

SERVED: October 16, 2009

NTSB Order No. EA-5483

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 14th day of October, 2009

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-18529
	v.)	
)	
JAMES NYERGES,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent appeals the May 6, 2009 oral initial decision of Administrative Law Judge William R. Mullins in this matter, issued following an evidentiary hearing held on May 5, 2009.¹ By that decision, the law judge affirmed the Administrator's complaint and ordered a 120-day suspension of respondent's

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

mechanic certificate with airframe and powerplant ratings, based on violations of 14 C.F.R. §§ 43.13(a) and (b),² and 43.9(d).³

We deny respondent's appeal.

The Administrator's March 3, 2009 order, which serves as the complaint herein, states that respondent is the director of maintenance and a mechanic at Western Air Express, Inc., which is an air carrier under 14 C.F.R. parts 119 and 135, and that Western Air Express owned and operated a Beechcraft Queen Air, model BE-65-A80-8800, civil aircraft N6AQ (hereinafter "N6AQ"). The complaint alleged that, on or about May 16, 2008, the nose landing gear of N6AQ failed to extend properly when the aircraft landed at Midland International Airport in Midland, Texas, with the nose gear in a retracted position. The complaint stated that an investigation of the event revealed that the nose landing gear actuator spines had failed. The complaint alleged that, on July 17, 2008, the main landing gear of N6AQ failed to

² 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; similarly, § 43.13(b) requires each person performing such maintenance to complete the work in such a manner and use materials of such a quality that the condition of the aircraft or part "will be at least equal to its original or properly altered condition" with regard to qualities affecting airworthiness.

³ Section 43.9(d) requires the person making repairs on an aircraft to include "major repairs and major alterations" on a specific form.

extend properly, and when the aircraft landed at Midland again, the main landing gear collapsed; subsequent to the event, an investigation revealed structural damage to the aircraft. The complaint further stated that, on July 18, 2008, FAA inspectors reviewed the aircraft's maintenance records and identified a logbook entry dated July 15, 2008, indicating that respondent had performed maintenance on the aircraft after the May 16, 2008 incident. The complaint stated that, on July 22, 2008, FAA inspectors found loose insulating material wrapped around the drive sprockets of the aircraft's nose gear retract/extension chain, and that, on August 18, 2008, FAA inspectors found a skin patch repair measuring approximately 18.5 by 7.5 inches in size on the forward left side of the fuselage performed without replacing the entire skin sheet panel or using original seam lines and fasteners. The complaint alleged that the August 18 inspection also revealed that respondent repaired the fuselage nose pan assembly, located in the structure that supports the nose of the aircraft, by "cutting out the lower portion of the damaged lower structure and splicing a section of unknown new material, installing additional support angles, and inserting a shim between the angles and the newly installed material to accommodate the improper alignment of the newly installed material over the original material." Compl. at ¶ 12. The

complaint stated that respondent showed FAA inspectors a copy of FAA Form 337 during their August 18 inspection, but that respondent never submitted Form 337 to the FAA, as required. As a result, the Administrator alleged that respondent violated §§ 43.13(a) and (b), and 43.9(d), because respondent conducted a major repair, as defined by 14 C.F.R. part 43, Appendix A, § (b)(1)(xxii) and (xiv), and did not submit FAA Form 337 concerning the repair, and that respondent did not conduct the repair in the manner that Advisory Circular (AC) 43.13-1B requires.⁴ The complaint ordered a 120-day suspension of respondent's mechanic certificate.

The case proceeded to hearing, at which the Administrator called Principal Maintenance Inspector (PMI) Arturo Castillo, who works at the Lubbock, Texas Flight Standards District Office, and served as the PMI for Western Air Express. The law judge accepted Inspector Castillo as an expert in "aviation matters and mechanic work as they relate to this case." Tr. at 42. Inspector Castillo stated that the landing gear was not fully locked in the incident that occurred on May 16, 2008, and identified photographs that he took showing damage to the lower

⁴ Section 4 of AC 43.13-1B requires a mechanic to use approved data for major repairs, because such repairs are extensive and can affect the structural integrity of a component. Exh. A-13; Tr. at 93. Sections 4-57 and 4-58 of AC 43.13-1B require the use of approved data for repairs of damaged skin. Exh. A-14; Tr. at 94-96.

nose section of the aircraft, the doors and fuselage skin, and the nose gear area in general. Inspector Castillo identified the accident report describing the July 17, 2008 occurrence, which Inspector Castillo stated was classified as an accident because the accident had substantially damaged the aircraft, as the main landing gear had collapsed. Inspector Castillo testified that he informed respondent that he wanted to inspect the aircraft following the accident, but that respondent initially did not allow Inspector Castillo and his colleagues to inspect the aircraft. Tr. at 57-58. Inspector Castillo identified several exhibits that the Administrator's counsel introduced, including photographs of the maintenance records for N6AQ, Form 337, and the parts at issue, among others.

