

SERVED: January 27, 2014

NTSB Order No. EA-5698

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 24th day of January, 2014

_____)	
Application of)	
)	
LARRY BOND)	Docket 361-EAJA-SE-19188
)	
for fees and expenses under the)	
Equal Access to Justice Act)	
_____)	

OPINION AND ORDER

1. Background

Applicant appeals the written initial decision and order denying his application for attorney fees and expenses under the Equal Access to Justice Act (EAJA),¹ issued by Chief Administrative Law Judge Alfonso J. Montaño on October 25, 2012.² In the written initial decision and order, the law judge concluded applicant was not entitled to recovery of attorney fees he incurred in the course of his defense in a certificate action initiated by the Federal Aviation Administration (FAA) Administrator because applicant was not a “prevailing party” in

¹ 5 U.S.C. § 504(a).

² A copy of the law judge’s written decision is attached.

the underlying action, in which the Administrator suspended applicant's Boeing 777 type rating pending reexamination.³ For the reasons that follow, we affirm denial of the application for attorney fees and expenses under EAJA.

A. Facts

This action is the culmination of an emergency order issued by the Administrator on September 27, 2011, suspending applicant's Boeing 777 type rating pending reexamination and applicant's demonstration of his qualification to hold the type rating. The emergency order was based on the FAA's examination of training records at Bond Aviation, the training center certificated under 14 C.F.R. part 142 at which applicant received his Boeing 777 type rating on June 11, 2008; in the order, the Administrator alleged Bond Aviation's training records covering the one-year period beginning on June 1, 2008, were incomplete and did not establish applicant had received the training necessary for issuance of the type rating on June 11, 2008.⁴

During the pendency of applicant's appeal of the emergency order, applicant produced evidence establishing he had undergone simulator training necessary to obtain the type rating.⁵ Accordingly, on May 18, 2012, the Administrator filed a motion "withdraw[ing] the complaint and request[ing] that the proceedings in the matter be terminated."⁶ The law judge entered an

³ See 49 U.S.C. § 44709 ("The Administrator . . . may . . . reexamine an airman holding a[n] [airman] certificate . . .").

⁴ Emergency Order of Suspension dated September 27, 2011. Incidentally, applicant served as president of Bond Aviation.

⁵ See Affidavit of Captain Arville W. Steed dated December 21, 2011, and attached simulator training records.

⁶ Administrator's Motion to Terminate Proceedings, dated May 18, 2012.

order on May 25, 2012, terminating the proceeding. The order did not specify that termination was with prejudice.⁷

Applicant, through counsel, next filed an application for attorney fees and expenses under EAJA, initially seeking \$37,825 in attorney fees he incurred in the course of his defense. The Administrator opposed a fee award, arguing EAJA permits recovery of fees only by a “prevailing party” and that applicant was not a prevailing party in the underlying certificate action because the Administrator withdrew the complaint and effected the termination of the proceeding without any change in the parties’ legal relationship.⁸

B. Law Judge’s Order

In the order denying the application for attorney fees, the law judge concluded applicant was not a prevailing party in the underlying certificate action and therefore was not entitled to recovery under EAJA.⁹ The law judge explained his order terminating the underlying proceeding did not do so with prejudice, leaving the Administrator free to pursue further legal remedies arising from the facts at issue in the underlying proceeding. Citing the Board’s opinion in Application of Bordelon, in which the Board held a party “prevailed” upon termination of a proceeding with prejudice,¹⁰ the law judge concluded his order in the underlying action, which did not terminate the proceeding with prejudice, “neither ordered a change in the legal

⁷ Order Terminating Proceeding, dated May 25, 2012.

⁸ Administrator’s Opposition to Application for Award of Fees and Expenses under the EAJA, dated July 25, 2012, at 6.

⁹ 5 U.S.C. § 804(a).

