

SERVED: June 14, 2013

NTSB Order No. EA-5666

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 June, 2013

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19464
v.)	
)	
REYNARD M.S. RIGUES,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

1. Background

Respondent, who proceeds pro se, appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued May 14, 2013, following a hearing.¹ In his decision, the law judge affirmed the Administrator's emergency order revoking respondent's airline transport pilot (ATP) certificate and any other airman certificates respondent holds, based on determining

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

respondent violated 14 C.F.R. § 61.59(a)(2),² by not providing accurate logbooks to Flight Training International, Inc. (FTI) upon his receipt of training from FTI.³ We reverse the law judge's decision.

A. The Administrator's Order

The Administrator's order alleged on July 17, 2012, respondent intentionally falsified an electronic logbook he emailed to FTI in order to obtain a B-777 type rating. The Administrator's order, issued April 15, 2013, described FTI as a flight training center under 14 C.F.R. part 142, located in Denver, Colorado. The order stated respondent's electronic logbook contained entries indicating he had flown 661.5 hours in a T-38 aircraft, and 181 hours in a C-27 aircraft. The order alleged respondent informed an aviation safety inspector at the Denver Flight Standards District Office (FSDO) and FTI he had completed these flight hours while conducting "black ops" as a government contractor.⁴ The order further asserted the entries indicating respondent's flight times in the T-38 and C-27 were intentionally false, because respondent did not complete these flight hours as he indicated in his logbook.

B. Facts

Respondent appealed the Administrator's emergency order, and the case proceeded to a hearing. The Administrator provided the testimony of Aviation Safety Inspector David Kempfer,

² Section 61.59(a)(2) prohibits any person from making, or causing 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."

³ 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, as amended, 77 Federal Register 63252-53, October 16, 2012.

⁴ Although the record does not contain a definition of "black ops," such operations engage in covert activities, about which the disclosure of information is prohibited.

who identified email documents and a Microsoft Excel spreadsheet showing respondent's time in the T-38 and C-27. Inspector Kempfer stated respondent also sent him a handwritten document indicating various flights. Inspector Kempfer added up respondent's hours, giving respondent "credit" in his calculations for every flight he determined was "reasonable."⁵ In Inspector Kempfer's summation, respondent had a total of 1,995 flight hours. Inspector Kempfer stated under 14 C.F.R. § 61.64, in order to obtain a simulator type rating, a pilot must have 2,000 total hours.

The Administrator also provided testimony from witnesses who believed the flights respondent listed in the Excel spreadsheet could not have taken place. Although not offered as an expert, Charles Hagan, the training center manager for FTI, opined it is very unusual for a pilot to have flight times of four to five hours in the T-38, because the T-38 is incapable of such a lengthy flight duration.⁶ In response to FTI staff's questions concerning the duplicative, allegedly fictitious flight times listed in respondent's logbook, Mr. Hagan recalled respondent told him the flight times he listed were only estimates, and that he summed several flights up and listed them all as one flight. When Mr. Hagan told respondent such totaling was not permissible, respondent replied he still had sufficient flight hours to obtain the type rating, even without counting the T-38 and C-27 flight times. Mr. Hagan also stated respondent never provided a complete logbook to FTI; for this reason, the FTI flight instructor who oversaw respondent's

⁵ Tr. 26. Inspector Kempfer described respondent's logbooks, including a handwritten logbook respondent provided directly to Inspector Kempfer. The inspector did not testify which logbook he used in calculating 1,995 as the total number of flight hours.

⁶ Tr. 43. During his testimony, Mr. Hagan utilized a computer depiction of the hours on respondent's logbook. The Administrator, however, did not offer the record into evidence so it is not contained in this record for our review.

check ride, Ronald Haider, put a restriction on respondent's B-777 type rating.⁷ Mr. Hagan confirmed respondent passed the training course for the type rating, but FTI was required to restrict it, due to the lack of logged flight hours.

Patrick Wrynn, a training check evaluator and instructor at FTI, corroborated Mr. Hagan's statements. In providing expert testimony, Mr. Wrynn opined respondent falsified his logbook by indicating he flew 617 hours in a nine-month period, and that his four-hour flight time with just one landing in the T-38 was not credible, because it exceeds the operational capability of the T-38.⁸ Mr. Wrynn further stated respondent could not have conducted so many basic fighter maneuver operations at night, in accordance with the hours listed his logbook, because the T-38 does not contain a radar.

In response to the Administrator's case, respondent indicated he issued subpoenas for the appearance of Messrs. George Smith and Haider, who work at FTI, but neither witness appeared at the hearing. Respondent recalled Mr. Hagan and Inspector Kempfer for his case-in-chief, and attempted to offer exhibits into evidence to show he indeed provided FTI with a complete copy of his logbook; however, the law judge excluded the evidence as irrelevant. Respondent then testified on his own behalf. During his testimony, the law judge did not allow respondent to testify concerning his understanding of the type rating requirements, on the basis such testimony was irrelevant. Respondent stated an error existed in the Excel file he transmitted to FTI, and he did not realize the error until after sending the logbook. He acknowledged he sent the logbook in an email certifying the logbook was true and correct, but noticed the errors in his totals on the Excel spreadsheet after he had transmitted the logbook. He stated he corrected the errors and

⁷ This restriction would prevent respondent from being hired by certain major airlines.

⁸ Tr. 38.

sent a new version of the logbook approximately 30 minutes after respondent sent the first Excel spreadsheet, and Mr. Smith from FTI sent an email back confirming FTI had received it.⁹

C. Law Judge's Oral Initial Decision

At the conclusion of the hearing, the law judge determined the Administrator proved respondent violated § 61.59(a)(2) when he provided incorrect logbooks to FTI. The law judge stated respondent's testimony was not helpful, because it was not relevant to the allegations in the complaint. In this regard, the law judge stated, "the issue is not whether [r]espondent's logbooks in some part do sustain a showing that he has a requisite number of hours for a type rating in a Boeing 777 or a Boeing 747. The issue is whether the logbook presented contains false entries."¹⁰ The law judge cited Cassis v. Federal Aviation Administration,¹¹ in support of his conclusion that respondent's logbook entries were material to the Administrator's determination of whether respondent had the requisite number of hours for a particular type rating. Concerning the credibility of the witnesses, the law judge stated, "any issue of credibility I do resolve in favor of the Complainant," because the Administrator's witnesses' testimonies were consistent and supported by the copy of the logbook the Administrator offered into evidence.¹²

The law judge considered the three prongs of the intentional falsification test, which we have long applied to Board cases. To prove a respondent intentionally falsified a document, the Administrator must prove the respondent (1) made a false representation, (2) in reference to a

⁹ As discussed below, respondent attempted to introduce this email message and corrected logbook into evidence, but the law judge did not allow it.