Inspector Castillo opined that insulation should not be loose and unsecured as it was on the nose drive chain, and that this loose insulation prevented the main landing gear from extending. Regarding the skin repair, Inspector Castillo opined that it was not a proper repair because respondent attempted to merely place a cover patch on the skin, when he should have replaced the entire panel, in accordance with the aircraft's manual. Tr. at 101-102. Inspector Castillo stated that the size of the skin repair exceeded six inches, and therefore was considered a major repair under the requirements of the manual.

Inspector Castillo also testified at length concerning the rivets in the lower section of the radome pan, which he opined were spaced improperly and out of alignment because they were not flush. Inspector Castillo stated that respondent should have replaced the entire assembly rather than putting in new rivets, and that respondent should have also contacted the manufacturer concerning the repair. Inspector Castillo testified that respondent did not submit FAA Form 337 to the FAA describing the repairs, and that respondent had told him that he considered the repairs minor and therefore believed he did not need to submit the form. Tr. at 116.

The Administrator also called James Tubbs, the Vice President for Technical Services at Danbury Aerospace, Inc., and Vice President for Engineering at Automotive Engineering Corporation, to testify as an expert in airworthiness and "structural matters." Tr. at 162. Mr. Tubbs opined that the repairs to the nose pan and the skin patch at issue were major repairs under 14 C.F.R. part 43, Appendix A, § (b), because both of those parts are principal structural elements in the aircraft. Mr. Tubbs provided detailed testimony concerning how loads are distributed among the parts, and stated that the photographs in evidence showed clearly where the bulkhead was spliced, and that there was no way for the repair to transmit

the skin shear loads from the top to the bottom parts of the bulkhead. Tr. at 168. Mr. Tubbs's testimony also corroborated Inspector Castillo's testimony concerning the opinion that respondent should have replaced the entire panel.

In rebuttal, respondent's designated representative submitted several photographs and other exhibits into the record in an attempt to establish that the repairs that respondent had completed were minor and that respondent did not deviate from the maintenance manual. Respondent's representative did not call any witnesses on respondent's behalf, and respondent did not testify.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he provided a detailed summary of the evidence and stated that it did not matter whether the FAA had classified the events concerning N6AQ in May and July as accidents or incidents, because the law judge's role was to determine whether respondent had violated the regulations, as charged. The law judge concluded that the Administrator presented sufficient evidence to prove that respondent had violated the regulations, as charged, and affirmed the 120-day suspension of respondent's mechanic certificate, with airframe and powerplant privileges.

On appeal, respondent argues that the Board's stale complaint rule⁵ prohibits the Administrator from taking action against his certificate; that the Administrator did not allege facts in the complaint to support the charges that he violated §§ 43.13(a) and (b), and 43.9(d); and that, if the Board affirmed the law judge's decision, then the Board would be acting in an arbitrary and capricious manner because respondent did not complete any major repairs. The Administrator contests each of respondent's arguments, and urges us to affirm the law judge's decision.

We are not persuaded by respondent's argument that the stale complaint rule, 49 C.F.R. § 821.33(a), bars the Administrator from taking action against his certificate. In respondent's March 30, 2009 motion to dismiss and in his appeal brief, respondent argued that he performed the aircraft repairs at issue on July 7, 2008, which is more than 6 months prior to the Administrator's January 9, 2009 notice of proposed certificate action. Respondent asserted that the Administrator had relied upon a maintenance logbook entry showing that the repairs occurred on July 15, 2008, and that respondent later

⁵ Section 821.33, entitled, "Motion to dismiss stale complaint," provides: "Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed action ... the respondent may move to dismiss such allegations as stale."

corrected the logbook to list the date of the repairs as July 7, 2008.⁶ The record does not support respondent's contention that the repairs at issue occurred on July 7, 2008; the Administrator introduced photographs of the logbook into evidence at the hearing, and one photograph clearly lists "07/15" as the date of the repairs at issue. Exh. A-7 at 2; see also Tr. at 61-66. In addition, Form 337, which respondent completed but did not submit, also lists July 15, 2008 as the date of the repairs. Exh. A-8; see also Tr. at 66. Respondent does not dispute that he listed July 15 as the date on both documents, but instead asserts that the Administrator should not have allowed 4 months to elapse between the conclusion of the investigation and the issuance of the notice of proposed certificate action. Overall, respondent has not proven that the logbook entry was inaccurate and that more than 6 months elapsed between the date that the repairs occurred and the date that the Administrator issued the notice.

