

SERVED: December 17, 2008

NTSB Order No. EA-5421

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 17<sup>th</sup> day of December, 2008

_____	)	
ROBERT A. STURGELL,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-18404
v.	)	
	)	
JARED KYLE ANGSTADT,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed the oral initial decision and order of Chief Administrative Law Judge William E. Fowler, Jr., issued on November 18, 2008.<sup>1</sup> The law judge denied respondent's appeal of the Administrator's emergency revocation order, based on

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

respondent's alleged intentional falsification of the load manifest for a flight on April 18, 2008, on which respondent served as pilot-in-command (PIC). In particular, the Administrator charged respondent with violations of 14 C.F.R. §§ 121.693(a) and (c),<sup>2</sup> 61.59(a)(2),<sup>3</sup> 91.13(a),<sup>4</sup> and 91.9(a).<sup>5</sup> We deny respondent's appeal.

On October 17, 2008, the Administrator issued an emergency order revoking respondent's airline transport pilot (ATP) certificate, and stating that respondent lacked the

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<sup>2</sup> Section 121.693(a) and (c) provide as follows:

The load manifest must contain the following information concerning the loading of the airplane at takeoff time:

(a) The weight of the aircraft, fuel and oil, cargo and baggage, passengers and crewmembers.

\* \* \* \* \*

(c) The total weight computed under approved procedures.

<sup>3</sup> Section 61.59(a)(2) provides that no person may make or cause to be made, "[a]ny fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part."

<sup>4</sup> Section 91.13(a) states that, "[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>5</sup> Section 91.9(a) provides that, "no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry."

qualifications necessary to hold an ATP certificate.<sup>6</sup> In the order, the Administrator alleged that respondent acted as PIC of a flight on a Saab 340 from LaGuardia Airport, New York, to Ithaca, New York, and that the flight had 35 passengers. The order alleged that respondent falsely or fraudulently completed a load manifest for the flight indicating that fewer than 34 adults, and one child, and no additional crewmembers were on the aircraft. The Administrator's order also stated that the load manifest falsely stated that the runway and climb limit weight of the aircraft was 30,000 pounds, and that the crew adjustment, passenger, zero fuel, ramp, takeoff, and landing weights were less than the weights computed under approved procedures. As a result, the Administrator's order alleged that respondent knowingly operated the aircraft while its total weight exceeded the maximum weight limitations on the ramp and during takeoff, as provided in the aircraft flight manual. Based on these allegations, the Administrator alleged that respondent had violated the regulations described above, and ordered revocation of respondent's ATP certificate.

Respondent filed a timely appeal of the Administrator's

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<sup>6</sup> This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52 - 821.57.

order, and the case proceeded to hearing. At the hearing, the Administrator provided the testimony of Benjamin Coats, who served as first officer on the April 18, 2008 flight at issue. Mr. Coats stated that he often flew with respondent, and that his duties included preparing the load manifest for the flight. Tr. at 22-23. Mr. Coats acknowledged that he and respondent did not have an affable relationship, and had disagreed on certain issues during previous flights. Tr. at 24-25, 30, 32-33, 38. Mr. Coats stated that, for the April 18 flight, he filled out the load manifest form and told respondent that the aircraft was overweight, to which respondent replied that he would "make trouble" for Mr. Coats with their employer, Colgan Air, if Mr. Coats told anyone about the overweight aircraft. Tr. at 42. Mr. Coats stated that he then handed the load manifest form to respondent to complete. Tr. at 43. The law judge admitted a copy of the load manifest form into evidence, and Mr. Coats testified that the form bears respondent's signature, and that the calculations on the form indicate that the aircraft was overweight. Tr. at 46-47; Exh. A-1. The form lists the maximum allowable weight as 28,698 pounds, but shows a line through the number, and the number 30,000 written above the 28,698 figure. Exh. A-1. Mr. Coats's testimony included an explanation of how he calculated the permissible weight to total 28,698 pounds. Tr. at 75. The load manifest form also indicates that 33

adults, one child, and one infant were on the aircraft. Exh. A-1. Mr. Coats testified that these numbers were incorrect, because 34 adults and no children were on the aircraft. Tr. at 81. Mr. Coats also stated that he copied the passenger numbers directly from the form that the flight attendant had given him (Tr. at 49), and that respondent suggested changing the number of children on the form so that the form did not indicate that the aircraft was overweight (Tr. at 53). Mr. Coats testified that respondent did not question the calculations that he had included on the form. Tr. at 77, 79. Mr. Coats also stated that, even if the maximum weight was 29,000 pounds, the aircraft would have exceeded that weight because respondent had allowed a passenger, Jeffrey Wood, to join the flight in the jumpseat of the aircraft. Tr. at 79, 98. Mr. Coats testified that he relied on the dispatch release, the airline's OF-11E form, and the flight attendant's form that contained the number of passengers, when he inserted the requisite information into the load manifest form. Tr. at 116-19.

