compliant. When I asked when that representation was made, he
6 simply stated it was made sometime before the flight. He also
7 testified that Mr. Barrera had also told him that the RVSM for 497
8 was still valid and compliant. When I asked why he would rely on
9 Mr. Barrera about the RVSM being compliant if Mr. Barrera held no
10 position at Capital Aerospace, the Respondent was nonresponsive in
11 his answer.
12 Respondent testified on direct examination that Mr. Beck
13 had made a false statement when he testified under oath that
14 Mr. Beck had tried to call him, Mr. Boeta, to ask for the op specs
15 and the general operating manual for aircraft 497RC. When I asked
16 why Mr. Beck would make such false representation under oath,
17 Mr. Boeta testified that he didn't know.
18 When I asked again who at Capital Aerospace had told him
19 that the RVSM was still valid, he testified that both Mr. Bell and
20 Mr. Barrera told him. He testified that they told him on separate
21 occasions. When I asked specifically when, he testified it was
22 sometime after May of 2011 and before the September 8, 2011 flight
23 that involved the ramp check.
24 Mr. Boeta also testified to clarify the statement on the
25 NASA form by adding additional verbiage. He testified that

1 additional information was provided on the rest of the form that
2 was consistent with his testimony on the witness stand. However,
3 that additional documentation was not entered into evidence in
4 this case to corroborate his testimony as he indicated it would.
5 In response to my questions, he testified that while the ramp
6 check was aggressive, it did not affect his ability to respond to
7 questions posed by the aviation safety inspectors.
8 Now, I'll discuss the testimony -- and I appreciate your
9 patience -- relative to the issues I have to decide in this case.
10 I will first address whether the Administrator has proven his
11 prima facie case. That is the first issue. The Administrator has
12 to prove his case. If the Administrator proves his case, then I
13 have to determine if the Respondent, Mr. Boeta's affirmative
14 defenses are proven by a preponderance of the evidence.
15 The Respondent in his answers to the complaint admitted
16 the factual allegations in paragraphs 1 through 4 of the
17 complaint. He denied paragraph 5 and paragraph 6 of the
18 complaint.
19 Paragraph 5 of the complaint reads, "At the time of the
20 flight, there was no valid letter of authorization for N497RC to
21 operate in RVSM airspace." The Administrator presented the
22 credible testimony of aviation inspectors Ohannesian and Inspector
23 Pedraza who testified that the Respondent could not produce a
24 valid letter of authorization for aircraft 497RC, could not
25 produce this RVSM authorization during the ramp check on September

1 8, 2011.

2 Inspector Ohannesian testified that while Respondent
3 first indicated that the flight was a Part 91 flight, because of
4 that representation, Inspector Ohannesian requested a valid letter
5 of authorization to fly RVSM, which should have been on board the
6 aircraft. Inspector Ohannesian testified that the Respondent
7 could not find a letter of authorization and subsequently
8 indicated he would call the management company for a copy of that
9 information.

10 While the Respondent attempted to obtain the
11 information, Inspector Ohannesian conducted a search on his laptop
12 and found that 497RC had previously been on a USAC Airways Part
13 135 certificate, but as of September 8, 2011, the aircraft had
14 been removed from USAC Airways' Part 135 certificate. Respondent
15 subsequently informed Inspector Ohannesian that he had been
16 mistaken and the flight was actually a Part 135 flight. Based on
17 the new information, Inspector Ohannesian asked for the operations
18 specification that should have included the Part 135 authorization
19 to fly RVSM. Those documents should have also been on board the
20 aircraft.

21 However, the Respondent produced documents which were an
22 aircraft maintenance manual, which were faxed to him, and he
23 provided those documents to Inspector Ohannesian. Inspector
24 Ohannesian testified that the documents provided by the Respondent
25 did not prove that the aircraft was RVSM-compliant. The

