

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: December 21, 1993

FAA Order No. 93-36

In the Matter of:)

VALLEY AIR SERVICES, INC.)
_____)

) Docket No. CP91NE0332
)
)
)

DECISION AND ORDER

This case involves an air taxi operator's alleged failure to maintain its aircraft in accordance with the Federal Aviation Regulations (FAR). The complaint alleged that Respondent Valley Air Services, Inc. (Respondent) operated its aircraft when the governors^{1/} on the propellers had not been overhauled. Administrative Law Judge Robert L. Barton held that Respondent was entitled to rely on a letter from the manufacturer extending the time between overhaul, and decided the case in favor of Respondent.^{2/} Complainant Federal Aviation Administration (FAA) (Complainant) appeals. Because

^{1/} A governor is a feedback device providing for automatic control.

^{2/} Attached are copies of: (1) Judge Barton's order granting Respondent partial summary judgment; and (2) his initial decision resolving the remainder of the case in Respondent's favor.

the law judge interpreted 14 C.F.R. § 135.421 incorrectly, his decision is reversed.

The facts of this case are not in dispute. During a routine inspection, an FAA inspector found that the propeller governors on Respondent's Piper PA-31 aircraft were 103.5 hours overdue for an overhaul.^{3/} The FAA inspector advised Respondent that the aircraft could not be used for any Part 135 flights until the governors were either overhauled, or replaced with overhauled governors. Respondent called the manufacturer, Woodward Governor Company (Woodward), the same day to request two overhauled propeller governors. When Woodward responded that overhauled governors could not be delivered for about two weeks, Respondent asked if there was any way of changing the time between overhaul. Without consulting the company's engineering department, Woodward's customer service representative agreed to send Respondent a letter authorizing Respondent to disregard the time between overhaul requirement for a period of 30 days.^{4/}

^{3/} Woodward's service bulletin indicates that the time between overhaul for the governors is the same as for the engines. The service letter for the engine requires overhaul every 1800 hours. At the time of inspection, the plane had been flown 1903.5 hours without overhaul of the governors.

^{4/} Under the company's unwritten policy at the time, the engineering department typically would be consulted on requests for extensions of time between overhaul. However, approval from engineering was not absolutely required. Woodward has since issued a written policy to its employees requiring engineering department approval on all extensions of time between overhaul.

Two days after the call to Woodward, Respondent received the promised letter by facsimile. The letter stated:

Woodward authorizes S/N 1752493 and S/N 1722494 to continue in service, without regard to the recommended TBO [Time Between Overhaul], until S/N 2346199 and 2246200 are installed, not to exceed 30 days after shipment from Woodward.

Upon receiving the letter, Respondent returned the Piper aircraft to service in Respondent's Part 135 operations.

About a week later, the FAA inspector informed Respondent that the FAA could not recognize the Woodward extension letter. Respondent took the aircraft out of service again for 5 days until the overhauled governors were installed.

In the complaint, Respondent was alleged to have violated the following regulations:

- (1) 14 C.F.R. § 135.421(a), requiring compliance with the manufacturer's recommended maintenance program or a program approved by the Administrator;
- (2) 14 C.F.R. § 135.5, prohibiting operation of an aircraft in violation of the operator's air taxi certificate and operations specifications;
- (3) 14 C.F.R. § 135.25(a)(2), prohibiting operation of an unairworthy aircraft; and
- (4) 14 C.F.R. § 135.413(a), requiring certificate holders to maintain their aircraft in accordance with the Federal Aviation Regulations.^{5/}

Complainant sought a civil penalty of \$4,000.

The outcome of this case turns on the meaning of the term "maintenance instruction" in Section 135.421(b). Section

^{5/} The complete text of these regulations is found in an Appendix to this decision.

135.421(a) requires air taxi operators to follow either a manufacturer's recommended maintenance program, or a program approved by the Administrator. Section 135.421(b) defines "manufacturer's maintenance program" as:

one which is contained in the maintenance manual or maintenance instructions set forth by the manufacturer as required by this chapter

14 C.F.R. § 135.421(b) (emphasis added).

In the proceedings below, Respondent argued that the manufacturer's extension of the time between overhaul was a maintenance instruction under Section 135.421(b) on which it was entitled to rely. Respondent also argued that the extension was retroactive, so that it was not subject to a penalty even for the 103.5 hours it flew the airplane before the extension was granted. Over Complainant's objections, the law judge accepted Respondent's arguments and decided the case in Respondent's favor.

The central question on appeal is: Was it error for the law judge to hold that the manufacturer's extension of the time between overhaul on the governors was a "maintenance instruction" within the meaning of Section 135.421? The answer to this question is yes.

Contrary to the law judge's holding, the extension of time granted by the manufacturer was not a "maintenance instruction" within the meaning of Section 135.421. As a careful reading of the regulation indicates, manufacturer's maintenance programs--which include maintenance instructions--are limited

to those instructions that the regulations require manufacturers to furnish to operators:

A manufacturer's maintenance program is one which is contained in the maintenance manual or maintenance instructions set forth by the manufacturer as required by this chapter for the aircraft, aircraft engine, propeller, rotor, or item of emergency equipment.

14 C.F.R. § 135.421(b) (emphasis added). Under the regulatory scheme of the FAR, manufacturers are required to develop general instructions on maintaining their products.^{6/}

Manufacturers create one set of instructions that are to be used by all. Apart from the potential for unfairness that would exist if manufacturers could arbitrarily set stricter standards for some members of the public than for others, the rules simply do not contemplate individualized instructions. Any additional maintenance programs for Part 135 certificate holders must be approved by the Administrator. 14 C.F.R. § 135.421(a).