⁶ We note that we need not analyze the issue of whether the time calculation for purposes of the stale complaint rule commences on the date on which the Administrator discovers the alleged violation or on the date on which the alleged violation occurred. Although the law judge relied on portions of our opinion in Administrator v. Dill, NTSB Order No. EA-4099 (1994), in his conclusion that it is appropriate to calculate the time from the date that the Administrator discovered the alleged violations, we do not reach the issue concerning the calculation of time for purposes of the stale complaint rule.

Respondent also challenges the law judge's conclusion that the Administrator presented sufficient evidence to establish that respondent violated §§ 43.13(a) and (b), and 43.9(d), and that respondent had completed major repairs on N6AQ. We have carefully reviewed the evidence in the record, which includes numerous photographs of N6AQ, as well as testimony concerning the appearance of the aircraft when Inspector Castillo inspected it. Respondent appears to argue that the Administrator's complaint must set forth sufficient facts to prove that respondent undoubtedly violated the regulations. We have previously held that the function of a complaint is to notify the respondent of the charges in order to allow the respondent to prepare a defense.⁷ In the case at hand, we agree with the law judge that the Administrator's complaint adequately put respondent on notice of the charges, and provided sufficient details concerning the allegations. The case file includes documents indicating that the parties engaged in discovery, pursuant to the Board's Rules of Practice, and the law judge held an evidentiary hearing, as described above. As such,

⁷ Administrator v. Pierce, NTSB Order No. EA-4965 at 4 (2002) (stating that, "[t]he purpose of the complaint is to put respondent on reasonable notice," and that, "[t]he exact wording of the complaint need not be perfectly proved at trial," and citing Administrator v. Sanderlin, NTSB Order No. EA-4510 at 5 n.4 (1996), and Administrator v. Parrott, NTSB Order No. EA-3692 at 5-6 (1992)).

respondent had sufficient notice of the allegations and opportunity to persuade the law judge that the Administrator had not fulfilled his burden of proof. Respondent's argument that the Administrator must plead the entire case in the complaint is contrary to our Rules of Practice and our general practice in overseeing cases.

Finally, respondent's contention that he did not complete any "major" repairs on N6AQ under the regulations, which respondent bases on the fact that the FAA originally classified the March 16, 2008 gear-up landing as an "incident" rather than an "accident," is also not persuasive. We note that we have long taken care to maintain a separation between the Board's investigative function and its adjudicative responsibilities.⁸ In this regard, the classification of the gear-up landing as an "incident" is irrelevant to the issue of whether respondent violated the regulations, as alleged.

We have reviewed the record and determined that the Administrator has fulfilled his burden of proving that

⁸ See, e.g., Administrator v. Hill, 5 NTSB 1447, 1454 (1986) (disapproving of the Administrator's choice of calling a Board investigator to testify at an evidentiary hearing for enforcement purposes, and emphasizing that separation of the Board's two principal functions is critical); see also Administrator v. Darby Aviation, NTSB Order No. EA-5159 at 11 n.5 (2005) (clarifying that the Board's decision in the case was based exclusively on the case record, and not on the Board's investigative activities concerning the respondent).

respondent violated the regulations, as charged. The Administrator provided several photographs of N6AQ that indicate that the aircraft was not repaired in accordance with methods, techniques, and practices prescribed in the current manufacturer's maintenance manual, and that respondent did not repair the parts in a manner equal to their original or properly altered condition. Inspector Castillo's testimony in this regard was a key component of the Administrator's case: Inspector Castillo testified that respondent's repair of the skin exceeded six inches, and was therefore a major repair (Tr. at 89-90), and that respondent failed to ensure that the retract chain in the landing gear was free of loose insulation (Tr. at 83-84). In addition, respondent does not deny that he failed to submit Form 337, concerning the repairs, to the Administrator. Overall, the evidence in the record indicates that the Administrator has proven that respondent violated the regulations, as charged.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The 120-day suspension of respondent's mechanic certificate, with airframe and powerplant ratings, shall begin

30 days after the service date indicated on this opinion and order.⁹

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

⁹ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

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

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In the matter of:	*	
	*	
LYNN OSMUS,	*	
Acting Administrator,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-18529
	*	JUDGE MULLINS
JAMES NYERGES,	*	
	*	
Respondent.	*	

* * * * *

U.S. Courthouse
Grand Jury Room, 3rd Floor
200 E. Wall Street
Midland, TX 79701

Wednesday,
May 6, 2009

The above-entitled matter came on for hearing, pursuant
to Notice, at 8:45 a.m.

