

SERVED: June 8, 2009

NTSB Order No. EA-5453

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 8<sup>th</sup> day of June, 2009

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| J. RANDOLPH BABBITT,             |              | ) |                 |
| Administrator,                   |              | ) |                 |
| Federal Aviation Administration, |              | ) |                 |
|                                  |              | ) |                 |
|                                  | Complainant, | ) |                 |
|                                  |              | ) | Docket SE-18570 |
|                                  | v.           | ) |                 |
|                                  |              | ) |                 |
| PHIL E. PARTINGTON,              |              | ) |                 |
|                                  |              | ) |                 |
|                                  | Respondent.  | ) |                 |
|                                  |              | ) |                 |
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**OPINION AND ORDER**

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty in this matter, issued following an evidentiary hearing held on May 12, 2009.<sup>1</sup> By that decision, the law judge affirmed the Administrator's complaint and ordered the revocation of respondent's mechanic

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

certificate with airframe and powerplant ratings, based on violations of 14 C.F.R. §§ 43.12(a)(1)<sup>2</sup> and 43.13(a).<sup>3</sup>

Respondent appeals the law judge's ruling regarding the merits of the case and the sanction. We deny respondent's appeal.

The Administrator's April 15, 2009 emergency order,<sup>4</sup> which served as the complaint before the law judge, alleged that, on or about August 28, 2008, respondent performed maintenance work on a Bombardier CRJ 700 operated by SkyWest Airlines at the Bombardier facility in Tucson, Arizona. The complaint alleged that respondent documented the work he performed on the aircraft using two of Bombardier's Maintenance Work Cards, on which respondent indicated that he completed the work by signing his name on the work cards in the section that stated, "Completed by Technician/Date." The complaint further stated that the

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<sup>2</sup> Section 43.12(a)(1) prohibits any person from making or causing to be made a fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under part 43 of the Federal Aviation Regulations.

<sup>3</sup> Section 43.13(a) requires each person performing maintenance, alteration, or preventive maintenance on an aircraft to use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual, or other methods, techniques, and practices acceptable to the Administrator.

<sup>4</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.

applicable manual for the work that respondent performed specifically required the attachment nuts to be torqued, and that respondent did not torque the attachment nuts, notwithstanding his entry on the two work cards that he had completed the work. The complaint also alleged that subsequent inspection of the aircraft at issue indicated that the cotter pins had been installed and bent over, in a manner normally found when a permanent installation has been completed. The complaint concluded with the allegation that respondent had violated §§ 43.12(a)(1) and 43.13(a) by falsifying the work cards to indicate that he had properly completed the work when he had not torqued the attachment nuts with a torque wrench, as required. The complaint ordered immediate revocation of respondent's certificate, based on an alleged lack of qualifications to hold any certificate.

At the hearing, the Administrator called Air Ward and Safety Inspector Steven Meisner, who works at the Scottsdale, Arizona Flight Standards District Office. Inspector Meisner stated that, on August 28, 2008, he was with Stephen Whittier, the Chief Inspector for Bombardier, when they both noticed respondent having an animated conversation with a quality control inspector. Inspector Meisner testified that the quality control inspector had refused to sign off on the installation that respondent was performing because he had not reviewed the

torque values. Tr. at 25. Inspector Meisner also stated that respondent told him that he completed all the work indicated on the work cards, but that he did not torque the nuts. Tr. at 32-33. Respondent told Inspector Meisner that he had not torqued the nuts because he intended the installation to be temporary, but that he had signed the paperwork because he had control over it. Tr. at 37. Inspector Meisner testified that he told respondent that it was a violation of the Federal Aviation Regulations to sign the paperwork as though he had completed the installation; he further testified that this statement did not seem to affect respondent. Inspector Meisner opined that respondent had violated §§ 43.12(a)(1) and 43.13(a), as alleged, and stated that respondent's actions concerned him, because they were unsafe.

The Administrator also called Stephen Whittier, the Quality Control Chief Inspector at Bombardier Aerospace facility in Tucson, to testify. Mr. Whittier's testimony corroborated Inspector Meisner's synopsis of the events of August 28, 2008. Mr. Whittier testified that he conducted his own investigation into the events and determined that the entry on the work cards was erroneous because respondent had not torqued the nuts. Tr. at 85. Mr. Whittier also stated that respondent told him that he believed it was acceptable to not torque the nuts because respondent knew how to tighten the nuts sufficiently, based on

his experience. Tr. at 88. Mr. Whittier further testified concerning the standard operating procedures at Bombardier, and stated that respondent violated the procedures because he signed the work card even though he had not completed the work. Based on his investigation into events at issue in this case, Mr. Whittier terminated respondent's employment at Bombardier. In addition to this witness testimony, the Administrator submitted several exhibits in support of the case.<sup>5</sup>

In response to the Administrator's case, respondent testified concerning his maintenance on the aircraft at issue. In particular, respondent described how he was called away from the aircraft to work on another, and that he placed the parts back in the aircraft so they would not be misplaced. Tr. at 121. He further testified that he did not intend to return the aircraft at issue to airworthy status after reinstalling the parts, and that he did not attempt to hide the fact that he had not torqued the nuts, as required. He stated that he signed the paperwork before the quality control inspector arrived, which was his normal practice. Respondent admitted that he had signed