The Administrator also called Jeffrey Wood, a pilot for US Airways, to testify. Mr. Wood stated that he frequently flies to Ithaca from LaGuardia, and that he does not recall the flight at issue. Tr. at 170, 173. Mr. Wood stated that he did not believe that anyone asked him to take another flight due to weight and balance concerns on the day in question. Tr. at 176.

In addition, the Administrator called Scott Robinson, a quality assurance analyst at US Airways Express, to testify.

Mr. Robinson stated that he flies to Ithaca every other weekend from Charlotte, North Carolina. Tr. at 179. Mr. Robinson testified that he knows Mr. Wood and spoke with him on April 18, while they waited to board the aircraft, and that he saw Mr. Wood in the jumpseat of the aircraft during the flight at issue. Tr. at 180-82. Mr. Robinson also stated that he recalled one infant being on the aircraft, but did not see any children onboard. Tr. at 184-85; Exh. A-10 (summary of conversation between Mr. Robinson and FAA aviation safety inspector).

The Administrator also called Laura Gore, the Quality Assurance Manager for US Airways Express Customer Service, to testify. Ms. Gore stated that she had gathered the flight history data for the April 18, 2008 flight, which indicates that 34 total passengers were on the aircraft, and that no jumpseat passenger had boarded the aircraft. Tr. at 200; Exh. A-11. Ms. Gore stated that the data is based on the OF-11E form that Colgan Air requires, and that, if a jumpseat passenger was not listed on the form, then the flight history data would not list a jumpseat passenger. Tr. at 201. Ms. Gore stated that the gate agent is responsible for recording whether a jumpseat passenger has joined the flight at the last minute, and that the

captain of the flight is responsible for listing the jumpseat passenger on the load manifest for the flight. Tr. at 203-204. The Administrator also called Christopher Canalia, a senior analyst for airport policy and procedures at US Airways, to testify. Mr. Canalia stated that the report from the U.S. Airways computer system indicates that the April 18, 2008 flight had 34 passengers and one infant on board the aircraft, and that no children were on the aircraft. Tr. at 209-210; Exh. A-12. Mr. Canalia also testified that the US Airways report indicates that Mr. Wood was a cancellation, or "no show" for the April 18, 2008 flight (Tr. at 218-19), but that it is possible that a jumpseat passenger could have boarded the aircraft, because gate agents may manually complete a jumpseat form at the last minute (Tr. at 220).

The Administrator concluded his case by calling Aviation Safety Inspector Douglas Lundgren to testify. Inspector Lundgren stated that he has been the Principal Operations Inspector for Colgan Air for over 2 years, and that he began collecting documents and investigating whether respondent had incorrectly completed the load manifest shortly after the FAA received a hotline call from Mr. Coats concerning the incident. Tr. at 256-57. Inspector Lundgren stated that his review of Colgan Air's policies indicated that Colgan does not permit pilots to interpolate numbers for the load manifest form, but

that pilots are instead required to use the most conservative estimate to ensure that no aircraft is overweight upon departure. Tr. at 260. Inspector Lundgren testified that he did not understand why respondent would have written 30,000 pounds on the load manifest form, and explained how the calculations indicated that the aircraft was overweight. Id. Inspector Lundgren stated that Mr. Coats was credible and answered his questions consistently during the investigation, but that respondent's replies to his questions were vague. Tr. at 262, 278, 293-94. Inspector Lundgren also testified that he had concluded that a large amount of circumstantial evidence indicated that a jumpseat passenger was on the aircraft (Tr. at 264), and that the evidence indicated that the critical weight measurements on the load manifest form, such as cargo, ramp, and taxi fuel weights, were false (Tr. at 267). Inspector Lundgren stated that he determined that the flight attendant's passenger count sheet had been discarded when he began his investigation. Tr. at 275. Finally, Inspector Lundgren testified that he checked the US Airways passenger name record for the flight at issue, and could not find any children listed. Tr. at 285-88; Exh. R-5.