BEFORE: WILLIAM R. MULLINS
Administrative Law Judge

APPEARANCES:On behalf of the Administrator:

STELLAMARIS WILLIAMS, ESQ.
Federal Aviation Administration
Office of the Regional Counsel
2601 Meacham Boulevard, 6E
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On behalf of the Respondent:

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Western Air Express, Inc.
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(480) 861-7821

ALSO PRESENT:

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1 ORAL INITIAL DECISION

2 This has been a proceeding before the National
3 Transportation Safety Board, held under the provisions of Section
4 44709 of the Federal Aviation Act of 1958, as amended, on the
5 appeal of James Nyerges, who I will refer to as Respondent, from
6 an order of suspension that seeks to suspend his A & P Certificate,
7 Airframe and Powerplant Certificate, for a period of 120 days.

8 The order of suspension which serves as complaint in
9 these proceedings, was filed on behalf of the Administrator of the
10 Federal Aviation Administration through Regional Counsel of the
11 Southwest Region.

12 The matter has been heard before me, William R. Mullins.
13 I am the administrative law judge for the National Transportation
14 Safety Board and, as is provided by the Board's rules, I will
15 issue a bench decision, at this time.

16 The matter came on for hearing, pursuant to notice that
17 was given to the parties, and the trial started yesterday, the 5th
18 day of May 2009. We started at 9:00 and continued until 5:00 last
19 evening, and then we are back on the record at this time for the
20 purpose of the issuance of this decision.

21 The Administrator was present throughout all of these
22 proceedings and was represented by counsel, Ms. Stellamaris
23 Williams, Esquire, of the Regional Counsel's office, Fort Worth,
24 Texas. The Respondent was not present at any time during these
25 proceedings, but was represented by his representative, Mr. John

1 Ilves, who is Assistant Vice-President of Western Air Express.

2 The parties were afforded a full opportunity to offer
3 evidence, to call, examine and cross-examine witnesses. In
4 addition, the parties were afforded an opportunity to make
5 argument in support of their respective positions.

6 DISCUSSION

7 First, let me state for the record that there were two
8 hearings scheduled to begin at 9:00 yesterday morning. First was
9 the Western Air Express case, which Board Docket Number is
10 SE-18376, and then we were scheduled to proceed, as soon as that
11 case was over, with the Nyerges case, which is SE-18529, which is
12 the case I am issuing the decision in.

13 First, when I came into my office on Monday morning, the
14 4th of May, I had a fax from Mr. Nyerges and, in that, he stated
15 that he had received a subpoena to testify in the Western Air case,
16 and he wasn't going to be able to comply with that subpoena
17 because he was going to be out of the country, and specifically he
18 listed a mailing address in London, England.

19 And accompanying that document was his designation of
20 representative, and he cited our Rule 821.6(a) that states that he
21 could be represented by any representative designated by him, and
22 he designated Mr. Ilves, Assistant Vice-President, Western Air
23 Express, Inc., also of Midland. And Mr. Ilves has been here
24 throughout these proceedings and, as I indicated to him just a few
25 minutes ago off the record, I thought he did an outstanding job,

1 particularly for one who has no schooling in legal matters.

2 I know you have run into a couple of problems and, of
3 course, the biggest problem, and I will tell you up front, is that
4 you had no witnesses. Your client wasn't here. The respondent,
5 Mr. Nyerges wasn't here. But we proceeded with your
6 representation of him, as the only representative in this
7 proceeding.

8 The Administrator had called two witnesses through the
9 hearing yesterday. The first was Mr. Arturo Castillo, and the
10 second one was Mr. James Tubbs. I will come back and talk about
11 those gentlemen in a little bit.

12 The order of suspension in this case has alleged
13 regulatory violation of three specific regulations that all relate
14 to maintenance issues. The first was FAR 43.13(a).