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<sup>5</sup> Among other exhibits, the Administrator provided the work cards at issue (Exhs. A-1 and A-2); the relevant pages from the applicable maintenance manual (Exh. A-3); Bombardier standard operating procedures for routine and nonroutine maintenance on SkyWest aircraft (Exh. A-4); and respondent's letter in response to the Administrator's letter of investigation, in which respondent opined that he could tighten the nuts without a torque wrench (Exh. A-7).

the paperwork prematurely. Tr. at 128, 133. Respondent stated, however, that he believed he had the discretion to amend the paperwork. On cross-examination, he stated that he believed he had performed the work as required, even though he did not utilize a torque wrench to torque the nuts.

At the conclusion of the hearing, the law judge issued a bench decision, in which he determined that the Administrator proved that respondent violated §§ 43.12(a) and 43.13(a)(1), based on respondent's admission that he had not used a torque wrench, and based on his testimony that he intended to complete the work later. The law judge stated that the work cards contained no indication that respondent intended to perform additional work, and that the signatures on the cards, as well as the fact that respondent had bent the end of the cotter key and called the quality control inspector to inspect his work, indicated that the work was completed. The law judge also rejected respondent's contention that his failure to use a torque wrench was excusable because he knew from experience how tight the nuts needed to be. The law judge concluded that respondent knew the entry on the work cards was false, and that respondent failed to adhere to the requirements of the maintenance manual.

Respondent appeals the law judge's decision, and alleges that the law judge erred in finding that he violated

§§ 43.12(a)(1) and 43.13(a), and that the law judge should not have imposed the sanction of revocation. In particular, respondent continues to assert that he had the right to amend or correct the work cards at any time, because the work cards are not permanent records. He alleges that he did not intentionally falsify the work cards under Board case law because the intentional falsification standard applies only to permanent records. Respondent concedes in his brief that he could have "been more thorough" (Appeal Br. at 14), and that he committed a violation (id. at 15–16); he attempts to justify his conduct, however, by stating that he did not intend for any future mechanics or the owner of the aircraft to rely upon his entries in the work cards (id. at 15).

With regard to his failure to use a torque wrench, respondent contends that the manual does not define "torque," and that the Administrator provided no evidence to indicate that a mechanic must use a torque wrench to torque the nuts. Respondent also asserts that his failure to torque the nuts did not cause any danger. Finally, with regard to sanction, respondent urges us to deviate from the standard of revocation for a finding of intentional falsification, and states that a paperwork error does not warrant revocation. He proposes that we allow law judges to decide, on a case-by-case basis, whether revocation is appropriate in each falsification case. The

Administrator contests each of respondent's arguments, and urges us to affirm the law judge's decision.

We find all of respondent's arguments meritless. His contention that work cards are not subject to our case law regarding intentional falsification is an argument that such work cards are not material. We have long adhered to a three-prong standard to prove a falsification claim. In intentional falsification cases, 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.<sup>6</sup> With regard to the second prong of this test, we have held that a statement is false concerning a material fact under this standard if the alleged false fact could influence the Administrator's decision concerning the certificate.<sup>7</sup> This standard of materiality is consistent with the Ninth Circuit's assessment in Janka v. Dep't of Transp., 925 F.2d 1147 (9<sup>th</sup> Cir. 1991), in which the Ninth Circuit held that a false statement is material if it could influence the FAA in some manner. Id. at 1150 (citing Cassis v. Helms, 737 F.2d 545, 547 (6<sup>th</sup> Cir. 1984), and Twomey v. NTSB, 821 F.2d 63, 66 (1<sup>st</sup> Cir. 1987)).

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<sup>6</sup> 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)).

<sup>7</sup> Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006); Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005).

In applying this standard, we find that work cards are material because they could influence the FAA and others. In particular, had another mechanic started to work on the same aircraft and reviewed the work cards that respondent completed, he or she would need to rely upon the indication that respondent had torqued the attachment nuts in accordance with the maintenance manual. Respondent included no indication on the work cards that he planned to return to the aircraft and continue the work; instead, he signed and dated the work cards. Such an error is material, because another mechanic, the FAA, or the owner would rely upon the work cards to reflect accurately the work completed. Overall, records related to maintenance work performed on aircraft must be scrupulously accurate, and work cards are not an exception to this standard.<sup>8</sup>

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<sup>8</sup> In Administrator v. Nunes, NTSB Order No. EA-4567 (1997), we stated:

FAR § 43.12(a)(1) "is concerned with insuring the truthfulness or accuracy of written information about an aircraft's maintenance history." If aircraft records cannot be relied on as accurate, the viability of the entire aircraft maintenance system is doubtful. Moreover, the necessity for truthfulness and the critical need for accuracy in these records is reflected clearly in our precedent, where we have consistently affirmed revocation as the only appropriate sanction in similar circumstances.

Id. at 13-14 (1997) (quoting Administrator v. Anderson, NTSB Order No. EA-4564 at p. 6, n.7 (1997)).