¹⁰ NTSB Order No. EA-5601 at 5 (2011).

relationship of the parties nor [constituted] a judgment in applicant’s favor in the underlying matter,” and was not “accompanied by a grant of judicial relief to [applicant].”¹¹

C. Issues on Appeal

Applicant first argues the Administrator was not substantially justified in issuing the order of suspension. Applicant next argues he was a “prevailing party” for purposes of EAJA because the termination of the proceeding effected a change in his legal relationship with the FAA and amounted to an award of relief by the law judge. The Administrator opposes a fee award to applicant and argues applicant was not a prevailing party under EAJA.

2. Decision

A. Standard of Review and Applicable Law

We review *de novo* a law judge’s order on an application for attorney fees under EAJA.¹² EAJA entitles a “prevailing party” in an administrative proceeding brought by the Government to recover attorney fees and expenses “incurred by that party” in the proceeding, unless the Government’s position “was substantially justified or . . . special circumstances make an award unjust.”¹³

In determining whether a party is a “prevailing party” for purposes of EAJA, the Board applies the three-part test adopted by the United States Court of Appeals for the District of Columbia Circuit in District of Columbia v. Straus: “(1) there must be a ‘court-ordered change in the legal relationship’ of the parties; (2) the judgment must be in favor of the party seeking the

¹¹ Written Initial Decision and Order at 5, dated October 25, 2012.

¹² See Application of Kamm, NTSB Order No. EA-5636 at 5 (2012) (“Consistent with the standard of review applicable to cases on the merits, in which we conduct a *de novo* review, we will examine a law judge’s determinations concerning EAJA applications *de novo*. *De novo* review is consistent with the EAJA, 5 U.S.C. § 504(a)(3) . . .”).

¹³ 5 U.S.C. § 504(a)(1).

fees; and (3) the judicial pronouncement must be accompanied by judicial relief.”¹⁴ In Bordelon, which like the present case arose from an emergency order, we concluded the law judge’s termination of an enforcement proceeding with prejudice “provided a court-ordered change in the legal relationship of the parties” for purposes of the first prong of the Straus test and gave rise to prevailing-party status for purposes of EAJA.¹⁵ Further, as we pointed out in Bordelon, dismissal with prejudice serves to end the enforcement proceeding.¹⁶ Distinguishing between termination with prejudice and termination without, we reasoned,

By entering an order dismissing the proceedings with prejudice, the law judge took the FAA’s so-called voluntary act of withdrawing the complaint and indelibly marked it with his judicial imprimatur by dismissing the complaint with prejudice, effectively preventing the FAA from continuing its pursuit of charges against applicant. The law judge’s order clearly was in favor of applicant.¹⁷

This case brings into focus the corollary to our holding in Bordelon: the mere termination of a proceeding without prejudice generally is not sufficient, in and of itself, to create prevailing-party status. Under the Board’s rules of practice, the FAA may withdraw a complaint without leave of the law judge, who may then terminate the proceeding based on withdrawal of the complaint.¹⁸ Termination of the proceeding then becomes a matter of judicial administration—the logical result of the Administrator’s voluntary withdrawal of the complaint—rather than an affirmative judicial act that determines the rights of the parties or awards relief. In Turner and

¹⁴ 590 F.3d 898, 901 (D.C. Cir. 2010) (quoting Thomas v. Nat’l Sci. Found., 330 F.3d 486, 492-93 (D.C. Cir. 2003); see Bordelon, NTSB Order No. EA-5601 at 4 (expressly adopting Straus test for determining entitlement to EAJA recovery); accord Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health & Human Res., 532 U.S. 598, 604 (2001).

¹⁵ Bordelon, NTSB Order No. EA-5601 at 5.

¹⁶ Id. at 11; see also Green Aviation Mgmt. Co. v. F.A.A., 676 F.3d 200, 201 (D.C. Cir, 2012).

¹⁷ Bordelon, NTSB Order No. EA-5601 at 5.