¹⁰ Initial Decision at 105-106.

¹¹ 737 F.2d 545, 547 (6th Cir. 1984).

¹² Initial Decision at 105.

material fact, and (3) had knowledge of its falsity.¹³ The law judge determined the Administrator proved all three prongs. Concerning respondent's knowledge of the falsity of his logbooks, the law judge stated:

These were entries made by [r]espondent not by someone else in his logbook; therefore, he had to know what entries he was making. He had to know whether or not the entries he was making were, in fact, flight times that he actually accomplished, and had he accomplished such flight times in the aircraft that he was indicating that he had flown those flight times. And operationally, the evidence does not support that he could have accomplished Black Operations BFM-type flights at night, although he was claiming that.¹⁴

Based on this analysis, the law judge held respondent intentionally falsified the logbook he provided to FTI.

D. Procedural Background

Following the law judge's decision, the law judge provided instructions to the parties concerning the procedure for appeal under our Rules of Practice. However, the law judge erroneously provided the deadlines for non-emergency cases. Our Rules of Practice, at 49 C.F.R. part 821, subpart I, contain special rules applicable to emergency cases, to ensure the cases proceed on an expedited timeline in the interest of due process. Following his decision, the law judge stated:

Either party from this Decision and Order may appeal to the full Board by filing with the Board within 10 days from this date a Notice of Appeal. The appealing party must further, within 50 days from this date, file with the Board a brief in support of that appeal . . . Although the emergency time provisions of the Board's Rules were waived and therefore additional time is extended in the appeal process, the emergency nature persists and therefore the revocation remains in effect during the pendency of any full Board review.¹⁵

¹³ *Hart v. McLucas*, 535 F.2d 516, 519 (9th Cir. 1976).

¹⁴ Initial Decision at 108.

¹⁵ *Id.* at 116.

The law judge asked the parties whether they had any other statements to make for the record. The Administrator's attorney did not point out the law judge's error in the appeal instructions, and respondent, proceeding pro se, did not inquire about the instructions.

The Board's General Counsel allowed respondent additional time to provide his notice of appeal and appeal brief for the record, finding the law judge's erroneous instructions established good cause existed for an enlargement of time. This ruling is consistent with Board jurisprudence concerning extensions of time,¹⁶ and we serve this opinion and order within the 60-day timeframe required by 49 U.S.C. § 44709(e)(4), even after providing additional time to the parties in order to rectify the issue the law judge's error presented.¹⁷

E. Issues on Appeal

On appeal, respondent contends the law judge erred in denying him the opportunity to testify concerning the Excel software errors he alleges altered his logbook. Similarly, respondent argues the law judge was biased in favor of the Administrator. Respondent further contends the Administrator did not fulfill the burden of proving respondent intentionally falsified his logbook; in this regard, respondent alleges Mr. Haider from FTI did not testify, even though respondent contends he provided a complete copy of his logbook to Mr. Haider. Overall, respondent argues

¹⁶ Administrator v. Ricotta, NTSB Order No. EA-5569 (2011) (granting reconsideration of an order dismissing a late-filed appeal, based on a determination the respondent's attorney established good cause existed for the delay by providing proof the law judge served respondent's former attorney, rather than the respondent's new attorney); see also Administrator v. Hooper, 6 NTSB 559, 560 (1988), on remand from Hooper v. Nat'l Transp. Safety Bd., 841 F.2d 1150 (D.C. Cir. 1988).

¹⁷ We further note respondent submitted his appeal brief electronically at 5:04 am EDT on May 29, 2012, although it was due on May 28, 2012. In the interest of equity and our rationale for extending the deadlines based on the law judge's incorrect instructions, we accept respondent's appeal brief.

the law judge erred in finding he violated § 61.59(a)(2) because he did not intentionally falsify his logbook.

2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.¹⁸

A. *Law Judge's Evidentiary Rulings*

1. *Exclusion of documentary evidence*

Our law judges have significant discretion in overseeing testimony and evidence at hearings. We typically review our law judges' evidentiary rulings under an abuse of discretion standard, after a party shows such a ruling prejudiced him or her.¹⁹ In the case at hand, we find the law judge erred in precluding respondent from articulating his defense concerning the alleged errors in the Excel spreadsheet. In addition, we find the law judge erred in prohibiting respondent from discussing his understanding of the type rating requirements at issue.

When respondent took the stand in his own defense, he denied intentionally falsifying any documents. He stated he sent the logbook in an Excel spreadsheet certifying it was true and correct, but, after sending it, he realized the spreadsheet contained errors.²⁰ The law judge did not allow respondent to elaborate on what errors the spreadsheet contained or how he corrected them. For example, the law judge did not permit respondent to explain whether the formulae in

¹⁸ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

¹⁹ See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)). 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).

²⁰ Tr. 92-93.

the Excel spreadsheet were inaccurate, or whether the actual numbers he entered into the spreadsheet were incorrect.

The law judge partially rejected admission of respondent's Exhibit R-13, which was a second, allegedly corrected, email message from respondent to Mr. Smith, sent approximately 30 minutes after respondent sent the first Excel spreadsheet, containing the errors. The law judge admitted the email message, but rejected the attached spreadsheet. The following exchange occurred between the parties and the law judge:

Respondent: Okay. I have no further questions for this witness. I'd like to enter this exhibit because it's part of the Defense Exhibit 13. It was the attachment.

Administrator's counsel: Your Honor, I object to this logbook being entered. It has no foundation.

Administrative law judge: There's no foundation for it. No, refused.²¹

We find the law judge erred in admitting the email into evidence but rejecting the attached logbook for Exhibit 13. In the Administrator's case-in-chief, the law judge allowed, and the Administrator based its entire case on, an electronic logbook respondent sent to Mr. Smith at FTI in an email message on July 17, 2012.²² Respondent, as a pro se litigant, did not object to this

²¹ Tr. 83. We note the record lacks clarity on whether the Administrator's attorney opposed Exhibit R-13, and whether the law judge admitted any portion of the exhibit into the record. On pages 78 and 79 of the hearing transcript, the Administrator's attorney stated he did not object to Exhibit R-13, and the court reporter marked the document as received into evidence. However, the quoted text above from page 83 of the transcript indicates the Administrator's attorney decided to object to the exhibit, and the law judge therefore excluded it. In the hearing exhibits accompanying this record of hearing, we note a one-page exhibit in the case file is marked Exhibit R-13, and it consists of an email dialogue, in which respondent sent an "PDF" file to Mr. Smith and stated, "[t]he file I sent to you had several errors in it. I did not realize it until I printed the last few pages. Apparently it deleted and added a few lines when I copied the total line to the bottom of each page. I fixed it, printed the last few pages, and here they are." Mr. Smith replied to the email with a message stating, "[t]hanks Reynard. I have the information and am working the issue this morning." We further note the case file does not include the rejected pages, such as the corrected logbook, from Exhibit R-13.