Respondent's argument that he did not need to use a torque wrench to tighten the attachment nuts is equally unpersuasive. He essentially urges us to hold that a mechanic may substitute his or her judgment for how to perform certain maintenance work, rather than adhering to the requirements clearly stated in the applicable manual. Such a holding would render § 43.13(a)(1) ineffective, and we decline to accept respondent's argument on this issue. Similarly, his argument that his failure to use a torque wrench did not compromise the safety of the aircraft is also meritless, as it is based upon conjecture and ignores the plain language of § 43.13(a)(1), which specifically requires mechanics to adhere to the requirements in the current manufacturer's maintenance manual. Finally, respondent's contention that the language of the manual is ambiguous, because it does not define the word "torque" and does not provide a measurement for the requisite amount of tightness, is also not convincing. The manual specifically requires mechanics to torque the attachment nuts. Based on the training required to obtain a mechanic certificate, a mechanic should be aware that "torque" means to tighten with a torque wrench.<sup>9</sup> Respondent did

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<sup>9</sup> Inspector Meisner and Mr. Whittier both testified with regard to the requirement to torque the attachment nuts. Specifically, Inspector Meisner stated that the language in the manual required respondent to obtain and use a torque wrench. Tr. at 75-76. Mr. Whittier further discussed the requirement, and stated that, "[t]ightening a nut is just tightening it, and

not utilize a torque wrench to tighten the attachment nuts, and therefore did not adhere to the requirements of the manual.

Finally, with regard to sanction, the law judge did not err when he affirmed the Administrator's revocation order. We have long held that intentional falsification is a serious violation that warrants revocation of certificates.<sup>10</sup> Respondent's opinion that the Board should analyze each intentional falsification case on its facts to determine whether revocation is appropriate ignores this longstanding precedent, and ignores the Board's obligation to defer, in general, to the Administrator's choice of sanction, absent an indication that the Administrator's sanction is arbitrary or capricious.<sup>11</sup> As such, we reject respondent's arguments concerning the sanction applied to his conduct.

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(..continued)

torquing it is using a torque wrench to get to a predetermined level of tightness." Tr. at 86. Mr. Whittier further stated that one cannot guess the "torque range" for a nut when assembling a part on an aircraft and "expect to get there." Tr. at 86.

<sup>10</sup> Administrator v. Croston, NTSB Order No. EA-5265 at 6-7 (2007) (citing Administrator v. Culliton, NTSB Order No. EA-5178 (2005)); see also, e.g., Administrator v. Croll, NTSB Order No. EA-4460 at 7-8 (1996); Administrator v. McCarthney, 7 NTSB 670, 672 (1990).

<sup>11</sup> FAA Civil Penalty Administrative Assessment Act, 49 U.S.C. §§ 44709(d) and 46301(d); see also Administrator v. Hewitt, NTSB Order No. EA-4892 at 2 (2001).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency revocation of respondent's mechanic certificate, with airframe and powerplant ratings, is affirmed.

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

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

\* \* \* \* \*

In the matter of: \*

LYNNE A. OSMUS, \*  
ACTING ADMINISTRATOR, \*  
Federal Aviation Administration, \*

Complainant, \*

v. \* Docket No.: SE-18570

JUDGE GERAGHTY

PHIL PARTINGTON, \*

Respondent. \*

\* \* \* \* \*

U.S. Tax Court  
O'Connor U.S. Courthouse  
Courtroom 406  
401 W. Washington Street  
Phoenix, Arizona 85003

Tuesday,  
May 12, 2009

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

BEFORE: PATRICK G. GERAGHTY  
Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

MARK G. CAMACHO, ESQ.  
Federal Aviation Administration  
Regional Counsel  
901 Locust, Room 506  
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(816) 329-3765

On behalf of the Respondent:

TIMOTHY V. ANDERSON, ESQ.  
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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the appeal of Phil Partington, herein Respondent, from an Emergency Order of Revocation which seeks to revoke his Mechanic Certificate with attached Airframe and Power Plant Ratings. The Order serves herein as the Complaint and was filed on behalf of the Acting Administrator of the Federal Aviation Administration, herein the Complainant.

The matter has been heard before this Judge and, as

1 required by the Board's Rules in Emergency Proceedings, I am  
2 issuing a Bench Decision in this proceeding.

3 Pursuant to notice, this matter came along for trial on  
4 May 12th, 2009, in Phoenix, Arizona. The Complainant was  
5 represented by one of her Staff Counsel, Mark Camacho, Esquire, of  
6 the Federal Aviation Administration, Central Region. The  
7 Respondent was present at all times and was represented by his  
8 Counsel, Timothy V. Anderson, Esquire, of Virginia Beach,  
9 Virginia.

10 Parties have been afforded full opportunity to call,  
11 examine, and cross-examine witnesses, and to make arguments in  
12 support of their respective positions.

13 I have considered all the evidence, both oral and  
14 documentary, in this case. And, in reviewing it, I will limit  
15 myself to the highlights, which I believe support the conclusion I  
16 have reached, herein. That evidence which I do not specifically  
17 mention is viewed by me as merely being corroborative, or is not  
18 materially affecting the outcome of the decision.