1 Respondent presented no evidence to establish that there was a
2 valid letter of authorization for N497RC to operate in RVSM
3 airspace on September 8, 2011. The only semblance of an argument
4 on this point came from Respondent.
5 Mr. Boeta testified that USAC Airways op specs and the
6 general operations manual were on board the aircraft, but he did
7 not provide those documents to the aviation safety inspectors
8 because they did not specifically ask for those documents. His
9 testimony is contradicted by the testimony of Inspector Pedraza
10 and Inspector Ohannesian, who both testified the Respondent was
11 asked to provide the operations specifications for the flight.
12 I do not find that the Respondent's testimony on this
13 point is credible or logical. If he truly believed that the
14 aircraft was RVSM-compliant under USAC's 135 certificate and proof
15 of that fact was in the general operating manual and the op specs
16 that were, according to Respondent, in the aircraft, he should
17 have provided that information to the aviation inspectors.
18 I must note that the evidence presented by the
19 Administrator clearly establishes by a preponderance of evidence
20 that USAC Airways' Part 135 RVSM authorization is for the
21 exclusive use of USAC Airways and cannot be used by any other
22 person or entity. Further, aircraft 497RC had been removed from
23 USAC Airways' op specs on May 10, 2011. Thus, even if I were to
24 find Respondent's testimony to be credible, he nor Capital
25 Aerospace could use USAC Airways' Part 135 RVSM authorization even

1 if it was still in existence on September 8, 2011. That RVSM
2 authorization was not in existence on September 8, 2011. Thus,
3 based on the evidence before me, I find that the Administrator has
4 proven the allegations in paragraph 5 of the complaint by a
5 preponderance of reliable, probative and credible evidence.
6 As to paragraph 6, the complaint reads, "At the time of
7 the flight, aircraft 497RC was not authorized to operate in RVSM
8 airspace." Again, the Administrator has established through the
9 credible testimony of its aviation inspectors, Pedraza,
10 Ohannesian, and Inspector McKinley, that aircraft 497RC was not
11 authorized to operate in RVSM airspace on September 8, 2011.
12 During his testimony, the Respondent testified he
13 accepted responsibility for the charged violations in this case
14 during cross-examination by the Administrator and on direct
15 examination as well. The Respondent also testified that he now
16 understands that aircraft 497RC was not RVSM-compliant when he
17 flew it in RVSM airspace. He does not dispute that he flew in
18 RVSM airspace on September 8, 2011 in aircraft 497RC.
19 Respondent presented no evidence or arguments to attempt
20 to prove that at the time that the flight on September 8, 2011,
21 aircraft 497RC was authorized to operate in RVSM airspace. All
22 Respondent argued, that he thought 497RC was RVSM-compliant on
23 September 2011. That does not establish that aircraft 497RC was
24 RVSM-compliant on that date. Thus, I find the Administrator has
25 proven by a preponderance of the evidence the allegations in

1 paragraph 6 of the complaint.

2 Based on all of the evidence before me, I find that the
3 Administrator has proven by a preponderance of reliable,
4 probative, and credible evidence all of the disputed factual
5 allegations in his complaint, and having done so, has established
6 the violations of the cited Federal Aviation Regulations. Having
7 found that the Respondent has proven his prima facie case by a
8 preponderance of reliable, probative and credible evidence, I now
9 turn to the Respondent's affirmative defenses.

10 Before I discuss the Respondent's affirmative defenses,
11 I must note the Respondent has expended considerable time arguing
12 that USAC Airways' RVSM authorization could be used for Part 135
13 as well as Part 91 flights, such as the flight with the owner on
14 board that took place on September 8, 2011.

15 The Administrator has established that the applicable
16 regulations clearly state that the RVSM authorization is operator-
17 specific. Only USAC Airways, the operator who obtained the RVSM
18 authorization, can utilize the RVSM authorization. It can only be
19 used when USAC Airways has operational control of the flight.
20 USAC did not dispatch Respondent for the flight on September 8,
21 2011, and USAC Airways did not have operational control over that
22 flight.