In response to the Administrator's case, respondent provided the testimony of Dean Bandabanis, who is the Director of Operations for Colgan Air. Mr. Bandabanis stated that

respondent had a good reputation as a captain at Colgan Air, and that Mr. Coats did not have a favorable reputation. Tr. at 225-27, 237. Mr. Bandabanis also stated that he was involved in conducting an internal investigation of the flight in question for Colgan Air. Tr. at 227. Mr. Bandabanis testified that Mr. Coats did not notify him of the incident, but that he learned of the incident from the Chief Pilot for Colgan Air. Tr. at 229. Mr. Bandabanis acknowledged that it is a serious offense for a jumpseat passenger to be on an aircraft but not be listed on the load manifest, that he had inquired of respondent about whether a jumpseat passenger was onboard, and that respondent replied that he did not allow an unreported jumpseat passenger. Tr. at 239, 245. Mr. Bandabanis stated that he had reviewed the load manifest at issue and discovered some irregularities, such as missing numbers within the takeoff weight category, and a missing index number. Tr. at 246. Mr. Bandabanis, however, testified that he did not believe these irregularities were a "big deal." Tr. at 247. Mr. Bandabanis stated that his investigation into the incident did not uncover why someone had crossed out the original number for the runway and climb limit weight and written in 30,000 pounds. Tr. at 248.

Respondent also testified on his own behalf. Respondent stated that his common practice concerning the certification of

load manifests is to compare the numbers on the load manifest to the OF-11E form and the flight attendant load sheet and make sure the numbers match, and that he generally relies on these documents. Tr. at 307-308, 311. Respondent testified that he has previously made changes to a load manifest if necessary to reflect a runway change, temperature change, or the like. Tr. at 312. Respondent stated that he does not recall this particular flight, and does not recall completing or signing the load manifest for this flight. Tr. at 313-14. Respondent also testified that, according to his calculations, if the temperature were 20 degrees Celsius at the time of the flight, and not 21 degrees, then the weight limit would have been 30,000 pounds. Tr. at 315. Respondent stated that he "[does not] believe that there's anything wrong with interpolating the numbers to get a more precise figure" for the load manifest. Tr. at 316. Respondent testified that he believed 21 degrees was an arbitrary number, and that it came from the dispatch release, which is rarely reliable. Tr. at 341-42. Respondent stated that he would not have allowed a passenger to sit in the jumpseat of the aircraft if the aircraft was overweight. Tr. at 319. Respondent testified that "it's possible" that he could have crossed out the figure of 28,698 pounds that Mr. Coats had written, but that he does not recall making such a change. Tr. at 340, 352. Respondent explained, in detail, how he

interpolated the numbers and concluded that 29,493 pounds was the reliable weight of the aircraft; in completing this calculation, respondent used the figure of 21 degrees, but assumed that the aircraft would operate at 98 percent power. Tr. at 343-44. As such, respondent stated that he does not know why the load manifest did not list 29,493 pounds as the permissible weight. Id. Respondent acknowledged that he did not calculate 29,493 pounds at the time of the flight, but instead completed the calculation shortly before the hearing. Tr. at 350. Respondent stated that he was aware that Colgan Air instructs pilots to use the most conservative numerical values in completing load manifests and calculating weights, but that he does not recall Colgan instructing him that interpolating numbers was not allowed. Tr. at 353. Respondent testified that he believes that, "it's still within the realm of safety" to refrain from using the most conservative values in calculating numbers for the load manifest form. Tr. at 354.

In rebuttal, the Administrator provided the testimony of Aviation Safety Inspector John Leshok, who testified that he obtained the faxed copy of the load manifest from the station manager at LaGuardia Airport. Tr. at 384. Inspector Leshok stated that he has no doubt that Exhibit A-1 is the load manifest for the flight at issue, and that he did not learn of the existence of any other load manifest for this flight while

he was investigating this incident. Tr. at 384-85. Inspector Leshok testified that the faxed copy of the load manifest in evidence was the only copy that he used for the investigation. Tr. at 386.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he concluded that resolution of this case rested on a credibility determination. The law judge described Mr. Coats as a "whistleblower," and stated that the Administrator satisfied his burden of proof with the testimony of Mr. Coats and Inspector Lundgren, combined with the copy of the load manifest form at issue. Initial Decision at 428. The law judge stated that the evidence showed that respondent ordered Mr. Coats to forge a new load manifest to show that a child, rather than an adult, was on the aircraft, and that Mr. Coats refused to do so. Id. at 430. The law judge stated that the load manifest was "totally and completely wrong, in and of itself," and that it did not contain the weight of the aircraft, did not list the passengers and crew, and did not include the correct total weight. Id. at 431, 434. Based on the evidence in the record, the law judge concluded that respondent had violated the regulations, as charged.