15 The second was FAR 43.13(b), and the third was
16 43.9(d). And those three regulatory violations arose as a result
17 of, first, it involved an aircraft that was leased to Western Air,
18 and it was a Queen Air, and the aircraft number is N6AQ. And on
19 May 16 of 2008 that aircraft that was operated by Western Air
20 Express, and owned by Mr. Nyerges, was involved in an incident
21 involving the nose wheel that collapsed on landing, here at
22 Midland.

23 As a result of that incident, there were some repairs
24 made to the aircraft by Mr. Nyerges. The evidence would indicate
25 that, on July 15th, Mr. Nyerges signed a log book stating that he

1 had completed these repairs on this aircraft, and then on July
2 17th the aircraft was involved in another gear-up, and this time
3 it was listed as an accident.

4 As a result of that accident, Mr. Castillo again went
5 back to the site, and then later they did a complete inspection of
6 the repair work, and determined that the repair work was deficient.
7 First, there was some insulating material that was wrapped around
8 a nose gear chain that was, the testimony was, connected to the
9 main gear, and there was suggestion in the evidence that that may
10 have caused this accident. That was one of the issues in the case.

11 The second issue was that there was a skin patch
12 exceeded six inches in length. It wasn't connected with in the
13 areas where it needed to be and, as a result, it was a major
14 repair, and the allegations were that the work was not done
15 according to approved data.

16 The third issue was that a nose pan, nose wheel pan
17 assembly, was at least partially replaced. Again, the allegation
18 by the Administrator was that this was a major repair and had not
19 been completed according to approved data.

20 And then, the fourth area was, this area where this nose
21 pan assembly was connected, the rivets were not consistent with
22 the requirement set forth in the Administrator's document for
23 rivets in this kind of repair.

24 The Administrator has 17 exhibits. The first exhibit
25 was Mr. Castillo's curriculum vitae. That is A-1. A-2 was the

1 aircraft lease agreement between the Respondent, the owner, and
2 Western Air Express. Exhibit A-3 was the accident/incident report
3 of May 16th, involving the nose wheel. I will come back and talk
4 about that a little bit later.

5 A-4 was the photos of the damage, after this nose wheel
6 gear-up accident on May 19th. Exhibit A-5 was the
7 accident/incident report of July 17th of 2008. A-6 was not
8 admitted. A-7 was the aircraft log book which shows the entry
9 dated 7/15/08 where Respondent talked about the work that was
10 completed. Exhibit A-8 was the Form 337, which is the major
11 repair and alteration form required by the Administrator, and it
12 was completed by Respondent, dated July 15th of 2008 and, under
13 the evidence from Mr. Castillo, and to this date, has never been
14 submitted to the Administrator as required.

15 Exhibit A-9 is photos of the chain drive with the
16 material around the chain drive. I think there were three
17 different pages of photos. A-10 is the Beechcraft Queen Air parts
18 catalog. A-11 is the photos of the skin patch. A-12 is one of
19 the not advisory circular, but Part 43 of the FAR's Appendix A
20 which references major alterations, major repairs. Exhibit A-13
21 is the advisory circular, 43.13(b), which refers to the manner in
22 which the rivets are to be replaced or placed. A-14 was advisory
23 circular 43.13(b).

24 A-15 was the photos of the nose pan assembly repair. A-
25 16 was those same photos with the arrows, showing the rivets and

1 the spacing of the rivets. And then, A-17 was the curriculum
2 vitae of Mr. James Tubbs.

3 Respondent's Exhibits, R-1 was a photo of the front side
4 photograph. And, since Respondent didn't have any witnesses, the
5 Administrator stipulated to these exhibits, and they were admitted.
6 R-1 is the front side photo of the repairs to this forward pan
7 nose pan assembly. And R-2 and R-3 were also photos of that same
8 area. R-4 was photo of the skin patch area. R-5 was photo of the
9 damage where the skin patch repair was made. R-6 is the NTSB
10 Regulation 830.2 which are definitions of accident and incident.
11 R-8 was Part 43, Appendix A, major repairs. R-9 was Part 43.13,
12 Appendix B relating to those subjects.

13 Respondent's Exhibit R-11 was not admitted because it
14 had not been identified, and the Administrator objected because
15 the suggestion was it had to be identified as to whether or not it
16 was current or not, and there was no evidence that it was a
17 current page out of the parts catalog. R-10 was a duplication of
18 A-10, and so it wasn't admitted. I think it was withdrawn at the
19 time. So those basically are the exhibits.