23 Furthermore, the aircraft in this case which was flown
24 by the Respondent on September 8, 2011, had been removed from USAC
25 Airways' operation specification on May 10, 2011. The RVSM

1 authorization no longer existed. Respondent does not directly
2 refute the Administrator's representations as to the regulations,
3 but instead simply continues asking, continues to argue that USAC
4 Airways' RVSM can be used for both Part 91 Capital Aerospace
5 flights as well as Part 135 flights.
6 Having made that point, now I turn to the Respondent's
7 affirmative defenses. In his answer to the complaint, the
8 Respondent raises five affirmative defenses. The first
9 affirmative defense, Respondent argues that the complaint and each
10 claim or allegation contained therein fails to state facts
11 sufficient to constitute a valid claim or cause of action against
12 the Respondent, and the complaint fails to state any claim upon
13 which relief may be granted.
14 As I stated, Respondent admitted to four of the six
15 allegations in the complaint, and the Administrator has proven the
16 allegations in paragraph 5 and paragraph 6 of the complaint.
17 Since the Respondent has admitted some of the allegations and the
18 Administrator has proven the remaining allegations, I must find
19 that the Respondent has not proven this affirmative defense by a
20 preponderance of the evidence.
21 As to the second affirmative defense, it reads that,
22 "Any regulatory violations alleged by the Administrator were not
23 attributable to or proximately caused by any purported act or
24 omission by the Respondent." Again, Respondent testified on
25 cross-examination that he took responsibility for the charged

1 violations in this case. It is undisputed that the Respondent
2 flew 497RC on September 8, 2011.
3 He filed an RVSM flight plan and told Inspector
4 Ohannesian that he flew at an altitude of 41,000 feet, which is
5 within RVSM airspace. Respondent has presented no evidence to
6 establish that the alleged violations were not attributable to or
7 proximately caused by any purported act or omission by the
8 Respondent. I, therefore, find that the Respondent has not proven
9 this affirmative defense by a preponderance of the evidence.
10 As to his third affirmative defense, Respondent states
11 that the sole proximate cause of the regulatory violations alleged
12 by the Administrator was the action, inaction or negligence of a
13 person or persons other than Respondent for such action, inaction
14 or negligence, and the Respondent was in no way responsible.
15 Respondent has not proven by a preponderance of the
16 evidence that the sole proximate cause of the regulatory
17 violations alleged by the Administrator was the action, inaction,
18 or negligence of a person or persons other than the Respondent,
19 for such actions, inactions or negligence, and that the Respondent
20 is in no way responsible. The Respondent presented no evidence as
21 to this affirmative defense and, therefore, I cannot find that he
22 has proven this affirmative defense by a preponderance of the
23 evidence.
24 As to his fourth affirmative defense, the Respondent's
25 defense reads that, "The Administrator's alleged regulatory

1 infractions were caused solely or, in the alternative, were
2 contributed to, by the acts or fault of persons or entities for
3 whom Respondent was not responsible, and said acts or faults were
4 intervening and/or superseding and/or the sole causes of the
5 Administrator's alleged violations."
6 I cannot find that the Respondent has proven by a
7 preponderance of evidence that the alleged regulatory infractions
8 were caused solely or, in the alternative, were contributed to by
9 the acts or faults of persons or entities for whom Respondent was
10 not responsible, and that the said acts or faults were intervening
11 and/or superseding and/or the sole cause of the Administrator's
12 alleged regulatory violations. The Respondent does not
13 specifically address this specific affirmative defense as worded.
14 Respondent has not proven this affirmative defense by a
15 preponderance of the evidence.
16 While the aforementioned affirmative defenses appear to
17 be boilerplate negligence form book types of defenses, which have
18 not been proven by the Respondent, the Respondent does raise a
19 relevant affirmative defense in this case. He argues that he is
20 not responsible for the violation of the cited regulations because
21 he reasonably relied on the fact that USAC Airways' operations
22 specification had authorized the operation of aircraft 497RC in
23 RVSM airspace.
24 Respondent argued in his response to the Administrator's
25 motion for summary judgment that he reasonably relied on the fact