²² Exh. C-1.

exhibit based upon foundation or hearsay. Exhibit R-13 is respondent's follow-up email and logbook, allegedly containing corrections, sent to Mr. Smith in an email message a mere 30 minutes later on July 17, 2012. The Administrator's counsel objected to the exhibit based upon foundation and the law judge sustained the objection. Yet, these documents—Exhibits C-1 and R-13—are indistinguishable for purposes of admissibility. We find the law judge clearly abused his discretion in permitting the Administrator's document while rejecting the respondent's nearly identical document.

Moreover, given the recently enacted statutory requirement that the Board apply the Federal Rules of Evidence to Board proceedings, to the extent practicable,²³ we find these evidentiary rulings of even greater significance. The Administrator failed to call Mr. Smith to testify at the hearing to sponsor Exhibit C-1-2 through C-1-19 (the Excel logbook in question) into evidence, pursuant to Federal Rule of Evidence 901. The law judge nevertheless allowed the document to come in as evidence, as the pro se respondent did not object.²⁴ We strongly caution our law judges and the Administrator's counsel, especially in cases involving pro se litigants, to be mindful the Board must apply the Federal Rules, to the extent practicable.

2. *Exclusion of testimonial evidence*

The law judge also prohibited respondent from discussing his subjective understanding of the type rating requirements. In this regard, the following exchange occurred,

Respondent: ... Well, I'll just head straight to the point. On February 8th -- on July 8th of 2012, I went to take my check ride. I presented to Mr. Haider both my logbooks, totaling up over 2,000 hours and more than 500 hours in a turbine-powered airplane of the same class as the 777.

²³ Pilot's Bill of Rights, Pub. L. No. 112-153, § 2(a), 126 Stat. 1159 (2012).

²⁴ Yet, the law judge excluded respondent's similarly offered exhibit, R-13, because the Administrator's attorney knew to object based upon foundation.

And Mr. Haider sat across the table from me and said turboprop airplane and turbojet airplanes are different classes of airplanes, which every pilot in the room knows to be false. So I said to him, I said you said you were going to have restriction.

Administrator's counsel: Your Honor, I would object to this. This is based in the grounds that we are getting into type ratings again. This has nothing to do with the allegations of whether he falsified the logbook that he sent to FTI.

Administrative law judge: Yes, sustained.

I tried to explain to you that the only issue is whether or not you presented a logbook to FTI ultimately in an effort to avoid a restriction on that type rating, which logbook had been in Excel form, which is Exhibit C-1-2 through C-1-19, you certified as being true but contains intentionally false entries. That's the only issue in front of me period.²⁵

We hold the exclusion of testimony concerning respondent's comments to Mr. Haider and respondent's subjective understanding of the type rating requirements was prejudicial to respondent. His comprehension of the type rating process could indicate whether either respondent or FTI would have a motive to be dishonest concerning respondent's flight hours, which is relevant to the third prong of the intentional falsification analysis—respondent's knowledge of his false representation.

In addition, like the comparison between Exhibits C-1 and R-13, the exclusion of this testimonial evidence demonstrates a clear abuse of discretion. On one hand, the law judge allowed into evidence, for the Administrator, the email message from respondent to Mr. Smith on July 17, 2012, indicating respondent's understanding of the type rating requirements as part of his hiring process with a major airline.²⁶ Yet, contrary to the Board's holding in Singleton and

²⁵ Tr. 89-90.

²⁶ Exh. C-1-2 (stating “[p]lease let me know if you were able to download and open [the attached logbook]. I know that Mr. Haider wants to mail the temporary to me, but I need it tomorrow, Friday for the latest or I loose [sic] my edge with Qatar. Thank you.”).

Dillmon,²⁷ the law judge excluded respondent's recollection of his conversation with Mr. Haider regarding his subjective understanding of the type rating requirements. Under our jurisprudence, such comprehension is relevant to the issue of whether respondent knowingly intended to falsify information in his logbook. The law judge's refusal of this evidence was error.

B. *Logbook at Issue*

In the complaint, the Administrator charged respondent with falsifying one version of a logbook—the first version respondent sent to Mr. Smith on July 17, 2012.²⁸ As discussed above, respondent stated he corrected the spreadsheet and sent a new version of the logbook, the receipt of which Mr. Smith from FTI confirmed.²⁹ However, at the hearing, Inspector Kempfer discussed a different version of the logbook during his testimony. Inspector Kempfer testified respondent provided him with a “complete copy” of his handwritten and Excel logbooks, from which he took information to estimate respondent had 1,995 hours in flight time.³⁰ It does not appear Inspector Kempfer based this total on the July 17, 2012 logbook the Administrator alleged as false in the emergency order. At the hearing, Mr. Hagan indicated staff at FTI were confounded concerning which version of respondent's logbook was the official version: “our ultimate confusion, as you can see here now is which set of logbooks do I look at? And this is where we handed it off to Inspector Kempfer for guidance. We just threw our arms up and said, what do we do here?”³¹

²⁷ Administrator v. Singleton, NTSB Order No. EA-5529 (2010) and Administrator v. Dillmon, NTSB Order No. EA-5528 (2010).

²⁸ Emergency Order at ¶¶ 2, 3, 6, 7.

²⁹ Tr. 93.

³⁰ Tr. 85-86.

³¹ Tr. 80.

The law judge did not allow respondent to ask questions of Mr. Hagan on the issue of his claim that he provided his entire logbook to FTI on more than one occasion. In this regard, the law judge stated as follows:

Administrative law judge: Is this exhibit something that FTI relied upon to make a decision as to what they were going to do with this request for the type rating? What is the relevance to what we are doing here?

Respondent: The relevance of this, Your Honor, is that when I sent the initial e-mail to Mr. --

Administrative law judge: No. All I'm concerned about -- did you ever produce an entire logbook?

Respondent: Yes, I did, Your Honor.

Administrative law judge: And that's the only thing that -- these portions don't do anything. The entire logbook is what the testimony has been about.

Respondent: I presented an entire logbook on more than three occasions.

Administrative law judge: But you're showing them pages.

Respondent: What I --

Administrative law judge: Mr. Rigues, this is not relevant to the issue in front of me. The issue in front of me is whether the ultimate logbook you presented to FTI was true and accurate as you certified. That's the issue.

Respondent: Well, FTI claims how they never saw a full logbook from me. And, Your Honor, on the day of my check ride, and subsequent days before my check ride, when I showed up, I showed up with my logbooks, all of them. All three of them intact and presented them.