The regulatory history to Section 135.421(b) provides further insight into the proper interpretation of the term

^{6/} For example, Part 23 requires the applicant for a type certificate on an airplane to prepare, in the form of a manual, "Instructions for Continued Airworthiness." 14 C.F.R. § 23.1529; Appendix G. Part 33 requires each applicant for a type certificate on an engine to prepare instructions for maintaining the engine. 14 C.F.R. § 33.5. Part 35 requires each applicant for a type certificate on a propeller to prepare an approved manual containing instructions for maintaining the propeller. 14 C.F.R. § 35.3.

"maintenance instruction."^{7/} As the following passage reveals, even when a service letter is issued to all operators, it still may not constitute a "maintenance instruction" unless compliance with it is required under the rules:

Several commenters state that the term "manufacturer's recommended maintenance programs" could require compliance with all service letters[,] suggesting installation of kits which may not be available. ... The manual that must be made available to the owner under § 23.1529 of this chapter would satisfy this requirement. The maintenance instructions that are required by [§§ 33.5 or 35.3] also would satisfy § 135.421 for the propeller or aircraft engine. Service letters or bulletins that are not required by an Airworthiness Directive are not included unless they are part of the maintenance manual or maintenance instructions required under the rules.

43 Fed. Reg. 46,780 (October 10, 1978) (emphasis added). As this passage indicates, if compliance is optional, then the guidance from the manufacturer is not a maintenance instruction within the meaning of the regulation.

To summarize, maintenance instructions are general instructions that manufacturers are required to furnish to all operators, and that operators in turn are required to obey. Maintenance instructions do not include either "instructions" issued to particular operators, nor optional "instructions."^{8/}

^{7/} Although the law judge held that it was inappropriate to look to the regulatory history because the regulation was clear on its face, this case would never have arisen if the term "maintenance instruction" was not susceptible to more than one interpretation. Resort to the regulatory history is, therefore, appropriate.

^{8/} Respondent has argued that in deciding this case, the Administrator is not permitted to consider the following

[Footnote continues on next page]

In the instant case, Woodward's extension of the time between overhaul was issued to Respondent alone--not to all operators. In addition, the effect of the letter was to relieve Respondent of a requirement--that of overhauling the governors at 1800 hours.

For these reasons, the extension letter was not a "maintenance instruction" within the meaning of Section 135.421 and did not extend the operating limitations set forth in the Piper PA-31 Service Manual. Rather, the letter from Woodward was in the nature of an exemption from the maintenance instruction requiring overhaul at 1800 hours. Because the extension letter was neither a part of the maintenance manual nor a maintenance instruction, it was not a part of the manufacturer's recommended maintenance program, as defined in Section 135.421(b). Section 135.421(a) provides that a Part 135 certificate holder must comply with either the manufacturer's recommended maintenance program, or a program approved by the Administrator. By failing to have the governors overhauled before the 1800-hour limit expired,

[Footnote continued from previous page]

8/statement from FAA Order 8300.10, Airworthiness Inspector's Handbook: "The manufacturer's maintenance program does not include individual authorizations by a manufacturer to a particular operator." It is not necessary to go beyond the regulations and the regulatory history to understand that the purported exemption granted by the manufacturer in this case was not a maintenance instruction for purposes of Section 135.421. The Airworthiness Inspector's Handbook does, however, show that this decision is consistent with the agency's past position on what constitutes a maintenance instruction.

Respondent failed to comply with the manufacturer's recommended maintenance program.^{9/}

Even if the extension letter were found to be a maintenance instruction, Respondent had already flown the aircraft for 103.5 hours past the 1800-hour limit when the inspector discovered the problem. Thus, the rules had already been violated when Respondent sought and obtained the extension letter from Woodward. Although Woodward may have intended its purported extension to be retroactive, it simply did not have the power to exonerate Respondent from a pre-existing violation of the rules.

In light of all the circumstances of this case, including the uncontroverted evidence in the record that Respondent had already flown its aircraft 103.5 hours past the 1800-hour limit before the manufacturer was even contacted, a sanction of \$4,000 is appropriate.

^{9/} While the terms of the extension letter are not the basis for this decision, they do raise safety concerns. Rather than extending the time between overhaul to a specific number of hours, the purported extension was for a period of 30 days after shipment of the parts. As counsel for Complainant brought out during the deposition of Charles Drewes, if, for example, there had been a delay in shipment, and the governors had not been shipped for 90 days, then Respondent could have flown an unlimited number of hours during the next 120 days before having the overhauled governors installed.

Counsel for Respondent represents in his brief that "the extension did not compromise safety in any way," citing the deposition of Alan Plummer, Woodward's product line manager for the governors. However, Plummer conceded in his deposition that a safety concern with the extension letter issued by Drewes was that it failed to define what the 30 days was when expressed in hours. Alan Plummer Deposition, January 26, 1993, p. 11.

APPENDIX

14 C.F.R. § 135.421 (1990) provides as follows:

(a) Each certificate holder who operates an aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, must comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, for each aircraft engine, propeller, rotor, and each item of emergency equipment required by this chapter.

(b) For the purpose of this section, a manufacturer's maintenance program is one which is contained in the maintenance manual or maintenance instructions set forth by the manufacturer as required by this chapter for the aircraft, aircraft engine, propeller, rotor or item of emergency equipment.

14 C.F.R. § 135.5 (1990) provides, in relevant part, as follows:

No person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate and appropriate operations specifications issued under this part

14 C.F.R. § 135.25(a)(2) (1990) provides, in relevant part, as follows:

Except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft--

(2) is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

14 C.F.R. § 135.413(a) (1990) provides, in relevant part, as follows:

Each certificate holder is primarily responsible for the airworthiness of its aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts, and shall have its aircraft maintained under this chapter, and shall have defects repaired between required maintenance under Part 43 of this chapter.