¹⁸ 49 C.F.R. § 821.12(b).

Coonan v. National Transportation Safety Board, the D.C. Circuit concluded termination of an enforcement proceeding without prejudice provided the EAJA applicants with “nothing . . . analogous to judicial relief.”¹⁹ The court explained that, once the Administrator had withdrawn his complaints against the two pilots involved in the underlying enforcement proceeding,

the pilots were no longer the subject of proceedings to suspend their licenses. For all practical purposes, the FAA had unilaterally ended the adversarial relationship between the parties, leaving them where they were before the complaint was filed. The order of the [law judge] dismissing the cases was just an administrative housekeeping measure, not a form of relief, because the FAA did not need the [law judge’s] permission to withdraw a complaint.²⁰

B. *Application at Issue*

In this case, the Administrator unilaterally and voluntarily withdrew the complaint as a matter of right under 49 C.F.R. § 821.12(b). The only action remaining for the law judge was to terminate the proceeding.

Applicant argues “[the judge’s] [d]ismissal was the act permitting [a]pplicant to legally fly the Boeing 777 and changed the legal relationship between the parties” and that the law judge’s “approval of the Agency’s [m]otion was a judicially sanctioned act that changed the legal relationship between [the] parties.” But we find no circumstances in this case supporting a determination that the termination order without prejudice effected “a ‘court-ordered change in the legal relationship’ of the parties” for purposes of the first prong of the Straus test.

Applicant’s argument rests on the faulty premise that the law judge, in terminating the proceeding, “approved” of the Administrator’s withdrawal of the complaint. This is not the case. As explained above, the Administrator did not seek the law judge’s approval to withdraw the

¹⁹ 608 F.3d 12, 16 (D.C. Cir. 2010) (citing Straus, 590 F.3d at 901, and 49 C.F.R. § 821.12(b)).

²⁰ Id.

complaint but rather withdrew the complaint as a matter of right under 14 C.F.R. § 821.12(b).²¹

The order terminating the proceeding without prejudice had the same effect as the orders at issue in Turner and Coonan: it “was just an administrative housekeeping measure, not a form of relief, because the FAA did not need the [law judge’s] permission to withdraw a complaint.”²²

Termination without prejudice left open the possibility the Administrator could resume certificate action against applicant if the Administrator so elected.

Because we conclude applicant was not a prevailing party for purposes of EAJA, we need not reach applicant’s argument that the Administrator was not substantially justified in bringing the certificate action.

ACCORDINGLY, IT IS ORDERED THAT:

1. Applicant’s appeal is denied; and
2. The law judge’s written initial decision and order is affirmed.

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

²¹ Administrator’s Motion to Terminate Proceedings, dated May 18, 2012.

²² 608 F.3d at 16.

Served: October 25, 2012

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

Application of

LARRY BOND

Docket 361-EAJA-SE-19188

for an award of attorney fees
and expenses under the Equal
Access to Justice Act.

**WRITTEN INITIAL DECISION AND ORDER DENYING AWARD OF
FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT**

Served: Michael Moulis, Esq.
Moulis Aviation Law, PA
Suite 344
1100 Lee Wagener Boulevard
Ft. Lauderdale, Florida 33315
(BY CERTIFIED MAIL AND FAX)

Taneesha D. Marshall, Esq.
Federal Aviation Administration
Southern Region
Post Office Box 20636
Atlanta, Georgia 30320
(BY FAX)

Larry Bond
Post Office Box 621405
Orlando, Florida 32862
(BY CERTIFIED MAIL)

Alfonso J. Montaña, Chief Administrative Law Judge: On June 26, 2012, applicant filed with this office an application, under the Equal Access to Justice Act ("EAJA," codified at 5 U.S.C. § 504), for fees and expenses associated with his appeal to the National Transportation Safety Board of an order which suspended the Boeing B-777 type rating on his airline transport pilot certificate pending his successful completion of a reexamination of his qualifications to hold such a rating. The Administrator subsequently filed an answer to that application, after which applicant submitted a reply to that answer, and the matter is now ripe for consideration.