19 AGREEMENTS

20 By pleading, and in open session, it was admitted that  
21 the allegations contained in the following Paragraphs of the  
22 Complaint are valid: Paragraphs 1 through 5, Paragraphs 7, 9, 11,  
23 12, and 14. Accordingly, the matters set forth in those  
24 Paragraphs of the Complaint are deemed established for purposes of  
25 this Decision.

1 DISCUSSION

2 The Complainant's action is based upon the allegation  
3 contained in the Complaint that, by reason of the facts and  
4 circumstances alleged in that Complaint, the Respondent on August  
5 28, 2008, when acting as a certificated mechanic, he did so  
6 operate in regulatory violation of the provisions of Sections  
7 43.12(a)(1) and 43.13(a) of the Federal Aviation Regulations.  
8 Those Sections and the applicable provisions thereof will be  
9 referred to subsequently in the discussion as appropriate.

10 The Complainant's case is made through the testimony of  
11 two witnesses and several exhibits. The first of the witnesses is  
12 Mr. Steven Meisner, who is an employee of the Federal Aviation  
13 Administration and holds a position as an Aviation Safety  
14 Inspector with a Maintenance Inspector designation. On his  
15 testimony he has a long experience in aviation and has held his  
16 Airframe and Power Plant Mechanic Certificates since about 1993.

17 He testified that he was at the Bombardier repair  
18 station, where the Respondent was an employee at the time, which  
19 is the Bombardier Services Corporation, stationed in Tucson Air  
20 Center, Tucson, Arizona, for normal surveillance. On the  
21 occasion, he was also accompanied by the Chief Quality Control  
22 individual, Mr. Whittier, who I will talk about subsequently, when  
23 both of them noticed some activity taking place.

24 So they went over to see what was going on. At that  
25 point, they interacted with the Respondent and, apparently, also

1 another quality control inspector, a Mr. Retherford.

2 In a discussion that followed, as to what was actually  
3 taking place, it was indicated that there was a concern about the  
4 work that the Respondent had performed on a particular aircraft.  
5 And completion of that work is indicated on work cards, which are  
6 received as Exhibits A-1 and A-2.

7 Mr. Meisner, in his testimony, indicated that looking at  
8 the work cards, A-1 and A-2, and the entries made and signed off  
9 by the Respondent, he did indicate that he had removed and  
10 reinstalled the specified items, and had done so in accordance  
11 with the manual specifications. That this indicated to Mr. Meisner  
12 that the Respondent was indicating, by these entries, that he had  
13 completed all of the work that was called out in the  
14 Manufacturer's Maintenance Manual for repair or maintenance on  
15 these particular items.

16 Mr. Meisner also testified that he had verified to  
17 Mr. Meisner that he, the Respondent, had in fact made those  
18 entries and they are signed for with his employee number, and that  
19 at that point Mr. Meisner inquired of the Respondent if he had in  
20 fact completed all of the steps as called out in the Maintenance  
21 Manual, which is referred to with the serial numbers or  
22 designation numbers. And to that inquiry, according to the  
23 witness, the Respondent stated that he in fact had, that is,  
24 completed all of the called for work.

25 It was also inquired as to the torquing of the

1 castellated nuts and the installation of the cotter pins, which  
2 and on the testimony is not disputed, were installed and bent  
3 back. And it is really not disputed in the testimony, but  
4 Mr. Meisner did testify that the Respondent did admit, when asked,  
5 that he had not in fact torqued the nuts using a torque wrench.

6           With respect to the installation of the cotter pins, the  
7 witness indicated that the ends of the cotter pins had been bent  
8 back, and that this indicated to him, it is standard in the  
9 industry where a cotter pin is installed as required, pins bent,  
10 that this would indicate that the work in fact had been completed.  
11 So that was consistent with what he had been told.

12           He also indicated that, on the work cards, in the block  
13 that indicates for a job continuation, that no mark had been made.  
14 And, as required by the standard operating procedures for the  
15 repair station, which called for the making of a form M-210B, a  
16 job continuation report, but no such entry had been made and no  
17 such forms had been submitted by the Respondent, at that time.

18           As to what was actually taking place, at the point, it  
19 is again stated by this witness and confirmed by the Respondent.  
20 And I do take it that the Respondent was at that point going to be  
21 shifted from the work that he was doing over to another job. So I  
22 have taken that into account, that it does appear that the  
23 Respondent was in the process of being sent from one place to  
24 another in the course of his duties as a mechanic.

25           In summary on Mr. Meisner's testimony, he expressed the

1 opinion, based upon his review of the documentation, and his  
2 interaction with the Respondent, that the Respondent had in fact  
3 operated in regulatory violation of those cited sections of the  
4 Federal Aviation Regulations.