Administrative law judge: Well, I don't want to hear that. The only evidence I have in front of me are these spreadsheets, which is on the testimony in front of me what FTI had to rely on.³²

This dialogue, combined with the fact Inspector Kempfer indicated he reviewed a "complete" copy of the logbooks, leads us to conclude the Administrator erred in using the July 17, 2012 version of the logbook as the basis for the intentional falsification violation. As we noted in Administrator v. Scott, "[b]ecause the complaint is the vehicle by which respondent is given fair notice of the charges he will be expected to defend against and which facts and

³² Tr. 81-82.

circumstances underlie those alleged violations, we cannot give any weight to apparent violations which were not alleged in the Administrator's complaint."³³ To the extent the Administrator seeks to allege respondent falsified any version of his pilot logbook other than the document respondent transmitted on July 17, 2012, we disregard such an allegation because the Administrator did not allege such in the complaint.

C. Intentional Falsification

We find the Administrator did not prove the three-prong standard regarding whether respondent violated § 61.59(a)(2) by intentionally falsifying his July 17, 2012 logbook. As noted above, under Hart v. McLucas,³⁴ the Administrator must prove the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity. The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) confirmed this three-prong evidentiary standard in Dillmon v. NTSB,³⁵ wherein the Court emphasized the Board must engage in a careful review of all three prongs of the standard. Following remand from the D.C. Circuit, we issued an opinion and order in Dillmon in which we determined law judges' credibility assessments as to a respondent's subjective intent were critical to the third prong of the analysis.

³³ NTSB Order No. EA-4030 at 6 (1993); see also Administrator v. Roberts, NTSB Order No. EA-5556 (2010) (quoting Scott); Administrator v. MacGlashan, 5 NTSB 1539, 1541 (1986) (stating the complaint establishes the parameters of the Administrator's case); and Administrator v. Robinson, 5 NTSB 1690, 1692 (1987) (stating the Board cannot redraft the complaint but must evaluate the evidence in light of the allegations). As an ancillary matter, we note the recently enacted Pilot's Bill of Rights requires the Board to apply the Federal Rules of Civil Procedure (FRCP) to the extent practicable. Pub. L. No. 112-153, § 2(a), 126 Stat. 1159 (2012). The application of the FRCP strengthens our jurisprudence with regard to our application of notice pleading principles.

³⁴ Supra note 13.

³⁵ 588 F.3d 1085 (D.C. Cir. 2009); NTSB Order No. EA-5528 (2010).

We find the Administrator failed to carry his burden of proof in this case. Concerning the second prong of Hart v. McLucas, the Administrator bases this case on entries in respondent's logbook that respondent transmitted to FTI, not the FAA. Nevertheless, the law judge determined the Excel spreadsheet respondent sent to FTI was material, because it influenced the Administrator's decision concerning whether to issue respondent the B-777 type rating.

The record, however, is devoid of evidence as to how this information was material to the Administrator. Neither Inspector Kempfer nor any other witness explained the process of how the Administrator coordinates with FTI to issue type ratings; in addition, the logbook in dispute, which respondent provided to FTI, does not appear to be the same version of the logbook respondent provided to Inspector Kempfer.

Regarding the third prong of the test, we believe the law judge's exclusion of respondent's exhibit and curtailment and disregard of respondent's testimony—that he inadvertently sent a version of the Excel spreadsheet that contained errors—limited the record in such a manner that we are unable to conclude respondent had the intent to falsify the logbook. In this regard, we note the D.C. Circuit ordered us to reconsider a similar decision in Singleton v. Babbitt.³⁶ In Singleton, the respondent alleged he found a question on the FAA medical certificate application confusing, and he misunderstood it when he indicated he had not been subject to administrative action based on a driving while intoxicated charge. The D.C. Circuit stated we erred in disposing of the case via summary judgment, because we were obligated to consider the respondent's defense of misunderstanding in light of the third prong of the intentional falsification test.³⁷ Following the remand, we issued an order indicating a hearing

³⁶ 588 F.3d 1078 (D.C. Cir. 2009).

³⁷ Id. at 1082-83.

was necessary, and instructed the law judge, at the hearing, to consider the respondent's defense and assess his credibility in order to determine whether the Administrator fulfilled the third prong.³⁸ The law judge's preclusion of respondent's opportunity to present his defense in the case at hand is similar to the granting of summary judgment in Singleton, which the D.C. Circuit rejected.

Furthermore, in Administrator v. Jetsmart and Howe,³⁹ we considered facts similar to those at issue here. In Jetsmart, the respondents contended their electronic flight logs under 49 C.F.R. part 135, which they logged in a software program called "CharterLog," contained errors and were not kept to show compliance with the regulations.⁴⁰ We affirmed the law judge's rejection of this argument. However, in Jetsmart, the law judge carefully considered respondents' defense and allowed them the opportunity, even as the case proceeded on an expedited timeline as an emergency, to present this affirmative defense during the five-day hearing. In the case *sub judice*, the law judge precluded respondent from fully articulating his defense concerning whether the Excel spreadsheet respondent provided to FTI contained unintentional errors, which respondent discovered and corrected immediately after transmitting the first logbook to FTI. In addition, as discussed above concerning the application of the Federal Rules of Evidence, the Administrator did not offer a witness to authenticate and identify the exhibit on which the Administrator based this case. These factors lead us to conclude the Administrator did not fulfill the burden of proof to establish respondent intentionally falsified a logbook under § 61.59(a)(2).

³⁸ Administrator v. Singleton, NTSB Order No. EA-5529 at 7 (2010).

³⁹ NTSB Order No. EA-5572 (2011).

⁴⁰ Id. at 15-17.

We acknowledge the law judge made a credibility determination adverse to respondent when he stated, “[s]o any issue of credibility I do resolve in favor of the Complainant.”⁴¹ We defer to our law judge’s credibility findings unless those findings are arbitrary and capricious.⁴² In Administrator v. Porco, we also held the law judge’s credibility determination should be based explicitly upon factual findings in the record.⁴³ In this case, we find the law judge’s credibility finding was arbitrary and capricious because he so significantly curtailed respondent’s ability to put on his case-in-chief that the law judge did not have the facts necessary to make a proper credibility determination as is required in intentional falsification cases under the Board’s jurisprudence in Singleton and Dillmon.⁴⁴

D. Law judge’s bias

Separate and distinct from our finding as to the Administrator’s failure to meet his burden of proof as to the intentional falsification, we hold the law judge’s actions in this case demonstrate he conducted this hearing with bias in favor of the Administrator. For example, at the end of the Administrator’s case-in-chief, the law judge showed his bias against respondent when he stated as follows:

Administrative law judge: That’s the Government’s case, Mr. Rigues. And if there were a motion for directed verdict at this time, I would rule that there has been made a prima facie case.