On appeal, respondent alleges that the law judge erred in numerous respects. In particular, respondent argues that the weight of the evidence does not support the law judge's

decision, that the law judge erred in not accepting respondent's affirmative defense of reliance, and that the law judge erred by not providing specific reasons for each of his findings concerning the individual regulatory violations. The Administrator disputes each of these arguments, and urges us to affirm the law judge's decision. We address each of these issues in turn.

With regard to respondent's principal argument that the weight of the evidence does not support the law judge's conclusion that respondent falsified the load manifest, we disagree with respondent's contentions. Respondent's argument concerning the admission of the copy of the load manifest into evidence is not helpful, because respondent cannot show that the law judge abused his discretion in admitting the copy of the load manifest into evidence. We have long held that law judges have significant discretion in overseeing administrative hearings and admitting evidence into the record. Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)). Moreover, we will not overturn a law judge's evidentiary ruling unless we determine that the ruling was an abuse of discretion. See, e.g., 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). When

resolving issues involving the admission of evidence, the Board is not bound by the Federal Rules of Evidence, but considers them to be "non-binding guidance." Administrator v. Ferguson, NTSB Order No. EA-5360 at 10-11 (2008) (citing Petition of Cary A. Neihans, NTSB Order No. EA-5166 at 9 n.9 (2005)). In this regard, the Board is not bound by evidentiary or procedural rules that apply in other courts. Furthermore, the Board is aware of the wide latitude that the Administrative Procedure Act provides agencies concerning the admissibility of evidence at administrative hearings. 5 U.S.C. § 556(d) (stating that, "[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence"). In light of this standard favoring the admission of evidence, respondent's argument that the law judge should not have admitted the load manifest into evidence is meritless, because respondent has not attempted to show that the law judge's admission of the document amounted to an abuse of discretion. Respondent's arguments concerning the authenticity of the load manifest address the weight that we should afford the document, rather than the issue of its admissibility.

Respondent further argues that evidence in the record contradicts the assertion that a jumpseat passenger was in the aircraft. In particular, respondent refers to Exhibits A-11

(portion of flight history data on the April 18, 2008 flight from US Airways) and A-12 (report from US Airways computer system that contains passenger list and flight history of flight at issue) in support of this argument, because neither exhibit lists a jumpseat passenger. This argument, however, is insignificant to our disposition of this case, because the evidence establishes that respondent altered the load manifest so that it incorrectly included 30,000 pounds as the permissible maximum weight. Regardless of whether a jumpseat passenger was on the aircraft, respondent amended the load manifest form to read 30,000 pounds, and falsely listed 33 adults, one child, and one infant on the load manifest. Exhibits A-11 and A-12, in addition to testimony at the hearing, establish that 34 adults, no children, and one infant were on the aircraft. Tr. at 184-85, 209-210. Even assuming, arguendo, that no jumpseat passenger was on the aircraft, the Administrator has still shown that the load manifest that respondent certified as "loaded in accordance with the Colgan Air FAA-approved Weight And Balance Program" was incorrect. As such, the Administrator has fulfilled his burden of proof with regard to falsification. For such falsification cases, we have long adhered to a three-prong standard to prove a falsification claim: the Administrator must prove that a pilot (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity

of the fact. Hart v. McLucas, 535 F.2d 516, 519 (9<sup>th</sup> Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

Here, the Administrator has provided evidence to fulfill all three prongs. The load manifest contained incorrect values, and such values are material to the operation of the aircraft: the Administrator approved Colgan Air's weight and balance program, which requires the completion of the load manifest prior to the commencement of each flight. In addition, respondent testified that he carefully checks the load manifest prior to each flight, and ensures that the numbers on the load manifest do not exceed the limitations in Colgan Air's Operations Manual. Tr. at 313; see also Exh. A-9 (excerpt from Colgan's "Weight and Balance Control Program"). Respondent also stated that he has previously asked jumpseat passengers to disembark a flight before taking off, if the aircraft is overweight. Tr. at 318. Such evidence establishes the materiality of the values listed on the load manifest form. Finally, the evidence also shows that respondent had knowledge of the falsity of the load manifest. In this regard, the law judge assessed the credibility of respondent and the other witnesses who testified at the administrative hearing, and determined that the Administrator's witnesses, including Mr. Coats, were more credible than respondent. Given our longstanding precedent of relying on law judges' credibility assessments unless such

determinations are arbitrary, capricious, or contrary to the weight of the evidence, we will defer to the law judge's credibility assessments in this case. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Respondent has not provided any compelling reason for us to dispute the law judge's credibility determinations in this case, and we agree with the law judge that respondent's testimony was vague with regard to several important issues. Tr. at 313-14 (respondent's statement that he does not recall this particular flight or load manifest), 340 (respondent's statement that he does not remember changing the runway and climb weight limitation to 30,000 pounds, but that "it's possible" that he changed it).