5           With respect to the process of torquing a nut, the  
6 witness indicated that the Respondent should have used a torque  
7 wrench, as the process is understood in the industry, according to  
8 the witness; that where it's called out, as it is in Exhibit A-3  
9 where it says torque the nut, that means that one should use a  
10 calibrated torque wrench. And if the value is not stated, as it  
11 isn't on A-3, but as subsequent testimony does indicate, that  
12 there is a chart available within the Manual that you can go to,  
13 to get the exact value for the torque and also the calibration or  
14 the type of tool that you're supposed to use. And the testimony,  
15 to that effect, was that the Respondent was in fact required to  
16 obtain and use a calibrated torque wrench, and there were no  
17 exceptions to that requirement.

18           Mr. Steven Whittier, as the Chief Inspector Quality  
19 Control for the repair station, was with Mr. Meisner on the day in  
20 question. Mr. Whittier has an Airframe and Power Plant  
21 Certificate and testified as to his prior experience in the  
22 industry and with the United States Air Force.

23           He indicated that when Mr. Meisner and Mr. Whittier went  
24 over to the area where the Respondent was with the other quality  
25 control inspector, a Mr. Retherford, at that point it appeared

1 that Mr. Retherford was not willing to sign off on the work cards  
2 because Mr. Retherford had not actually observed the torquing of  
3 the castellated nuts.

4 Mr. Whittier testified that each quality control  
5 inspector, and there's apparently, at that time, about six or  
6 seven of them on the floor available, that each of them can do  
7 their inspection as they so desire, or as long as they can  
8 obviously complete the inspection. Mr. Retherford apparently was  
9 of the view that he should have actually observed the torquing  
10 before he would sign off on a completed inspection.

11 Mr. Whittier also testified that he personally did  
12 observe the castellated nut and the pins that had been installed  
13 by the Respondent and that, by looking at the work, in his view  
14 the way the work was, in appearance, it indicated that the work  
15 was in a completed state.

16 Subsequent to the event itself, according to this  
17 witness, the company did their own investigation of the  
18 circumstances, and Mr. Whittier indicated that, based upon the  
19 company's investigation of the incident itself, the company did  
20 come to the conclusion that the entries made by the Respondent on  
21 Exhibits A-1 and A-2 were in fact false or, as he stated,  
22 fraudulent.

23 There was testimony back and forth on the points, so I  
24 mention it, the use of the word simply "torqued" in A-3. And,  
25 according to Mr. Whittier and even Mr. Meisner, inferentially, by

1 using that it would be understood that that means to use a  
2 calibrated instrument, a torque wrench, to torque it. According  
3 to Mr. Whittier, there is no equality between the term torque as  
4 used in the industry and simply tightening a nut. They are two  
5 different things.

6 And also, as this witness indicated, in Chapter 20 of  
7 the SOP for the repair station, there is a chart giving the actual  
8 values of the torque setting to be used, and also the calibration  
9 to be used. It's called out on Exhibit A-3, and the particular  
10 individual can then go to another chapter in the SOP to get the  
11 values that he's supposed to use for the particular job.

12 Mr. Whittier did state that the Respondent, in the  
13 conversation, stated to him, and admitted, that he had not torqued  
14 the nuts using a torque wrench, indicating that he, the  
15 Respondent, could tighten the nuts, based upon his 20 years of  
16 experience, to the requisite value.

17 The Respondent had never indicated to him, Mr. Whittier,  
18 that he, the Respondent, had control of the work cards and that he  
19 could therefore modify them at some subsequent time. As far as  
20 Mr. Whittier was concerned, the cards, and this was testified also  
21 by Mr. Meisner, belong to the repair station itself, and that  
22 once, according to Mr. Whittier, the Respondent had signed off on  
23 the work cards the work was complete, meaning that it was done,  
24 and that the cards, therefore, were complete at that point.

25 Exhibits R-1 and R-2 were amendments to the work cards,

1 and Mr. Whittier indicated that he had directed the Respondent to  
2 cross out the entries as they appear on A-1 and A-2, and to  
3 correct them because, according to Mr. Whittier, it was necessary  
4 so that there would be an indication as to the correct work having  
5 been accomplished.

6 On cross-examination Mr. Whittier again reiterated that  
7 each inspector can perform his inspections according to his  
8 choice, as long as the inspection is done, to assure that the work  
9 has been properly accomplished, and also again reiterated that the  
10 Respondent had stated that he had not torqued the nuts and that  
11 was why the conversation was going on, that Mr. Retherford was not  
12 going to sign off because he had not observed the work.

13 Also of significance on cross-examination, the witness  
14 reiterated that the Respondent had never stated to him,  
15 Mr. Whittier, that the work that the Respondent had signed for on  
16 Exhibits A-1 and 2 were only meant to be taken as temporary  
17 installations.

18 To the contrary, in accordance with provisions of the  
19 routine and non-routine maintenance, the SOP for the repair  
20 station as it appears in Exhibit A-4, and testified to by  
21 Mr. Whittier, that the sign off would indicate that the work was  
22 completed, in that the SOP does state each technician will  
23 reference the work he or she has completed and signed for, only  
24 that work performed.