I have to look at the evidence in a light most favorable to the person who’s the object of the motion, disregard any unfavorable evidence, draw only favorable inferences, disregard unfavorable inferences. But in this case there is definitely a prima facie case and therefore the burden of going forward, not the burden of

⁴¹ Initial Decision at 105.

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

⁴³ Id. at 22, 28-29.

⁴⁴ Supra note 27.

proof, the burden of going forward rests with you. It is your case. Do you have a witness that you wish to call?⁴⁵

In making this statement, not only did the law judge convey to the Administrator's counsel his recommendation to request a directed verdict in the case, but he also indicated to respondent his intent to rule in favor of the Administrator before even hearing respondent's case. We also note this is an incorrect statement of the law as it improperly shifts the burden of proof to respondent.

As discussed above in Section 2.A.1., during respondent's case-in-chief, the law judge excluded respondent's documentary evidence despite the fact the law judge admitted similar evidence in the Administrator's case-in-chief. In sum, the law judge effectively prohibited respondent from putting on a defense in his case.

In light of the fact respondent is pro se and Congress has instructed the Board to apply the Federal Rules of Evidence to our proceedings, to the extent practicable, biased proceedings such as these cannot withstand scrutiny. In reviewing the record as a whole, we find the law judge failed to act as an independent arbiter, and thereby denied respondent his due process right to a fair and impartial hearing.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;
2. The law judge's decision is reversed; and
3. The Administrator must return respondent's ATP and all other airman certificates the Administrator revoked in accordance with the Administrator's April 15, 2013 emergency order of revocation.

⁴⁵ Tr. 68-69.

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

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On behalf of the Respondent:

REYNARD M. S. RIGUES, Pro se
1015 Marne Lane
Houston, Texas 77090

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ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE GERAGHTY: Pursuant to notice

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this matter came on for trial on May 14, 2013, in Denver,

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Colorado, on the Appeal of Reynard M.S. Rigues, hereinafter,

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Respondent, for review of the Emergency Order of Revocation issued

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which seeks to revoke his Airman Pilot Certificates of any type

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and particularly his Airline Transport Pilot Certificate. The

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Emergency Order of Revocation serves herein as the Complaint and

1 was issued on behalf of the Administrator of the Federal Aviation
2 Administration, herein the Complainant.

3 The matter has been heard before this Judge and as
4 provided by the Board's Rules, I am entering a Bench Decision in
5 the proceeding.

6 The Complainant was represented through one of his Staff
7 Counsel, Kyle Lomazow, Esq. of the Northwest Mountain Regional
8 Office, Federal Aviation Administration. The Respondent was
9 present and elected to represent himself pro se.

10 The parties have been afforded opportunity to offer
11 evidence, to call, examine and cross-examine witnesses, and to
12 make argument in support of their respective positions.

13 I have considered all the evidence, both oral and
14 documentary, and I will simply summarize that which leads me to
15 the conclusion I have reached herein. The evidence that I don't
16 specifically mention is viewed by me as being essentially
17 corroborative or not materially effecting the outcome of the
18 decision.

19 AGREEMENTS

20 By pleading, it was agreed, there was no dispute as to
21 the allegations contained in Paragraph 1 of the Complaint and also
22 much of Paragraph 2 of the Complaint, except for the phrase "in
23 order to obtain a B-777 type rating." The matters admitted are
24 therefore taken as having been established for purposes of this

1 Decision.

2 DISCUSSION

3 As noted, the Complainant seeks to revoke on an
4 emergency basis any Airman Pilots Certificate held by the
5 Respondent, and in particular, his Airline Transport Pilot
6 Certificate. And that is based upon the allegation that in
7 attempting to secure his type rating, the Respondent submitted to
8 the training facility, Flight Training International, otherwise
9 known as FTI, what purported to be a true and correct copy of his
10 pilot logbook, but which, in fact, contained false entries.
11 Therefore, the Respondent has acted in regulatory violation of the
12 provisions of Section 61.59(a)(2) of the Federal Aviation
13 Regulations, hereafter referred to as FARs. The requirements of
14 that Regulation will be recited subsequently as appropriate.

15 Complaint in this case was made through the testimony of
16 three witnesses and the documentation which was received as
17 Administrator or Complainant's Exhibits C.

18 The first witness called was Mr. David Kempfer, who is
19 employed by the Federal Aviation Administration as an Aviation
20 Safety Inspector. He testified to his experience, 17 years,
21 apparently with the United States Marine Corps, as a pilot. He
22 holds an Airline Transport Pilot Certificate, six ratings,
23 Commercial Privileges, single and rotorcraft. He has been with
24 the FAA since about 2006.

1 Mr. Kempfer became involved on contact from Mr. Hagan,
2 who is with FTI. FTI was concerned that a logbook that had been
3 presented to them by the Respondent for purposes of removing a
4 restriction on a 777 type rating, that Mr. Hagan and Mr. Wrynn,
5 also of FTI had concerns that the documentation was perhaps false
6 or contained false entries. And therefore, they were concerned
7 that they didn't want themselves be in violation of the FARs by
8 issuing a type rating based upon inaccurate documentation.

9 Mr. Kempfer identified Exhibit C-1-2, which was
10 proceeded by C-1-1, which was a covering e-mail. C-1-2 is a
11 certification sent to FTI by the Respondent. And it plainly
12 states that: "I, (the Respondent), certify and attest to the best
13 of my knowledge that the logbook represents the true and correct
14 and current record of my flight time."

15 Attached thereto was Exhibit C-2-1 through C-2-19, which
16 is the electronic logbook which the Respondent submitted to FTI in
17 his effort to have a restriction removed from his type rating. It
18 appeared that Respondent did satisfactorily complete the training
19 course with FTI and did have overall the required number of hours
20 to obtain a type rating, but without the certification of the
21 accurate logbook, as will be seen when I discuss Mr. Hagan's
22 testimony, FTI could not remove the restriction. So this was the
23 effort by the Respondent, in submitting C-1 and C-2 to FTI, to
24 remove the restriction.

1 Mr. Kempfer discussed Exhibit C-2-1 through C-2-19,
2 which is the electronic logbook, and pointed out that in the
3 electronic logbook the Respondent was claiming to have flown in a
4 T-38 aircraft, which is a supersonic jet aircraft, single engine,
5 661.5 hours, and in a C-27, 181 hours. But Mr. Kempfer went on to
6 say that, as required by FAR 61.51, the entries in the electronic
7 logbook were insufficient to comply with the requirement of that
8 Regulation in that the logbook did not depict tail numbers for the
9 aircraft allegedly flown nor any departure or arrival points for
10 the flights claimed.