Respondent also asserts that the Administrator did not produce: the OF-11E form that would contain the passenger list and information concerning who was on the aircraft; the flight attendant count sheet; the original version of the load manifest at issue; a copy of the jumpseat pass that Mr. Wood should have filled out when he got in the jumpseat; and any documents confirming the temperature at the time of the flight at issue. In addition, respondent argues that the Administrator could not prove that the flight at issue occurred on April 18, because Mr. Coats, when he called the FAA hotline to report the incident, initially stated that the flight had occurred on April 16. We do not believe that these arguments suffice to

prove that the law judge's decision was contrary to the weight of the evidence. As discussed above, the Administrator produced sufficient evidence to prove that the load manifest was incorrect. Moreover, the Administrator adequately proved that the flight at issue took place on April 18, 2008; Mr. Coats's incorrect memory concerning the date of the flight does not alter the evidence showing that the load manifest, which includes the date "4/18/2008," listed 33 adult passengers, one child, and one infant, while other credible evidence shows that 34 adult passengers, no children, and one infant were on the April 18, 2008 flight. See Exhs. A-1, A-11, A-12.

Respondent also argues that the law judge erred in rejecting respondent's affirmative defense of reliance. We do not believe that the law judge erred in refraining from analyzing respondent's affirmative defense of reliance, as respondent's argument that his certification of the load manifest was justified because he relied upon certain forms in completing the load manifest does not fulfill the appropriate legal standard. Under the doctrine of reasonable reliance, we have held that, "[i]f ... a particular task is the responsibility of another, 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." Administrator v. Fay and Takacs, NTSB Order No. EA-3501 at 9 (1992). We have also previously held that the doctrine of reasonable reliance is a narrow one; the doctrine may apply to cases "involving specialized, technical expertise where a flight crew member could not be expected to have the necessary knowledge." Fay and Takacs, supra, at 10; see also Administrator v. Jolly, NTSB Order No. EA-5307 at 10 (2007).

We have previously acknowledged that it is certainly necessary for operators to divide their duties and responsibilities in order to operate the aircraft in the safest, most effective manner. However, respondent has not presented evidence, other than his own testimony, which the law judge determined was not credible, to prove that he relied on any particular forms or information in completing the load manifest. Moreover, respondent did not establish that the certification of the load manifest was completely the task of another and that he had no ability to ascertain the information, nor reason to question the information upon which he relied. Overall, respondent did not fulfill the test we set forth in Fay and Takacs.

Finally, respondent's argument that the law judge did not sufficiently explain his findings is also not persuasive. The law judge clearly stated that he determined that respondent's

testimony was not as credible as the Administrator's witnesses' testimony, and described the facts on which the Administrator based the charges. Initial Decision at 428-30. The law judge specifically stated that he found that respondent knowingly operated the aircraft when its total weight exceeded the weight limitations, and that, as a result, respondent violated the regulations, as charged. Id. at 434-35. Respondent's argument that the law judge determined that respondent had violated § 121.693(a) "without any discussion of the facts which support such a violation" is not persuasive, as the law judge concluded that the facts established that the load manifest contained incorrect information, and excluded some information, such as the weight of the aircraft, the passengers and crew, and the total weight, altogether. Id. at 431, 434.

In conclusion, we find that respondent has not provided a basis upon which to reverse the law judge's decision.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The Administrator's emergency revocation of respondent's ATP certificate is affirmed.

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

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of:	*	
	*	
ROBERT A. STURGELL,	*	
ACTING ADMINISTRATOR,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-18404
	*	JUDGE FOWLER
JARED K. ANGSTADT,	*	
	*	
Respondent.	*	

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National Transportation Safety Board  
429 L'Enfant Plaza, S.W.  
Board Room  
Washington, D.C.

Tuesday  
November 18, 2008

The above-entitled matter came on for hearing, pursuant  
to Notice, at 9:30 a.m.