1 that Capital Aerospace never told him that the aircraft 497RC was
2 no longer RVSM-authorized. However, at hearing, he testified
3 under oath that Capital Aerospace had lied to him when he was told
4 by Capital Aerospace that aircraft 497RC was still under USAC
5 Airways' 135 air carrier certificate and was RVSM-compliant.
6 The Respondent also argued in response to the
7 Administrator's motion for summary judgment that USAC Airways
8 never informed Capital Aerospace that it was removing aircraft
9 497RC from its operations specification, and he asserted that had
10 USAC Airways informed Capital Aerospace, then Capital Aerospace
11 would have informed him and he would not have flown aircraft 497RC
12 in RVSM airspace on September 8, 2011.
13 Respondent argues that Mr. Beck removed aircraft 497RC
14 from its operation specifications on May 10, 2011, and never
15 informed Capital Aerospace, Redi-Carpet or Mr. Boeta, or any of
16 the other pilots of Capital Aerospace of that action.
17 Respondent's counsel argues that Mr. Beck's refusal to notify
18 anyone of that removal of the aircraft from the USAC Airways op
19 specs was a staggering act, that he's staggered by the fact that
20 Mr. Beck did not inform anyone as to the removal of aircraft 497RC
21 from USAC Airways' op specs.
22 Respondent argues that Mr. Beck's actions were intended
23 to sabotage Capital Aerospace and Mr. Boeta. He also argues that
24 he, Mr. Beck, required Mr. Boeta to complete an employment
25 application as some form of sleight of hand. Mr. Beck was

1 subpoenaed to testify by the Respondent. Mr. Beck testified that
2 he did notify Capital Aerospace that he had removed 497RC from
3 USAC Airways' op specs. He testified he informed Antony Bell,
4 whom he had the agreement with, of the action by telephone and in
5 writing. He testified that he tried to get Mr. Bell to send him
6 an e-mail confirming that he had been informed of the removal of
7 497RC from the USAC Airways op specs, but Mr. Bell did not comply.
8 Respondent's counsel argued that Mr. Beck is not to be
9 believed because he failed to acknowledge that he was angry with
10 Capital Aerospace until he was reminded that he had previously
11 said he had become angry because of the difficulties he was having
12 with Capital Aerospace.
13 I listened to the testimony of Mr. Beck. I found his
14 testimony to be credible both on direct and cross-examination.
15 The one irrelevant inconsistency noted by Respondent's counsel
16 does not destroy Mr. Beck's credibility. I did not find him as
17 reprehensible as portrayed by Respondent's counsel. I believe he
18 informed Mr. Bell of the removal of 497RC from USAC Airways' op
19 specs.
20 Mr. Beck also testified that he tried to call Mr. Boeta
21 to request that he return the op specs and the general operating
22 manual for aircraft 497RC. Mr. Boeta testified that Mr. Beck
23 never tried to contact him. Mr. Boeta went so far as to state
24 that Mr. Beck made false statements under oath, essentially
25 committed perjury. When I asked Mr. Boeta why Mr. Beck would make

1 such false statements, he replied he did not know. Mr. Beck has
2 nothing to gain by making the alleged false statements.
3 Mr. Boeta, on the other hand, is attempting to establish
4 that he was without knowledge that aircraft 497RC was no longer on
5 USAC Airways' op specs and was no longer RVSM-compliant. I do not
6 find Mr. Boeta's testimony as to Mr. Beck's false statements to be
7 credible. I find Mr. Beck's testimony that he tried to contact
8 Mr. Boeta by phone and Mr. Boeta did not return his calls to be
9 credible.
10 Now I will address Mr. Boeta's assertion that he
11 reasonably relied upon representations by Capital Aerospace. As
12 previously noted, in his response to the Administrator's motion
13 for summary judgment, Respondent argued that he was never told by
14 Capital Aerospace that aircraft 497RC was not RVSM-compliant.
15 Contrary to this earlier assertion, Respondent testified under
16 oath that Capital Aerospace had told him a lie and lied to him
17 when he was specifically told that the RVSM authorization was
18 still valid.
19 When I asked him who lied to him, he testified that
20 Mr. Bell had told him that the RVSM certificate for the aircraft
21 in this case was still valid. When I asked when that
22 representation was made, at what point in time by Mr. Bell,
23 Mr. Boeta simply stated that representation was made sometime
24 before the flight. Mr. Boeta also testified that Mr. Barrera told
25 him that the RVSM was still valid.