I.

As is noted above, the underlying certificate action was initiated by the Administrator's issuance of an order suspending applicant's B-777 type rating until such time as he established his qualifications for that type rating through a reexamination. That order was issued on an emergency basis on September 27, 2011,¹ and alleged that applicant was issued his B-777 rating on or about June 11, 2008 by Bond Aviation, "an Aviation Training Center . . . using aircraft simulators and other training devices to train for and issue large aircraft type ratings;"² that, in June 2009, the FAA commenced an investigation of Bond Aviation's training and practical testing practices for the period from June 1, 2008 to June 1, 2009; that said investigation brought into question whether such practices were in accordance with Part 142 of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.), in that records for Training Center Evaluators and for students who received training and/or practical testing at Bond Aviation during that period were incomplete or missing; that, as a result of the investigation, the FAA's South Florida Flight Standards District Office advised applicant by letter on November 17, 2009 that a reexamination of his competence to hold a B-777 type rating, "to consist of a practical exam to include the knowledge and skill necessary to be the holder of a B-777 type rating," was necessary; that, although applicant, through his counsel, responded to that letter by relating that he received his B-777 rating from Bond Aviation in May 2008, prior to the period under investigation, he was subsequently informed by letter on July 7, 2011 that an extensive review of his official airman records indicated that he received the type rating between June 1, 2008 and June 1, 2009, and that he, thus, "would still need to present [him]self for a reexamination;" that, as of the date of the suspension order's issuance, applicant had not presented himself for or successfully completed such a reexamination; and that the Administrator was, therefore, unable to determine his competency to hold a B-777 type rating.

Following the submission of applicant's appeal from that order, the Administrator, on October 12, 2011, reissued the order as the complaint in the underlying proceeding. Applicant then filed an answer to the complaint on October 18, 2011, in which he averred that "[t]he training . . . occurred in May of 2008, not June of 2008," and asserted that "FAR Part 142 Simulator Training Schools [are required] to retain records for one year. The FAA inspected [Bond Aviation] over a year after [he] completed his training. Accordingly, his records were destroyed in the normal course of business. As such, the lack of records is not a basis for the FAA to request a re-examination under [49 U.S.C. §] 44709 . . . or the FARs."

The record in the underlying proceeding contains a certified copy of applicant's FAA airman file, dated November 16, 2009, which was submitted in connection with a motion for summary judgment filed by the Administrator on November 25, 2011. Said file included a computer-generated Airman Certificate and/or Rating Application (FAA Form 8710-1), with

¹ In connection with his appeal of the suspension order, respondent waived the applicability of the Board's rules governing emergency proceedings.

² Applicant was the President of Bond Aviation.

applicant's name and the term "E-SIGN" appearing in the space provided for the signature of the person applying for the certificate or rating, and indicated that applicant graduated an approved course for an "ADDED RATING – AIRCRAFT TYPE" at Bond Aviation on June 11, 2008. Entered in the Evaluator's Record section of that computer-generated form are verifications of oral, simulator/training device and aircraft flight checks that are "E-SIGN[ED]" by Examiner Arville Wiley Steed, all dated June 11, 2008. Applicant's airman file also contained a computer-generated Temporary Airman Certificate (FAA Form 8060-4) — which includes a B-777 type rating — that was issued on June 11, 2008, in which the e-signature of Examiner Steed appears in the space provided for "SIGNATURE OF EXAMINER OR INSPECTOR."