11 He also pointed out that as of April 6, 2009, the
12 Respondent was claiming pilot in command time in a T-38, but there
13 was no record in the electronic logbook of the Respondent ever
14 receiving any training for flights in a T-38 aircraft or in a
15 predecessor, which would be before the T-38, the T-37. And that
16 he was claiming the pilot in command time within, I believe, 10
17 days of having received his present pilot certificate.

18 Mr. Kempfer testified that although there was a letter
19 of investigation and phone calls between himself and the
20 Respondent, that the Respondent never produced any documentation
21 to satisfy that he, in fact, had flown T-38 or the C-27 aircraft.
22 Exhibit C-5 is the Respondent's reply to the Letter of
23 Investigation.

24 Mr. Kempfer did indicate that the Respondent did send to

1 him a copy of a handwritten logbook, along with the electronic
2 logbook, but that the subsequent submissions did not show the T-38
3 or the C-27 flight time previously claimed. That time had
4 apparently been deleted. And there was testimony as to what
5 Mr. Kempfer, based upon what he honestly credit in giving Colgan
6 flight time and Piedmont flight time, I believe he came up with a
7 total of 1900.5 hours.

8 Mr. Charles Hagan is a pilot with United Airlines, but
9 he is also the manager of FTI, and apparently an instructor. FTI
10 is identified as a Part 142 training center. Mr. Hagan, himself,
11 testified that he flew in the United States Navy for about 25
12 years, I believe. He was a flight engineer and a check flight
13 engineer in 1996. I take it that would be with United Airlines.
14 But in any event, based upon his testimony, he certainly has the
15 background and experience to testify in this proceeding.

16 Mr. Hagan testified as to how the Respondent initially
17 came to FTI for his training. This apparently first took place
18 down in Texas, but the training was to take place here in Denver,
19 Colorado. The initial submission was by the Respondent, I
20 believe, to a Mr. Smith, who satisfied Mr. Hagan by sending some
21 pages of the logbook and indicating the flight time claimed by the
22 Respondent, that the Respondent met the initial "cut-off," to use
23 that term, for FTI to expect the individual to satisfactorily
24 complete their training course.

1 The training course originally applied for was for a
2 Boeing 747 type rating. But as Mr. Hagan indicated, there was a
3 problem with 747 simulator time; it was all being bought up by the
4 airlines, and an individual such as the Respondent would probably
5 not be able to get the required 747 time and therefore it was
6 suggested and the Respondent did then change his training request
7 for that of a Boeing 777 type rating, since that type rating could
8 be obtained much sooner.

9 Mr. Hagan testified as to Exhibit C-6, which is a two-
10 page document. C-6 has the signature of the Respondent and is
11 dated 27th day of March 2012, and clearly spells out that in order
12 to use the flight simulator for training, the individual must meet
13 the requirements of FAR 61.64 - 2,000 total hours, 500 hours in
14 class -- and that, as important here, that the individual must
15 bring to the check ride either an FAA or ICAO license or logbooks
16 to demonstrate the flight experience listed, which is listed on
17 page 2 of C-6. Page 2 of C-6, shows that the Respondent was
18 claiming a total flight time of 3,275 hours, with multi-engine
19 turbine time in excess of 1,600.

20 Mr. Hagan again emphasized that FTI needed to see the
21 actual logbooks so they could certify or satisfy themselves that
22 the Respondent did meet the requirements of FAR 61.64, and that at
23 no time was FTI ever satisfied, as they only saw copies of a
24 logbook, photocopies, or a couple pages of photocopies. He

1 indicated that every time they had asked the Respondent about
2 producing a logbook, that the Respondent would offer some excuse
3 as to why he could not produce the original logbook.

4 Because of the difficulty with the logbooks, FTI
5 informed the Respondent that they would have to issue the type
6 rating, which he apparently was qualified for on the presentations
7 and completing the training, with a restriction. This, however,
8 did not please the Respondent, as the testimony goes, because he
9 needed unrestricted certificate for the possibility of obtaining
10 overseas employment as a pilot.

11 In any event, as Mr. Hagan testified, Exhibit C-1-2 and
12 C-2-1 through C-2-19, were offered by the Respondent to Mr. Smith,
13 which is a spreadsheet of a logbook and is certified, as I have
14 already indicated, as a true and correct copy of the Respondent's
15 flight time.

16 Mr. Hagan testified he had reviewed the logbook, finding
17 that there was a claim of, I believe, 21,000 total hours; however,
18 that on his checking, the flight times were unsupported. There
19 were a lot of, as he said, "double counting." There was no T-37
20 flight time listed, which would be a precursor to operational
21 certification for operating T-38 aircraft.

22 He also pointed out that on C-2-17 in the electronic
23 logbook, it appears that the Respondent went directly from flying
24 commuter type aircraft, apparently Colgan Airways and Piedmont, to

1 operating as a PIC a T-38 aircraft, which is a supersonic jet
2 aircraft. There was no simulator time indicated for any
3 transition from commuter flying to T-38. There was no training,
4 according to Mr. Hagan's review of the records. And again,
5 pointing out, as Mr. Kempfer did, there were not tail numbers or
6 any arrival or departure sites listed for any of the claimed T-38,
7 C-27 flights.

8 And in a comparison as shown on a computer screen, which
9 I discussed for the record, Mr. Hagan pointed out that if one
10 takes blocked time and compares various blocks of 20 hours which
11 were claimed, they match up. They are at the exact same time;
12 claim the same landings, and the same approaches. So they're just
13 carried over as identical, which is highly improbable, that one
14 could fly at different periods of time the exact identical number
15 of hours, the exact identical landing sites, the identical number
16 or types of approaches. There is no variance; highly unlikely.

17 Mr. Hagan testified as did Mr. Kempfer, that when
18 queried about his T-38 times, the Respondent indicated that his T-
19 38 time was in Black Operations and that the flights were for
20 purposes of basic flight maneuvers, or BFM. But that, as
21 discussed by Mr. Hagan, in the electronic logbook BFM time is also
22 indicated as night flying and on the testimony BFM cannot be flown
23 at night. As Mr. Wrynn testified, the T-28 is not equipped with
24 provisions for radar. You would have to take out the battery of

1 the aircraft apparently, and therefore, you cannot do night
2 intercepts, basic flight maneuvering, because you can't find the
3 other aircraft. But in any event, the regulations that, as they
4 testified to, both for Air Force and for Navy Marine Corps flight,
5 BFM is not performed at night.

6 Mr. Hagan testified also that FTI gave the Respondent
7 2 weeks to produce some documentation to support his claimed T-38
8 time, either some kind of contract of employment or W-2 form from
9 an employer. The only thing they ever received was an e-mail
10 about Colgan and Piedmont.