25 Respondent testified on his own behalf. He has no prior

1 violation history that's been brought to the attention of the  
2 Board, and he testified that he's never been subject of any other  
3 enforcement action by the Federal Aviation Administration. He  
4 indicates that he has 10 or 15 years, both in training and as a  
5 mechanic in Canada with his Canadian certificate, and also has  
6 worked on aircraft for Bombardier for at least 12 years.

7           As I've already mentioned in passing, the Respondent did  
8 testify that, on this particular job that he was doing, and that  
9 appears on Exhibits A-1 and A-2, that subsequently he had been  
10 instructed by his lead mechanic, apparently that he, the  
11 Respondent needed to go work on another aircraft. And, therefore,  
12 according to the Respondent, he did feel that he was being  
13 somewhat rushed, and that he was then in the process of trying to  
14 account for the work he had done and the various parts that he  
15 still had laid out on his toolbox, and that at the time that he  
16 had been interrupted he was really in the process of getting ready  
17 to go to the repair station store area to obtain other parts that  
18 he felt were necessary to complete the work.

19           In any event, he came to the decision that rather than  
20 leave any parts laying about, and maybe getting misplaced, that he  
21 decided to reinstall the parts on the aircraft. And that he  
22 therefore determined that the better action was put them back on  
23 the aircraft. And that his intention was then to return to  
24 complete the work later. And that it was never his intention to  
25 indicate that the aircraft was ready to be returned to an

1     airworthy status.

2             He conceded that he had not used the torque wrench, but  
3     stated that instead he used tools which he felt were adequate for  
4     performance of the required work.  And lastly, that it was never  
5     his intention to represent that he had torqued the nuts, using a  
6     torque wrench, by his entries that he made on Exhibits A-1 and A-  
7     2.

8             I've already referenced some of the Exhibits and the  
9     entries on them.  I will just briefly go through some of the more  
10    significant ones to me.  A-1 and A-2 do indicate sign offs by the  
11    Respondent.  And a reasonable interpretation of both A-1 and A-2,  
12    by anyone coming into subsequent possession of these forms, would  
13    necessarily have to come to the conclusion that all of the work  
14    called in the particular citation to the maintenance manuals had  
15    in fact been completed, meaning the use of the calibrated torque  
16    wrench to torque the castellated nuts.

17            That is the only interpretation that one can have.  
18    There's no indication that other work was to be performed.  On  
19    their face they indicated completion of the required work.  A-3,  
20    as I've already said in passing, does call for torquing of the  
21    nuts.  And on the testimony, really, that means use of a  
22    calibrated tool, and that those tools are available, as  
23    Mr. Whittier indicated on the tool inventory and the logging of  
24    the calibrated tools, which are Exhibits A-5 and A-6.  The  
25    Respondent never obtained those tools and never signed them out.

1           And, as I stated on A-4, the SOP, which is an accepted  
2 document by the Administrator of how work is to be performed,  
3 therefore, it is an acceptable method. That is the method that  
4 has to be followed. It is to be signed only for the work  
5 completed. A-1 and A-2 are signatures saying work has in fact  
6 been completed, not that it's in the process.

7           Lastly, I refer to Exhibits A-7 and A-8 and A-9. Page 2  
8 of A-7, which is a letter by the Respondent, sets forth apparently  
9 the same reasoning that was given to Mr. Whittier that he  
10 testified to, that it was the Respondent's position, at the time,  
11 possibly even now, that a tool does not have to be used, but that  
12 "within reason" an experienced mechanic is able to adjust and  
13 install a castellated nut to the required torque setting. And  
14 that word is used throughout, "within reason" or "reasonable  
15 correct installation".

16           Requirement is not for a reasonable approximation. It  
17 requires what the manufacturer has set out and what has been  
18 accepted under the certification for the particular aircraft. Not  
19 what someone thinks is within reason. If it's done within reason  
20 it's not airworthy.

21           This in my view goes to the intent, on the part of the  
22 Respondent. Similarly, with the written statement of  
23 Mr. Whittier, which he testified in accordance with this  
24 statement, when Mr. Whittier asked the Respondent if he had used a  
25 torque wrench on the bolt, as required by the maintenance manual.

1 The Respondent stated that he had not, and that when inquired as  
2 to why he had not used the wrench, that he, the Respondent stated,  
3 and I'm quoting from Exhibit A-8, "He, Respondent, had 20 years in  
4 the industry and he knew what the torque value felt like."

5 In A-9, Mr. Retherford's testimony as to the questions  
6 being asked of Respondent with respect to the write-ups on A-1 and  
7 A-2, the Respondent, in Mr. Retherford's view, had signed off for  
8 the work as having been completed.

9 That is my view of the pertinent evidence in the case.  
10 Of course the burden of proof in this case rests with the  
11 Complainant throughout. And she must sustain that by a  
12 preponderance of the reliable and probative evidence.

13 The Regulations cited by the Complainant charge the  
14 Respondent, in Regulation Section 43.12(a)(1), with having made a  
15 fraudulent or intentionally false entry in any record or report  
16 that's required to be made kept, or used to show, compliance  
17 within a requirement under Part 43. Respondent is not charged  
18 with fraudulent. We are dealing here under the allegations in the  
19 Complaint with an alleged intentionally false entry.