BEFORE: WILLIAM E. FOWLER, JR.,  
Chief Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

CHRISTIAN LEWERENZ, Regional Counsel  
Federal Aviation Administration  
Office of the Chief Counsel  
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Jamaica, NY 11434

On behalf of the Respondent:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: This has been a proceeding before the National Transportation Safety Board, held pursuant to the provisions of the Federal Aviation Act of 1958, as that Act was subsequently amended, on the Appeal of Jared Kyle Angst, from an Emergency Order of Revocation issued by the Federal Aviation Administrator dated October 17th, 2008, which purports to revoke Respondent Angst's Airline Transport Pilot Certificate Number (omitted). The Administrator's Emergency Order of Revocation, as duly promulgated in accordance with the Board's Rules of Practice in Air Safety Proceedings, was issued by the Regional Counsel, Eastern Region of the Federal Aviation Administration, and dated October 17th, 2008.

This matter has been heard before this United States Administrative Law Judge, and as is provided by the Board's Rules of Practice, specifically Section 821.56 of those rules, it is mandatory, as the judge in this proceeding, an emergency proceeding, that I issue an Oral Initial Decision on the record, which I am going to do at this time.

Following notice to the parties, this matter came on for trial on November 17th and 18th, 2008. The Respondent was very ably represented by Joseph Lamonaca, Esquire. The Administrator, was also very ably represented by Christian Lewerenz, Esquire, of

1 the Regional Counsel's office, Eastern Region of the Federal  
2 Aviation Administration.

3 JUDGE FOWLER: Both parties in this proceeding have been  
4 afforded the opportunity to offer evidence, to call, examine and  
5 cross-examine the witnesses. In addition, the parties have been  
6 afforded the opportunity to make final argument in support of  
7 their respective positions.

8 DISCUSSION

9 I have reviewed the testimony and the evidence that  
10 we've had during the course of this two-day proceeding, which has  
11 consisted of seven witnesses on behalf of the Administrator,  
12 coupled with 13 exhibits by the Administrator. Respondent has had  
13 two witnesses including himself and five exhibits. All of the  
14 exhibits have been duly admitted into the record, as presently  
15 constituted.

16 When you have an order, and here, it's an Emergency  
17 Order of Revocation, it's a very serious matter because it means,  
18 if the Administrator is successful, that the Respondent is  
19 grounded forthwith and is ordered to surrender his certificate  
20 immediately.

21 As mentioned, I have reviewed the testimony and the  
22 evidence, coupled with the documentary exhibits. It is my  
23 determination and conclusion that the Administrator has  
24 successfully proven virtually each and every allegation set forth  
25 in the Emergency Order of Revocation of October 17th, 2008.

1           This is a strange case, in a manner of speaking, and I'm  
2 speaking from my own personal viewpoint, because if ever there was  
3 a witness that was deemed to be a whistleblower, it would be  
4 Witness Benjamin Franklin Coats. The testimony of Witness Coats  
5 and Aviation Safety Inspector Lundgren, coupled with Exhibit A-1,  
6 I believe is devastating to the Respondent's defense in this  
7 proceeding.

8           Here, the burden of proof is upon the Administrator and  
9 the Administrator has to show and prove by a substantial amount of  
10 reasonable, relevant material and relevant evidence. This is not  
11 to denigrate in any sense what I deem to be a very specifically  
12 eloquent grieved argument by Respondent's counsel, through the  
13 course of this proceeding, in defense of his client.

14           But as I said, I have reviewed the testimony here and  
15 the Administrator's case, which consists of all 15 paragraphs  
16 contained in the allegations against Respondent Angstadt, have  
17 been now proven by the testimony of Witness Coats,  
18 Inspector Lundgren and the Administrator's Exhibit A-1, which is  
19 really what this case is all about, because basically this is a  
20 false statement case.

21           The Administrator has to show, by a fair and reasonable  
22 preponderance of the material, relevant and substantial evidence,  
23 a material fact and statement was made, the time it was made, and  
24 the Respondent knew it was false, and the Federal Aviation  
25 Administration has reason to rely on such statement. That all of

1 those criteria are met here, is my ultimate determination and  
2 conclusion.

3           The testimony of Witness Coats, of course, and it's  
4 quite obvious that there was a deal of irritation and friction  
5 between himself, as first officer, and the Respondent,  
6 Jared Kyle Angstadt, as captain of this flight of April 18th,  
7 2008, from La Guardia Airport to Ithaca, New York. There had been  
8 irritation, as set forth in the testimony, and the exhibits of  
9 such friction on previous flights.

10           You may recall the allegations containing the alleged  
11 machine guns and concerning Witness Coats, and the altitude  
12 deviation and so forth. These were sources of friction. But this  
13 does not take away, or lessen in my determination, from the  
14 testimony of Witness Coats or Inspector Lundgren.