20 Mr. Castillo, the first witness called, testified that
21 he was designated the person to go and review this incident at the
22 Midland Airport, and he is with the Lubbock Flight Standards
23 District Office. He is an aviation safety inspector, and he is a
24 principal maintenance inspector. He came to the accident site,
25 incident site, on that day or the day after, and that is not

1 relevant. But he took some pictures which reflected the damage
2 that was done to the aircraft.

3 Then, later he was back after the second gear-up
4 incident on July 17th. I think he was back on the 18th, took some
5 photographs at that time, and then came back later, in July or
6 perhaps early August, and did his investigation. And he
7 identified each of those areas as being deficient; he identified
8 the skin patch, the nose assembly area as major repairs that
9 require approved data and a 337. He also testified that the 337
10 that was admitted into evidence has never been submitted to the
11 FAA and even if it had been submitted to the Administrator, as
12 required under the regulation, it would not have been in
13 sufficient form because it did not have this approved data on it.

14 He also testified about the insulation material that
15 collected around this chain drive, and it was his opinion that,
16 and the two accident reports would indicate that, the aircraft had
17 only flown one hour from the time of the first accident/incident
18 to the time of the second accident/incident, and that this
19 material would not have been there if the work had been completed
20 consistent with practices approved by the Administrator.

21 And specifically he talked about, to do the work on the
22 nose wheel area would have required removal of the inspection
23 plates in the cockpit that look down in this area where this chain
24 drive was, and where all this insulation had fallen down around
25 the chain.

1 On cross-examination, Mr. Ilves attempted to cast some
2 doubt over Mr. Castillo's determination of whether the gear-up
3 incident in May was an accident or incident, and his argument
4 seemed to be that, if it had been an incident, versus accident, it
5 wouldn't have required major repair. And I believe, I don't think
6 that it makes the Administrator that much difference whether it is
7 an incident or accident. It makes a huge difference to the
8 National Transportation Safety Board because the National
9 Transportation Safety Board is not obligated to investigate
10 incidents, but they are obligated to investigate accidents,
11 determine probable cause, and issue safety recommendations as a
12 result of that investigation. And they don't do that in incidents,
13 but they do it in accidents.

14 So it makes a big difference to the NTSB. I don't think
15 it makes that much difference to the Administrator, but it
16 certainly, for the purposes of this proceeding, doesn't make any
17 difference, simply because, and I suggest this to attorneys that
18 appear before me all the time, Mr. Ilves, and, in fact, I have got
19 this same issue coming up tomorrow, is that the respondents like
20 to point to the FAA and say, "You screwed up. Therefore, anything
21 I did after that is going to be okay, because it is all your
22 fault."

23 Well, it doesn't make any difference whether
24 Mr. Castillo incorrectly determined whether this was an incident
25 or an accident. I am not here to make that determination. I am

1 here to look at the work that was done by Mr. Nyerges and listen
2 to the evidence about that work and determine whether or not it
3 was done consistent with the regulations.

4 Mr. Castillo was qualified as an expert in the area of
5 maintenance, and Mr. Tubbs, then, was called, and he is not, and
6 hasn't been, according to his CV, an employee of the Federal
7 Aviation Administration, but he does have a fairly vast background
8 in aerodynamics. His CV would indicate that he has a degree in
9 aerospace engineering, from the University of Texas, and he has
10 worked in this area, it would indicate, over the years since that
11 time.

12 And he talked about the importance of major repairs,
13 involving these areas where there is stress, of making sure there
14 is approved data and that these repairs are done, consistent with
15 that approved data, and in accordance with the industry practices.

16 Well, that concluded the evidence, and, as I said,
17 Mr. Nyerges was not present. He didn't have any witnesses to call.
18 In that respect, there was no rebuttal of any of this evidence.
19 And I think, given that, it is pretty clear, under that evidence,
20 that the Administrator has established the regulatory violations,
21 as alleged, and that the sanction of 120 days suspension of
22 Mr. Nyerges' A & P Certificate would be appropriate in this case.

23

24

ORDER

25

IT IS THEREFORE ORDERED THAT safety in air commerce and

1 safety in air transportation requires an affirmation of the
2 Administrator's order of suspension, as issued.

3 Specifically, I find that there was established, by
4 preponderance of the reliable and probative evidence, the
5 regulatory violations alleged of FAR 43.13(a), FAR 43.13(b), and
6 FAR 43.9(d), and that the sanction of 120-day suspension of
7 Mr. Nyerges' A & P Certificate should be, and the same, is hereby
8 sustained.

9

10

11

12 EDITED ON

13 JUNE 10, 2009

William R. Mullins

Administrative Law Judge