20 Respondent is also charged with violation of Section  
21 43.13(a), which requires that anyone performing maintenance on an  
22 aircraft shall use methods, techniques, and practices prescribed  
23 in the manufacturer's maintenance manual, or to use methods,  
24 techniques, and practices acceptable to the Administrator. And he  
25 shall use tools, equipment, and test apparatus necessary to ensure

1 completion of the work and accept it in accordance with accepted  
2 industry practices. So those are the standards that are  
3 applicable in this case.

4 On the question of intentional falsification, there is a  
5 three pronged test that the Board has adopted in these types of  
6 cases. And those three criteria are: there must be established  
7 that there was a false entry, the entry must be material, and the  
8 entry must of have been made intentionally, that is, knowingly;  
9 that is, the individual must know that the entry made is in fact a  
10 false entry.

11 Dealing with the easiest part of the criteria,  
12 materiality, obviously the entries in maintenance records are  
13 records that are required to be kept, maintained, so that  
14 inspection of the aircraft, or someone who comes in possession of  
15 the aircraft will know what has been done and how the aircraft has  
16 been maintained. They are in fact material and I so find.

17 Were, in fact, the entries made on Exhibits A-1 and A-2  
18 false? Yes. And my determination on the weight of the evidence,  
19 as I indicated early on, looking at Exhibits A-1 and A-2, which  
20 are material records, on their face they are signed off by the  
21 Respondent as having completed this work in accordance with a call  
22 out in the Maintenance Manual. There's nothing in these work  
23 orders, or work cards which indicates that any step had been  
24 postponed, or was to come back to, and be completed, subsequently.

25 If something had happened to the Respondent, which

1 prevented him from doing what he testifies that he intended to do,  
2 was to come back and complete the work, no one would be able to  
3 determine that by simply looking at these work cards. On their  
4 face they indicate the work was done in accordance with the  
5 Manual.

6           And on the evidence in front of me, by a preponderance,  
7 it is clear that these cards would indicate to any reasonable  
8 person that came in possession of them, that that work had been  
9 signed off as completed in total by the Respondent. And I so  
10 find.

11           Lastly, we come as to whether they were intentionally  
12 made. They were false entries as I've already indicated. And of  
13 course intent is a subjective finding. It has to go essentially  
14 on circumstantial evidence.

15           I have listened to the testimony of the Respondent as to  
16 what he intended to do. However, the contradictory testimony from  
17 the Complainant is that, as the work appeared to Mr. Whittier or  
18 Mr. Meisner, as completed work, the nut was in there, the cotter  
19 pin was in there, the ends were bent, which would indicate that  
20 the work had been completed.

21           I've also taken into account that Mr. Retherford had  
22 been called over by the Respondent to the work station to look at  
23 the work. Why would a quality control inspector be requested to  
24 come to the position where the work was being done if it was not  
25 to inspect the work and to sign off on the work? There would be

1 no necessity for a quality control inspector to check the work if  
2 it was not completed.

3 To me, the fact that the quality control inspector,  
4 Mr. Retherford, was there, whether or not he would have signed it  
5 because he hadn't actually seen the torquing of the nut, that's  
6 another issue. But the fact that the quality control inspector  
7 was requested to be present would indicate to me that the  
8 Respondent expected his work to be inspected. And, if it was to  
9 be inspected, it would indicate also reasonably that the work to  
10 be inspected was done, that is completed.

11 Lastly, I take into account the statements made by the  
12 witnesses for the Complainant, which are not contested or  
13 contradicted, that the Respondent never indicated to Mr. Meisner  
14 or Mr. Whittier that he intended to come back and complete the  
15 work, is that, as I get it, that he felt, the Respondent, based  
16 upon his 20 years of experience, could within reason tighten these  
17 nuts. As he indicated in Mr. Whittier's statement, that he had 20  
18 years in the industry, and that he, the Respondent, knew what the  
19 torque value felt like.

20 In my view, therefore, the credibility on the issue of  
21 what was the intent of the Respondent at the time preponderates in  
22 favor of the Complainant. I, therefore, find that the Respondent  
23 knew that the entry that he made, which he had to know with his  
24 time at Bombardier and 20 years in the industry, that by signing  
25 off in accordance with a manual would indicate work had been

1 completed, that this was a false entry, and therefore he signed  
2 this intentionally with knowledge that the entry was in fact  
3 false.

4 I therefore find on a preponderance of the reliable and  
5 probative evidence that the Respondent did in fact make a false  
6 entry, a material entry and with knowledge of its falsity.

7 The Board has held that entries in maintenance records  
8 are required to be made scrupulously because of the impact on the  
9 public interest in aviation safety. If one cannot rely upon the  
10 maintenance records, the system of air worthiness for aircraft  
11 falls apart. Therefore a falsification in a record of this type  
12 is looked at as a serious violation.

13 The Board has also held that one instance of intentional  
14 falsification is grounds for revocation of any and all airman  
15 certificates held by the particular airman.

16 I am aware of the cases that the counsel for the  
17 Respondent has cited, but in this instance I do find that the  
18 Respondent did in fact make an intentional false entry on work  
19 cards that were required to be kept and maintained, that his  
20 subsequent explanation of why he did this is simply not credible.