15           Respondent's R-2 is an exhibit really admitted as the  
16 telephone conversation Inspector Lundgren had with Benjamin Coats  
17 on June 4th, 2008, and Inspector Lundgren says in this  
18 conversation that Witness Coats said that by his calculations  
19 concerning the flight in question that we're dealing with here on  
20 April 18th, preliminarily, he deemed that they would've been  
21 overweight with either one or two more passengers.

22           Witness Coats stated that Captain Angstadt had the idea  
23 of taking all of the 33 passengers that had boarded the aircraft,  
24 but to show three passengers, on the load manifest, as children,  
25 which would make them count as half the weight of adults.

1           Witness Coats said, in his conversation, according to  
2 Witness Lundgren, that Coats objected and he said the flight  
3 attendant's passenger count did not show that any of the  
4 passengers were actually children, and that the captain ordered  
5 him to write up a new load manifest using the fictitious child  
6 weights and that he, Coats, refused.

7           The new manifest, Coats said, showed the aircraft  
8 takeoff weight and zero fuel limits just below the allowable  
9 limits, but at that point, Coats estimated that the plane was  
10 actually overweight by approximately 200 pounds.

11           He said the captain threatened him, to make trouble for  
12 him with Colgan Air management, if he did not go along with him.  
13 Coats further said that by that the aircraft would've been -- four  
14 to five hundred pounds over the allowable takeoff weight.

15           Inspector Lundgren said, later on, in this telephone  
16 conversation, that Coats had said to him, telephonically, that he  
17 filed with the NASA Aviation Safety Reporting System. He reported  
18 the incident shortly after the flight, but he did not think to  
19 file the ASAP report to his company, which he later says was a  
20 mistake.

21           We have had the final analysis by the Administrator's  
22 exhibits and documents on the Administrator's side of this case.  
23 The final analysis by the Administrator was that there were 34  
24 people on board this flight, all were adults, and there was one  
25 infant. There was a jumpseat occupant which was not included in

1 the weights of this load manifest, which means that, on its face,  
2 this load manifest, some of which, maybe even the majority of  
3 which, was compiled by Witness Coats, but it was signed off on, as  
4 the captain's signature, by Jared Kyle Angstadt, which is a  
5 standard operating procedure on all of these load manifests. But  
6 this one is totally and completely wrong, and false.

7 I also find and hold that it supports, as substantial  
8 evidence, and constitutes a false statement, which Respondent  
9 Angstadt knew was false when he signed it, and it's certainly  
10 materially relevant to the Federal Aviation Administration,  
11 because they rely on all airmen, but particularly airline  
12 transport pilots, to exercise the maximum degree of care, judgment  
13 and responsibility at all times.

14 There were several events in question that arose during  
15 the course of this proceeding, none of which in my estimation were  
16 important enough to defer or negate from the Administrator's  
17 burden of proof.

18 The Administrator has brought forth seven witnesses and  
19 13 documentary exhibits, which the Administrator and his counsel  
20 have adduced during the course of this proceeding.

21 To interject a personal note, Respondent, here, is a  
22 young man, 26 years of age. He's only been a pilot for a few  
23 years and ATP-rated since -- well, more recently, in the last two  
24 to three years. While revocation is the supreme sanction that the  
25 Administrator can invoke during the course of an enforcement

1 proceeding, taking into account Respondent's age, this is not the  
2 end of the world for him.

3 As the Administrator has said, in his order here, that  
4 after an expiration of a year period, that Respondent very well  
5 may be considered and possibly even reissued another pilot  
6 certificate of some type subsequently.

7 So ladies and gentlemen, at this time, I'm sure you  
8 follow the drift of my determination in this proceeding. I will  
9 now proceed to make the following specific findings of fact and  
10 conclusions of law, based on the testimony of the witnesses and  
11 the documentary exhibits that have been introduced before me  
12 during the course of this two-day proceeding:

13 (1) The Respondent, Jared Kyle Angstadt, admits and it  
14 is found that he was and is the holder of Airline Transport Pilot  
15 Certificate Number (omitted).

16 (2) The Respondent admits and it is found that, on or  
17 about April 18th, 2008, Respondent operated a Saab 340 aircraft,  
18 Identification Number N350CJ, as pilot in command from La Guardia  
19 Airport, New York to Ithaca, New York.

20 (3) The Respondent admits and it is found that the  
21 flight described above was operated under Parts 119 and 121 of the  
22 Federal Aviation Regulations; a U.S. Airways Express Flight 4803,  
23 with passengers and crew aboard.