Applicant subsequently requested an extension of time to submit a reply to the Administrator's summary judgment motion, in connection with which it was claimed that the computer-generated Form 8710-1 was "full [of] misinformation, misrepresentations, [and] omissions of required information," and contained e-signatures of persons who were not qualified to e-sign, and it was requested that the Administrator be ordered to produce "the original handwritten FAA Form 8710[-1]." That submission also related that Examiner Steed would be "willing to testify or otherwise submit affidavits with supporting documentation that all of the required check rides and testing were completed in May of 2008," and stated that applicant needed additional time to obtain such evidence from Examiner Steed, who had retired. The Administrator, in response to said request, noted that the Form 8710-1 appearing in applicant's airman file "was electronically created and signed using the FAA's Integrated Airman Certification and Rating Application (IACRA) Program," and, "[t]herefore, a handwritten copy does not exist as the IACRA document accepts digital signatures in lieu of handwritten signatures."

Applicant later submitted his reply to the Administrator's motion for summary judgment, associated with which was an affidavit from Examiner Steed, in which he attested that he "can and will testify" that applicant completed the FAA-approved B-777 type rating course in May 2008; that applicant successfully completed a B-777 type rating check ride administered by him in a Level D simulator on May 14, 2008; that he personally checked his records from the Atheon/Boeing simulator facility to confirm that date; that applicant's type-rating examination did not include any flight activity in a B-777 aircraft (as had been indicated on the computer-generated Form 8710-1 found in applicant's airman file); that, "[b]ecause IACRA . . . had in my experience been so unreliable and error prone, my practice was to submit Airman Certification forms by hand and not electronically;" and that he had submitted an FAA Form 8710-1, "indicating [applicant's] completion date of May 14, 2008," to the FAA in handwritten form. That affidavit was not accompanied by any documentation.

Thereafter, during a telephone conference call I conducted with counsel for the parties on January 17, 2012, the Administrator's counsel conceded that there were issues of fact remaining to be resolved, and I denied the motion for summary judgment on that basis.

The parties then proceeded with discovery, which culminated with applicant, on May 11, 2012, providing copies of sign-in sheets and flight technical logs for Boeing 777

flight simulator activity by him at the Atheon/Boeing Miami Flight Training Center on May 8 and 14, 2008 (with the flight technical logs showing the signature of Examiner Steed as "INSTRUCTOR"), and a copy of a Bond Aviation Training Center Airman Certification/Proficiency Evaluation for him, dated May 14, 2008, on which Examiner Steed certified that applicant had achieved satisfactory results in all preflight and in-flight activities on a B-777 simulator.

Thereafter, on May 18, 2012, the Administrator withdrew the complaint in the underlying proceeding and requested that the proceeding be terminated. I subsequently issued an Order Terminating Proceeding on May 25, 2012. I did not terminate the proceeding with prejudice, and applicant did not request that I do so.

II.

Under the EAJA, "[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award [of such fees and expenses] unjust." 5 U.S.C. § 504(a)(1).

Thus, the first question that must be addressed here is whether applicant achieved prevailing party status in the underlying proceeding. Because the term "prevailing party" is not defined in the EAJA, that concept has been construed through litigation. Recently, in *Application of Bordelon*, NTSB Order EA-5601 (served October 24, 2011), the Board reviewed its treatment of the prevailing party concept in EAJA cases in light of the United States Supreme Court's decision in *Buchannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001), and subsequent Federal Courts of Appeals' decisions, and adopted the standard established by the District of Columbia Circuit in *District of Columbia v. Straus*, 590 F.3d 898 (2010), which requires that "(1) there must be a 'court-ordered change in the legal relationship' of the parties; (2) the judgment must be in favor of the party seeking the fees; and (3) the judicial pronouncement must be accompanied by judicial relief."³ In so doing, the Board "reject[ed] all prior Board precedent inconsistent with th[at] test."⁴

Bordelon arose from an emergency order of revocation issued by the Administrator against the holder of an airman mechanic certificate with airframe and powerplant ratings, stemming from his alleged failure both to perform maintenance in accordance with proper methods and techniques and to make appropriate aircraft logbook entries in connection with work performed on a Cirrus SR22 aircraft. After the certificate holder filed an appeal from that revocation order, deposition testimony was obtained from him which, along with information provided by other witnesses, brought the charges into serious question. The Administrator then moved to withdraw the complaint without prejudice and the certificate

³ 590 F.3d at 901.