11 Mr. Patrick Wrynn also is employed by FTI. He is on the
12 Board of Directors. He is also an instructor, and he also flies
13 with United Airlines. He was with the United States Air Force in
14 1988. He has both T-37 and T-38 time, saying that he flew T-38's
15 for 9 years. He was an instructor in T-38 and then transitioned
16 over to flying the U-2 type aircraft. And flew that in what he
17 termed as "Black Operations."

18 He knows the Respondent because the logbook submitted,
19 the electronic logbook, was brought to his attention by Mr. Hagan
20 in July. Mr. Hagan was having some doubts as to the accuracy of
21 the entries in that logbook. This witness reviewed the logbook
22 also.

23 Mr. Wrynn testified based upon his review of C-2-1
24 through C-2-19, the electronic formatted logbook, that he had

1 several issues with the entries in the logbook. There was a
2 discrepancy, in his view, as to the number of flights. There was
3 no training associated with the claimed time; that is, a
4 transition from commuter straight to PIC in a T-38. There are
5 gaps, T-38 time claim, and then there would be a period of some
6 months and then suddenly T-38 time again. No indication of flight
7 time transition time, or to come right back in to flying as PIC
8 without any training to bring one up to speed to again fly this
9 type of high performance aircraft.

10 Mr. Wrynn also testified as to the number of hours
11 claimed by the Respondent for performance by him in T-38
12 operations. According to this witness, the times claimed in the
13 logbook exceed the operational capability of a T-38. He pointed
14 out that in one point -- I believe it was like 4 hours claimed on
15 one leg of a flight time allegedly performed by the Respondent.
16 According to this witness, if one is performing BFM type
17 maneuvers, taking off in afterburner, with the fuel burn rate in a
18 T-38, which was not challenged, Mr. Wrynn testified that you would
19 be lucky to get somewhere about .6 hours. And then you would
20 probably be coming back on flight idle.

21 In any event, he testified that, and it was not
22 contradicted, that to fly this type of aircraft, a T-38 for 4
23 hours was impossible and that in his experience, in 9 years of
24 flying, I believe 2,000 hours in a T-38, the longest flight time

1 he ever recorded in that period of time was 2.1 hours.

2 He also pointed out that the number of hours claimed by
3 the Respondent of 600-and-some hours was about one-third of the
4 number of hours that Mr. Wrynn was able to accomplish in 9 years
5 flying. So, again, it becomes very improbable on the testimony of
6 this witness. Or to sum up his testimony, he did not find any of
7 the explanations proffered by the Respondent as being probable.

8 And he lastly indicated that he in fact flew U-2 Black
9 Operations, and that in Black Operations, while you might not be
10 able to describe what the operation was, you could log in your
11 logbook the appropriate flight time for the flight and the tail
12 number of the -- or identification number of the aircraft in your
13 personal logbook.

14 He also testified on cross-examination, that when he,
15 Mr. Wrynn, had inquired of the Respondent how you would be flying,
16 that is, what you were doing with the T-38 aircraft, that the
17 Respondent advised him, Mr. Wrynn, or replied that his T-38 flight
18 time was accomplished in BFM flight time.

19 Respondent testified on his own behalf. But, quite
20 frankly, the testimony was not directed to the allegations in the
21 complaint. It is not an issue of a discussion of what was
22 submitted to Mr. Smith to initially enter the FTI training program
23 or what was to be a restriction or not a restriction.

24 Similarly, the recall of Mr. Hagan and Mr. Kempfer did

1 not in any way contradict, in my view, any of the testimony
2 offered by those witnesses in their direct examination and cross-
3 examination offered during the Complainant's case in chief.
4 Therefore, in my view, the majority of the testimony of the
5 Complainant's witnesses stands uncontradicted.

6 That is my summation of the evidence.

7 FAR 61.59(a)(2) of the FARs prohibits the making of, as
8 is important here, an intentional false entry in a logbook record
9 or any report that is required to be made or used to show
10 compliance with a requirement for the issuance or exercise of the
11 privileges of any certificate or rating to be issued under Part 61
12 of the Federal Aviation Regulations.

13 The burden of proof in the case, of course, rests with
14 the Complainant. And the Complainant must sustain that by a
15 preponderance of reliable, probative and credible evidence.

16 In this case, I weighed the credibility of the evidence,
17 as it does appear, and found that the testimony of the
18 Complainant's witnesses is in fact credible. It is supported on
19 their training background and experience, which was not
20 challenged, and was also in accord with the documentary evidence
21 which was offered as Complainant's Exhibits C-1. So any issue of
22 credibility I do resolve in favor of the Complainant.

23 Also, simply observed here, the issue is not whether the
24 Respondent's logbooks in some part do sustain a showing that he

1 has a requisite number of hours for a type rating in a Boeing 777
2 or a Boeing 747. The issue is whether the logbook presented
3 contains false entries. As the Court, United States Court of
4 Appeals, pointed out in the case of Cassis v. Federal Aviation
5 Administration, 737 F.2d 545, 547 (6th Cir. 1984), and in that
6 case, it was argued that falsification was not material, since
7 without the falsification the airman in that case still had the
8 number of hours required for, in that case, an application for
9 issuance of an Airline Transport Pilot Certificate 1,500 hours.
10 The Court of Appeals disagreed, saying that false entries were in
11 fact material because if they were left in the record, they showed
12 or could be shown by the respondent therein, Mr. Cassis, this
13 compliance with other requirements of the Federal Aviation
14 Administration at some point in the future.

15 And this was again also affirmed by the 6th Circuit in
16 the case of McCartney v. Federal Aviation Administration,
17 indicating that the record must be in fact reliable. And the
18 Board has repeatedly held the same thing, that material entries in
19 the logbook, regardless of whether or not other entries are
20 sufficient for some other purpose, are still material, and if
21 false, are in violation of the provisions of the requirements of
22 FAR 61.59 of the Regulations.

23 As to intentional falsification, there is a three-prong
24 test. That is, the entry must be false, the entry must be

1 material, and it must be made with knowledge of its falsity.
2 Taking first, the issue of whether or not it's material.
3 Certainly an entry that is offered in a logbook for purposes of
4 obtaining a type rating is material. As the Court held in the
5 McCartney case, all flight time recording in a logbook or any
6 other reliable record, an airman is required to keep this material
7 information because it is important to determination respective
8 the airman's currency, qualifications, or future entitlement to
9 other ratings. So, I find here that the entries certified as
10 being true and correct by the Respondent were in fact material.