1 When I asked why he would rely on Mr. Barrera about the
2 validity of the RVSM when Mr. Barrera had no position at Capital
3 Aerospace, Respondent, as I indicated, was nonresponsive.
4 However, on closing arguments, Respondent's counsel argued that
5 Mr. Barrera was Mr. Boeta's direct supervisor. He hired him.
6 Again, Mr. Boeta could not specifically state when
7 Mr. Barrera lied to him. He only could say that it was sometime
8 before the flight.
9 Mr. Barrera testified immediately before Mr. Boeta
10 testified. Mr. Barrera was not asked by counsel for Mr. Boeta if
11 he had told the Respondent that 497RC was still RVSM-compliant
12 when he was on the witness stand and under oath. Mr. Barrera was
13 not asked if he was Mr. Boeta's supervisor, as argued by
14 Respondent's counsel. Respondent and his counsel waited to call
15 Mr. Barrera a liar until after he completed his testimony on
16 behalf of the Respondent, until after they smiled and had shaken
17 his hand at their table, and until after he had left the
18 courtroom.
19 I do not find Mr. Boeta's testimony as to his reliance
20 upon the purported lies of Mr. Barrera and Mr. Bell to be
21 credible. Respondent's testimony is severely lacking in
22 specificity as to what specifically was said by Mr. Bell and
23 Mr. Barrera. It is also lacking specificity as to what point in
24 time he was told these purported lies. There is no corroborating
25 testimony from any other witness and certainly no corroborating

1 testimony from Mr. Barrera who was subpoenaed by the Respondent to
2 testify on Respondent's behalf.
3 Mr. Barrera had testified that everyone at Capital
4 Aerospace knew that the relationship between Capital Aerospace and
5 USAC Airways was over because USAC had stopped dispatching the
6 flights. He testified Capital Aerospace understood that they
7 could not use USAC Airways' Part 135 air carrier certificate or
8 the RVSM authorization. He testified that Capital Aerospace was
9 stuck with a jet that could not be chartered. He testified that
10 Capital Aerospace began to use short-term leases to render those
11 individuals who wanted to use the aircraft as short-term owners so
12 that Capital Aerospace could essentially charter aircraft 497RC.
13 Mr. Boeta himself testified that he had piloted flights
14 after May of 2011 with passengers other than the owner. He
15 testified that Capital Aerospace provided him with paperwork and
16 lease agreements to fly the passengers who were not the owner of
17 the aircraft.
18 Based on all of the evidence before me, I cannot find
19 that the Respondent has proven by a preponderance of evidence that
20 he relied upon anything Mr. Beck represented because Respondent
21 never testified he relied upon anything Mr. Beck had said or done.
22 He testified he was generally in the dark about what Mr. Beck had
23 done in March and May of 2011.
24 I cannot find that the Respondent has proven by a
25 preponderance of the evidence that he relied upon any

1 representation by Mr. Bell and Mr. Barrera. I do not find the
2 testimony of Mr. Boeta as to this affirmative defense of
3 reasonable reliance to be credible. Thus, I cannot find that the
4 Respondent has proven any of his affirmative defenses by a
5 preponderance of evidence.
6 As I have not found that Mr. Boeta relied upon any
7 representation, there is no basis to address whether the alleged
8 reliance was reasonable, which I believe never took place,
9 reliance never took place, and there is no need to discuss whether
10 or not the case law as to reasonable reliance applies to this
11 case. I do not believe it does, because I find that there has
12 been no reliance on any information that was alleged to have been
13 provided to Mr. Boeta.
14 Based on the evidence before me, I find that the
15 Respondent has not proven any of his affirmative defenses by a
16 preponderance of reliable, probative and credible evidence.
17 Having found the Administrator's proven all of the
18 allegation in the Administrator's complaint by a preponderance of
19 the reliable, probative and credible evidence, I will turn to the
20 sanction imposed by the Administrator in this case. But first, I
21 want to make findings of facts and conclusions of law, and to do
22 that, I will use the order, the Administrator's complaint.
23 FINDINGS OF FACT AND CONCLUSIONS OF LAW
24 As I indicated, the Respondent admitted to the
25 allegations of paragraph 1 through 4. I have found that the