⁴ NTSB Order EA-5601 at 5.

holder moved that the proceeding be terminated with prejudice. The presiding judge, William R. Mullins, subsequently terminated the proceeding with prejudice. The certificate holder then filed an EAJA claim, which Judge Mullins granted. On appeal, the Administrator argued that the certificate holder was not a prevailing party in the underlying matter because there was no court-ordered change in the legal relationship of the parties, as the complaint had voluntarily been withdrawn. In rejecting that assertion and finding that the certificate holder was a prevailing party, the Board determined that “the law judge provided a court-ordered change in the legal relationship of the parties when he dismissed the case *with prejudice*. . . . The Administrator sought to have the law judge terminate the proceedings *without prejudice* so the Administrator would have an opportunity to continue the investigation and possibly ‘issue a new Order of Revocation in this matter.’ . . . By entering an order dismissing the proceedings with prejudice, the law judge took the FAA’s so-called voluntary act of withdrawing the complaint and indelibly marked it with his judicial imprimatur by . . . effectively preventing the FAA from continuing its pursuit of charges against [the certificate holder]. The law judge’s order clearly was in favor of [him].”⁵

Unlike in *Bordelon*, the underlying certificate proceeding in the instant matter was terminated without prejudice. My May 25, 2012 Order Terminating Proceeding does not legally foreclose the Administrator from initiating a new certificate action against applicant under the circumstances in question. Thus, I neither ordered a change in the legal relationship of the parties nor entered a judgment in applicant’s favor in the underlying matter when I issued that Order, and I made no judicial pronouncement that was accompanied by a grant of judicial relief to him in so doing. Accordingly, I find that applicant cannot be considered a prevailing party under the three-prong test adopted by the Board in *Bordelon*, and that I must, therefore, deny his application for attorney fees and expenses under the EAJA on that basis.⁶

⁵ NTSB Order EA-5601 at 10-11 (emphasis original; footnote omitted).

⁶ If applicant could have been deemed a prevailing party in the underlying proceeding, I would, nevertheless, have been compelled to find that the Administrator was substantially justified in proceeding with a certificate action against him up until the time the complaint in that matter was withdrawn on May 18, 2012. As is noted above, applicant’s official airman file contained information that he underwent training for a B-777 type rating at Bond Aviation (of which he was President) during the June 1, 2008 to June 1, 2009 period for which issues had arisen about training and/or practical testing it provided to pilots — thus bringing into question his qualifications to hold that rating. It was not until May 11, 2012 that applicant produced documentation which tended to corroborate his claim that he completed his training for the B-777 rating prior to June 2008, and the Administrator withdrew the complaint in the underlying proceeding approximately one week after it was submitted by him.

THEREFORE, IT IS ORDERED that the application in this proceeding for fees and expenses under the Equal Access to Justice Act is hereby DENIED.

Entered this 25th day of October, 2012, at Washington, D.C.

A handwritten signature in black ink, consisting of a large, rounded initial 'A' followed by several loops and a horizontal stroke at the end.

Alfonso J. Montañó
Chief Administrative Law Judge

APPEAL (EAJA INITIAL DECISION)

Any party to this proceeding may appeal this written initial decision by filing a written notice of appeal within 10 days after the date on which it has been served (the service date appears on the first page of this decision). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board
Office of Administrative Law Judges
Room 4704
490 L'Enfant Plaza East, S.W.
Washington D.C. 20594
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this initial decision. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board
Office of General Counsel
Room 6401
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594
Telephone: (202) 314-6080

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rule 38 of its Rules Implementing the Equal Access to Justice Act (codified at 49 C.F.R. § 826.38) and Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.