21 And that was his intent all along, to leave the work as  
22 it was. That makes it a serious, in my view, violation. Since  
23 the record on its face would lead anyone else to conclude this  
24 aircraft was released at least with this work as being completed  
25 and in an airworthy condition.

1           With respect to the violations I do find therefore that  
2 the Respondent did operate in regulatory violation of Section  
3 43.12(a)(1) and that he made an intentionally false entry in a  
4 maintenance record that was required to be kept to show compliance  
5 with the provisions of Part 43 of the Federal Aviation  
6 Regulations.

7           I further find and conclude that the Respondent did act  
8 in regulatory violation of Section 43.13, that is, 13(a)., in that  
9 he failed to use the methods, techniques and practices prescribed  
10 in the manufacturer's maintenance manual. And he also failed to  
11 use other methods, techniques and practices which were deemed  
12 acceptable to the Administrator by the Administrator's acceptance  
13 of the standard operation procedures for the Bombardier Tucson Air  
14 Center Repair Station.

15           As to the question of sanction, by Statute deference is  
16 required to be shown to the Administrator's choice of sanction,  
17 absent a showing that it is either arbitrary, or capricious, or  
18 not in accordance with precedent. That demonstration has not been  
19 made in this record. And I do find that precedent, as I've  
20 already referenced with respect to instances of intentional  
21 falsification do call for revocation.

22           I therefore do find that the public interest in air  
23 safety and air commerce does require affirmation of the  
24 Administrator's Emergency Order of Revocation as issued as I do  
25 find in sum that all of the allegations that are factual,

1 contained in the Order, the Complaint herein have been established  
2 on a clear preponderance of the evidence, as have been the  
3 regulatory violations charged. I therefore will affirm the  
4 Emergency Order Revocation, the Complaint, herein as issued.

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ORDER

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IT IS THEREFORE ADJUDGED AND ORDER THAT:

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1) The Emergency Order Revocation, the Complaint herein  
be, and the same hereby is, affirmed as issued.

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2) The Respondent's Mechanic certificate with attached  
Ratings and Limitations be, and the same hereby are revoked on an  
emergency basis.

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Entered this 12th day of May, 2009 at Phoenix, Arizona.

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EDITED ON

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PATRICK G. GERAGHTY

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May 18, 2009

Administrative Law Judge

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1 APPEAL

2 Either party may appeal from this decision and order by  
3 filing with the Board within two days from this date a notice of  
4 appeal. The appealing party must further, within five days from  
5 this date, file with the Board a brief in support of that appeal.  
6 Those documents must be filed with the docket section, Office of  
7 Administrative Law Judges, National Transportation Safety Board,  
8 Washington D.C. 20594 with copies of each document served upon the  
9 opposing party.

10 Parties are cautioned that the Board takes a very strict  
11 view of the time limitations, and will dismiss an appeal for the  
12 untimely filing either of the notice or supporting brief.

13 As this is an emergency proceeding, the review on  
14 appeal, or election by the Board to review on its own motion, will  
15 not stay the effectiveness of the emergency order revocation  
16 during the pendency of that review.

17 Anything else, for the record?

18 MR. CAMACHO: Yes, Your Honor. During the discussion  
19 phase of your discussion you referenced testimony with regard to  
20 the presence of torque values that could be found in chapter 20.  
21 And you referenced chapter 20 of the SOP, but my recollection of  
22 the evidence that it was chapter 20 of the maintenance manual.

23 And I thought that that should be, to make the record  
24 clearer, I think the evidentiary -- the exhibits -- documentary  
25 evidence I think reflects that along with the testimonial evidence

1 of Mr. Whittier.

2 ADMINISTRATIVE LAW JUDGE GERAGHTY: Well, my notes are  
3 not really clear on it. I did get Chapter 20. And if it's -- I  
4 thought it was as part of the SOP. But if it's in a different  
5 manual -- in any event, there is a Chapter 20 in existence,  
6 according to Mr. Whittier, where one can go and find the values,  
7 which is the important thing, that they do exist and they're not  
8 made up.

9 MR. CAMACHO: Right.

10 ADMINISTRATIVE LAW JUDGE GERAGHTY: So whatever the  
11 testimony actually shows, that's what it will show. But the  
12 critical thing to me is that A3 only calls out torque. But there  
13 is a place that the individual can go and find what the requisite  
14 torque settings should be. And also apparently also find out  
15 exactly which torque wrench whether you put pounds or foot inches  
16 you're going to use for the particular repair. Okay?

17 MR. CAMACHO: Yes, Sir.

18 ADMINISTRATIVE LAW JUDGE GERAGHTY: Nothing else?

19 MR. CAMACHO: No, Sir.

20 ADMINISTRATIVE LAW JUDGE GERAGHTY: Nothing else either  
21 side? Proceeding is closed. Thank you, gentlemen.

22 MR. ANDERSON: Thank you, Your Honor.

23 (Whereupon, at 2:58 P.M., the hearing in the above-  
24 entitled matter was adjourned.)