1 Administrator has proven the allegations in paragraph 5 by a
2 preponderance of the evidence, and has proven the allegations in
3 paragraph 6 by a preponderance of the evidence. Those are
4 specific findings of facts and conclusions of law that I make in
5 this case.
6 As to the sanction in this case, on August 31, 2011,
7 Public Law 112-153, known as the Pilot's Bill of Rights was signed
8 into law by the President of the United States. The law applies
9 to all cases before the National Transportation Safety Board
10 involving the reviews of actions of the Administrator of the FAA
11 to deny airman medical certificates under 49 USC 44703, or amend,
12 modify, suspend or revoke airman certificates under 49 USC Section
13 44709. The law became effective immediately upon its enactment.
14 The Pilot's Bill of Rights specifically strikes from 49
15 USC Section 44703 language that provides that in cases involving
16 airman certificate denials, the Board is bound by all validly
17 adopted interpretations of law and regulations the Administrator
18 carries out, unless the Board finds that an interpretation is
19 arbitrary, capricious or otherwise not in accordance with the law.
20 The Pilot's Bill of Rights also strikes from 49 USC
21 Section 44709 and 44710 language that in cases involving
22 amendments, modifications, suspensions or revocations of airman
23 certificates, language that indicates the Board is bound by all
24 validly adopted interpretations of law and regulations the
25 Administrator carries out and written agency guidelines available

1 to the public relating to sanctions to be imposed under this
2 section unless the Board finds an interpretation is arbitrary or
3 capricious or otherwise not in accordance with the law.
4 While I'm no longer bound to give deference to the
5 Federal Aviation Administration by statute, the agency is still
6 entitled to judicial deference, as Mr. Stevenson has argued, is
7 still entitled to judicial deference, as are all other federal
8 administrative agencies under the Supreme Court decision in *Martin*
9 *v. Occupational Safety & Health Review Commission, et al.*, 499
10 U.S. 144, and 111 S.Ct. 1171.
11 Thus in applying the principles of judicial deference to
12 the interpretations of law, regulations, and policy that the
13 Administrator carries out, I must analyze and weigh the facts and
14 circumstances of each case to determine that the sanction selected
15 by the Administrator is appropriate.
16 In the case before me, the Administrator has argued that
17 proper deference is due the FAA, and he has admitted the sanction
18 guidelines into evidence without objection. The Administrator
19 argues that while there's no specific sanction guidelines as to
20 the specific violation in this case, he argues that the FAA has
21 analogized it to other similar offenses to determine that a 60-day
22 suspension is reasonable.
23 The Respondent argued that, of course, there has been no
24 violation proven and therefore there should be no sanction;
25 however, Respondent argues that if a finding is that a violation

1 has been proven, then the 30-day suspension is a more appropriate
2 sanction. The Respondent did not indicate any mitigating
3 circumstances or no mitigating circumstances of record have been
4 cited by the Respondent.
5 I find the Administrator's argument as to the propriety
6 of the 60-day suspension to be compelling. The reasoning used to
7 determine the 60-day suspension was well articulated and appears
8 to be a reasonable one to the circumstances. There are no
9 mitigating circumstances of record, of evidence in this case that
10 has been advanced by the Respondent. I therefore find that the
11 sanction brought by the Administrator is appropriate and warranted
12 in the public interest in air commerce and air safety.
13 Finally, having found that, I now turn to the
14 Respondent's assertion that he is entitled to a waiver of sanction
15 imposed by reason of filing his NASA report. Under the Aviation
16 Safety Reporting Program that is noted in Advisory Circular 00-
17 46D, in paragraph 9(c), indicates that this program involves
18 filing a report with the National Aeronautic and Space
19 Administration, NASA, concerning an FAA violation, such a filing
20 will obviate imposition of a sanction if the violation was
21 inadvertent and not deliberate; it did not involve a criminal
22 offense, accident, or action found at 49 USC 44709; or, three, the
23 person has not been found in an enforcement action to have
24 committed a regulatory violation in the past five years; and,
25 four, the person mails a report of the incident to NASA within 10

1 days.

2 There is no dispute that the Respondent filed a NASA
3 report and that he filed a NASA report in a timely manner. The
4 parties are also in agreement that there's no evidence in this
5 case that Respondent's action in this case was deliberate.

6 Respondent instead argues that his conduct was
7 inadvertent. He maintains that he thought aircraft 497RC was
8 still RVSM-compliant on September 8, 2011 because he reasonably
9 relied upon information or misinformation provided by others. I
10 did not find Respondent's affirmative defense of reasonable
11 reliance to have been established in this case.