11 Were the entries false? On the preponderance of the
12 evidence in front of me, the entries submitted in the electronic
13 logbook, which was certified by the Respondent, as shown by
14 Exhibit C-1-2, as being true and correct, were in fact false. On
15 the preponderance of the testimony, the flight time claimed by the
16 Respondent, particularly for T-38 aircraft, were impossible of
17 performance by the Respondent. There is no documentation to show
18 that the Respondent flew in Black Ops, that he ever had any
19 training of flying T-38's, no simulator training, no transition
20 training, no currency training where there were breaks in between
21 times where he claimed he was flying T-38's.

22 Therefore, on the preponderance of the reliable and
23 probative evidence, I find that the entries made by the Respondent
24 in his electronic logbook, which he submitted to FTI in

1 satisfaction of their requirement and the requirement of 61.64 FAR
2 to remove a restriction on his type rating were in fact false.
3 And I so hold.

4 The last question is, whether or not they were made with
5 knowledge of the falsity. These were entries made by the
6 Respondent not by someone else in his logbook; therefore, he had
7 to know what entries he was making. He had to know whether or not
8 the entries he was making were, in fact, flight times that he
9 actually accomplished, and had he accomplished such flight times
10 in the aircraft that he was indicating that he had flown those
11 flight times. And operationally, the evidence does not support
12 that he could have accomplished Black Operations BFM-type flights
13 at night, although he was claiming that.

14 Overall, the evidence indicating in here that the
15 Respondent made entries in his logbook, to me, on a preponderance
16 of the evidence, that they were made by him knowing that such
17 entries were in fact untrue, that is that they were false. I
18 find, therefore, that he in fact in his electronic logbook, which
19 he submitted to FTI to satisfy removal of the restriction and
20 satisfy the requirements of the FARs, were in fact intentionally
21 false.

22 To sum, therefore, with respect to the charges in the
23 Complaint, with respect to the allegation in Paragraph 3 of the
24 Complaint, I do find that the evidence does support that he

1 submitted a logbook which contained entries of showing 661.5
2 flight time in a T-38 aircraft, and 181 total flight hours in C-27
3 aircraft. And is shown on the testimony of the exhibit itself, C-
4 2, and the testimony of Mr. Kempfer and Mr. Hagan.

5 I find also Paragraph 4 allegation is sustained in that,
6 on the testimony of Mr. Hagan, the Respondent, in fact, did advise
7 FTI that he, the Respondent, had flown both the T-38 and C-27
8 aircraft as an employee of a Black Ops contractor. And that is
9 also sustained by the testimony of Mr. Wrynn. And so I find that
10 that is established.

11 I find also that Paragraph 5 is established on the
12 testimony of Mr. Kempfer, that you advised the Safety Inspector,
13 that is, Mr. Kempfer, at the Denver Flight Standards District
14 Office, the FSDO, that you had flown -- you, the Respondent, both
15 the T-38 and C-27 aircraft as an employee of a Black Ops
16 contractor. I find all those allegations as established by a
17 preponderance of the evidence.

18 In sum total, therefore, I do find the conclusions of
19 law stated in the allegations Paragraphs 6 and 7 as being
20 sustained on a clear preponderance of the reliable and probative
21 evidence. And I find that on that evidence that you either
22 responded and made representations in your electronic logbook,
23 which was presented to both to FTI and also to subsequently the
24 Federal Aviation Administration, that were false, materially

1 false, and were intentionally false, in that you did not
2 accomplish 661.5 flight hours in a T-38 aircraft.

3 And lastly, your representation made in that electronic
4 logbook was intentionally false and material in that you had not
5 accomplished the 181 hours in a C-27 aircraft.

6 In sum, therefore, I find on the preponderance of the
7 reliable and probative evidence that it is established that the
8 Respondent has acted in regulatory violation of the provisions of
9 Section 61.59(a)(2) of the Federal Aviation Regulations, in that
10 you have made an intentionally false entry in a logbook and that
11 such entry is material, and therefore by doing such you have
12 demonstrated a lack of judgment, care and responsibility one would
13 expect of the holder of an Airline Transport Pilot Certificate. A
14 holder of such is expected to exhibit a high degree of care,
15 judgment and responsibility that has been shown on this evidence
16 to be lacking and, therefore, as the Board assesses, such lack
17 also demonstrates that you lack the requisite qualifications
18 necessary to hold an airline transport pilot certificate or any
19 airman pilot certificate.

20 I therefore will affirm the complaint, the Emergency
21 Order of Revocation, as issued.

22 ORDER

23 IT IS THEREFORE ORDERED THAT:

- 24 1. The Emergency Order of Revocation, the Complaint herein,

1 be, and the same hereby is, affirmed as issued.

2 2. That the Respondent's Airline Transport Pilot
3 Certificate and any other Airman Pilot Certificate held by him
4 be, and is hereby, revoked on an emergency basis.

5 Entered this 14th day of May 2013, at Denver, Colorado.

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8 EDITED ON

PATRICK G. GERAGHTY

9 MAY 22, 2013

ADMINISTRATIVE LAW JUDGE

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APPEAL

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ADMINISTRATIVE LAW JUDGE GERAGHTY: Either party from
this Decision and Order may appeal to the full Board by filing
with the Board within 10 days from this date a Notice of Appeal.
The appealing party must further, within 50 days from this date,
file with the Board a brief in support of that appeal.

Those documents must be filed with the Docket Section,
Office of Administrative Law Judges, National Transportation
Safety Board, Washington, D.C., with copies of each document
served upon the opposing party.

Although the emergency time provisions of the Board's
Rules were waived and therefore additional time is extended in the
appeal process, the emergency nature persists and therefore the
revocation remains in effect during the pendency of any full Board

1 review.

2 Parties are cautioned that the Board takes a very
3 stringent view of the time provisions applicable to appeals and
4 the Board may upon its own motion or the motion of the opposing
5 party dismiss an appeal for the untimely filing of a notice or the
6 appeal brief by even one day. If additional time is required, it
7 must be requested by the party prior to the expiration of the time
8 provision from the Office of the General Counsel, National
9 Transportation Safety Board, Washington, D.C.

10 If no appeal is taken within the time provided, or the
11 Board does not elect to review upon its own motion, the Decision
12 and Order shall become final as provided by Board Rule.

13 Anything further for the record from the Government?

14 MR. LOMAZOW: No, Your Honor.

15 ADMINISTRATIVE LAW JUDGE GERAGHTY: Respondent?

16 MR. RIGUES: Nothing.

17 (Whereupon, at 12:59 p.m., the hearing in the above-
18 entitled matter was adjourned.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Reynard M.S. Rigues

DOCKET NUMBER: SE-19464

PLACE: Denver, Colorado

DATE: May 14, 2013

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

Joan L. Matteo
Official Reporter