24 (4) It is found that, specifically aboard the flight,  
25 there were 34 passengers, no children and one infant, and three

1 crew members, including the Respondent, and one additional crew  
2 member, hereafter referred to as an additional crew member, who  
3 was riding, in the jumpseat.

4 (5) It is found that prior to takeoff of the flight  
5 described above, there was a load manifest prepared, which  
6 indicated that the total weight of the aircraft exceeded certain  
7 maximum weight limitations, as provided in the aircraft flight  
8 manual.

9 (6) It is found that even though the first officer  
10 advised the Respondent that certain maximum weight limitations  
11 were exceeded, as described above, Respondent declined to de-plane  
12 any of the passengers or the additional crew member.

13 (7) It is found that instead, Respondent completed the  
14 load manifest or caused one to be made.

15 (8) It is found that, specifically, Respondent completed  
16 a load manifest, or caused one to be made, that falsely stated  
17 that aboard the flight there were -- and I'm incorporating by  
18 reference Paragraphs A, B, C in Paragraph 8, which displays the  
19 adults and one child, as forth on the load manifest.

20 (9) It is found that, further, Respondent completed a  
21 load manifest, or caused one to be made, that falsely stated that  
22 the runway and climb limit weight was 30,000 pounds.

23 (10) It is found that as a result, Respondent completed  
24 a load manifest, or caused one to be made, that falsely stated  
25 that the following weights were less than the weights computed

1 under approved procedures. And I'm incorporating by reference,  
2 that is, Paragraphs A through F, which sets forth, in the  
3 Administrator's Order of Revocation, all the weights, in turn,  
4 from the crew adjustment weight to the landing weight.

5 (11) It is found that Respondent thereby made, or caused  
6 to be made, intentionally false entries in a record or report that  
7 is required to be kept, made or used to show compliance with any  
8 requirements for the issuance or exercise of the privileges, of  
9 any certificate, rating or authorization under Part 61 of the  
10 Federal Aviation Regulations.

11 (12) It is found that, in addition, the load manifest  
12 failed to contain the following information concerning the loading  
13 of the airplane at takeoff time, computed under approved  
14 procedure: (a) the weight of the aircraft; (b) passengers and crew  
15 members, and (c) the total weight.

16 (13) It is found that as a result of Respondent's  
17 actions, the Respondent knowingly operated the aircraft while the  
18 total weight of the aircraft exceeded certain maximum weight  
19 limitations, as provided in the aircraft flight manual,  
20 specifically (a) on the ramp, and (b) during takeoff.

21 (14) It is found that, in operating the aircraft, as  
22 described above, the Respondent operated the aircraft in a  
23 careless manner, so as to endanger, or potentially endanger, the  
24 lives and property of others.

25 (15) As a result, it is found that by Respondent's

1 actions, that Respondent appears to lack the qualifications to  
2 continue to hold an airline transport pilot certificate.

3 (16) It is found that as a result of all of the above,  
4 the Respondent, Jared Kyle Angstadt, violated the following  
5 Federal Aviation Regulations: Section 121.693(a); I'm  
6 incorporating by reference, as set forth in the Administrator's  
7 Order of Revocation, what that section says. Section 121.693(c);  
8 I've also incorporated what that section says, by reference.  
9 Section 61.59(a)(2), incorporating by reference what that  
10 regulation says and spells out. Section 91.13(a), which of course  
11 is a derivative violation, because of the other violations dealing  
12 with operating the aircraft in a careless manner, so as to  
13 potentially endanger the life or property of another. Section  
14 91.9(a). I'm incorporating that section by reference, as to what  
15 it spells out in the Administrator's Emergency Order of  
16 Revocation.

17 (17) This Judge finds that safety in air commerce or air  
18 transportation and the public interest does require the  
19 affirmation of the Administrator's Emergency Order of Revocation  
20 dated October 17th, 2008, in view of the Respondent's violations  
21 of the aforesaid Federal Aviation Regulations Section 121.693(a),  
22 Section 121.693(c), Section 61.59(a)(2), Section 91.13(a), and  
23 Section 91.9(a).

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ORDER

In view of the aforesaid violations of these regulations, IT IS ORDERED AND DECREED THAT:

The Administrator's Emergency Order of Revocation dated October 17th, 2008, be and the same is affirmed. This Order is issued by William E. Fowler, Jr., a United States Administrative Law Judge.

EDITED AND DATED ON  
NOVEMBER 21, 2008

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WILLIAM E. FOWLER, JR.  
Administrative Law Judge