12 Respondent further maintains that he only learned that
13 the aircraft he flew in RVSM airspace was not RVSM-compliant
14 during the ramp check, when he could not find the appropriate the
15 RVSM authorization. Aviation Inspector McKinley testified that it
16 is the responsibility of the pilot-in-command to ensure that all
17 required documents are current and on board the aircraft before
18 each flight. If a flight involves a flight in RVSM airspace, an
19 RVSM authorization must be on board the aircraft, and the pilot-
20 in-command has to review that document to determine whether or not
21 it is current.

22 The conduct of the Respondent during the ramp check on
23 September 8, 2011 and his interactions with Aviation Safety
24 Inspectors Pedraza and Ohannesian indicate he did not know where
25 the proper RVSM documentation was located because he had not

1 checked on the RVS compliance for his aircraft before the flight.
2 Inspector Ohannesian testified he thought the Respondent provided
3 a portion of the RVSM maintenance manual under the belief that the
4 document constituted an RVSM authorization. Respondent did not
5 dispute that testimony, and Respondent's conduct during the ramp
6 check does not convince me or establish that his violation of the
7 Federal Aviation Regulations was inadvertent.
8 His conduct is indicative and establishes that he did
9 not determine if his aircraft was RVSM compliant before he flew in
10 RVSM airspace, where jets fly at high speed at reduced vertical
11 separation; he simply did not check. I find that the Respondent
12 is therefore not entitled to a waiver of sanction, as I cannot
13 find that his violation was inadvertent.
14 Based on the evidence before me, I find that the
15 Administrator's Order of Suspension in this case, the complaint
16 herein, must be and shall be affirmed as issued.
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1 ORDER

2 IT IS ORDERED that the Administrator's Order of
3 Suspension, the complaint in this case, be, and is hereby,
4 affirmed as issued.
5 Any and all air transport pilot certificates held by
6 Mr. Boeta, including Air Transport Pilot Certificate Number
7 0003015690, be, and hereby are, suspended for 60 days.
8 This order is entered on the 7th day of August 2014, in
9 Houston, Texas.
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12 ALFONSO J. MONTAÑO
13 Chief Administrative Law Judge
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1 APPEAL

2 ADMINISTRATIVE LAW JUDGE MONTAÑO: Now, I have handed
3 the court reporter forms which I have asked her to please hand to
4 the parties.

5 Could I ask you to do that at this point?

6 COURT REPORTER: (Complying.)

7 ADMINISTRATIVE LAW JUDGE MONTAÑO: All right.
8 Mr. Boeta, you have appeal rights from my ruling. The document
9 that I have provided indicates a clear outline as to what has to
10 be done and what time frames have to be met in order to -- for you
11 in order to appeal this case.

12 If you appeal this case, it will go to the full Board,
13 which currently has four members on it. They will review my
14 decision in the case, accept briefs, and may hear oral arguments
15 in limited circumstances, and will make a decision as to whether
16 or not my decision should be reversed, if it should be remanded
17 for me take additional action, or if -- or they may find that they
18 will affirm my decision.

19 From there you have -- under the Pilot's Bill of Rights,
20 you have a right to appeal either to the federal district court or
21 the circuit court of appeals that is applicable under these
22 circumstances, and from there to the Supreme Court of the United
23 States.

24 So certainly my findings aren't the last and final word
25 on this case, should you decide to appeal. I will be the first to

1 admit that I am infallible or don't always make the right
2 decisions; I mean, that's always -- that's been proven. But in
3 this case I feel that, based on the evidence before me, that this
4 is the decision I have to make as I am charged as an
5 administrative law judge. However, you have a right to an appeal;
6 that's the beauty of the American legal system, which this hearing
7 is a part of, this administrative hearing. So I would urge you to
8 exercise those appeal rights if you feel you can and have a basis
9 to do that. And that completes my discussion of the appeal
10 rights.
11 So based on that, I appreciate the parties' patience.
12 It was a long decision. I appreciate your patience. And with
13 that, we will go off the record.
14 (Whereupon, at 10:01 a.m., the hearing in the above-
15 entitled matter was concluded.)
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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Richard L. Boeta

DOCKET NUMBER: SE-19349

PLACE: Houston, Texas

DATE: August 7, 2014

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

Leslie Berridge/kn

Leslie Berridge
Official Reporter