

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

SANFORD AIR, INC.

FAA Order No. 97-31

Served: October 8, 1997

Docket No. CP95NE0301

DECISION AND ORDER

This appeal under 14 C.F.R. Part 13 raises two primary questions. First, is it fair to hold a company responsible for an employee's improper repairs to an aircraft? And second, should a case be dismissed if the law judge failed to issue a written decision within 30 days of the closing of the record?

Sanford Air, a fixed-base operator located in Sanford, Maine, is in the business of repairing aircraft. (Tr. 18.) Sanford Air performed most of the maintenance on a Meyers model 200A airplane owned by a man named Jeffrey Walker. (*Id.*) When problems arose with the landing gear,¹ Walker went to Sanford Air, on several different occasions, for repairs. (Tr. 20; Complainant's Exhibit D.) A Sanford Air employee named Patrick Martel, who is the brother of Sanford Air's President, Donald Martel, replaced the right gear door cable and later the left gear door cable; he also made other adjustments. (Complainant's Exhibit D.) Patrick Martel, however, made no contemporaneous entries in the aircraft

¹ Walker noticed that one of the gear door cables was hanging loose after a practice flight. (Tr. 20.) On several occasions, Walker had trouble with the red warning lights for the landing gear remaining on. (Complainant's Exhibit D.) On yet another occasion, Walker noticed that the other gear door cable was frayed. (Complainant's Exhibit H.)

logbooks. (Tr. 21, 25.) Walker did not make the logbooks available at the time, and Patrick Martel did not insist that he do so.² Sanford Air billed Walker for Patrick Martel's work. (Complainant's Exhibit F.)

Shortly thereafter, when Walker was attempting to land his airplane in Portland, Maine, the green light indicating a down-and-locked right landing gear failed to illuminate. (Tr. 16.) Thinking that the light was simply malfunctioning, Walker proceeded with the landing, but the right landing gear was still stowed, causing the aircraft to cartwheel on the runway. (Tr. 17, 42; Complainant's Exhibit D.) Fortunately, no one was injured. (Tr. 17.) An inspection of the aircraft after the incident revealed that the right landing gear door cable was 2 inches too short and that the wrong swedged terminal had been installed. (Tr. 46; Complainant's Exhibit B.)

As part of his investigation into the incident, FAA Inspector Joseph Murray asked to look at the aircraft's logbooks. (Tr. 44, 144.) Before Walker gave the logbooks to the inspector, he returned to Sanford Air to have the work on the gear door cables recorded (Tr. 21), at which time Patrick Martel made the following entry (Tr. 144):³

5-20-95 Replaced R.H. Gear Door Accuating (sic) Cable
 6-16-95 Replaced L.H. Gear Door Accuating (sic) Cable
 AC Logs Not Available Until This Time.

SFM⁴

² Walker testified that he kept his logbooks in a fireproof box in his home, and that he was often lax in bringing the logbooks to Sanford Air when he had maintenance done. (Tr. 20.)

³ Inspector Murray testified that the dates in Patrick Martel's entry were incorrect and suggested that they may have been simply Patrick Martel's approximations, after the fact. (Tr. 63.)

⁴ "SFM" is the acronym for the Sanford, Maine, airport at which Sanford Air is located. (Tr. 36.)

(Complainant's Exhibit I.) As the investigation progressed, Inspector Murray discovered the following:

- Patrick Martel was not a certificated mechanic, but only an apprentice. (Tr. 48, 145.)
- Patrick Martel's repairs to the landing gear doors were not supervised by a certificated mechanic.⁵
- Patrick Martel did not have the manufacturer's maintenance manual available for reference when he performed the repairs. (Tr. 53; Complainant's Exhibit G.)
- After replacing the cables, Patrick Martel did not test the landing gear doors per the manufacturer's instructions. (Tr. 48; Complainant's Exhibit H.)

Complainant FAA (Complainant) filed separate civil penalty actions -- one against Patrick Martel individually, which was uncontested,⁶ and the instant civil penalty action against Sanford Air. Complainant alleged that Sanford Air violated the following safety regulations:

- 14 C.F.R. § 43.9(a)(1) and (3), in that Sanford Air failed to make a maintenance record entry containing a description of work performed and the name of the person who performed the work;
- 14 C.F.R. § 43.13(a), in that Sanford Air failed to use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or other methods, techniques, and practices acceptable to the Administrator;
- 14 C.F.R. § 43.3(d), in that Sanford Air maintained an aircraft using personnel who were not authorized to do so;

⁵ Although Sanford Air initially claimed that Randall Collins, a certificated mechanic, supervised Patrick Martel, Collins testified at the hearing that he was not involved in any way with the repairs. (Tr. 89; *see also* Complainant's Exhibit J.) Moreover, the inspector testified, and his telephone records indicate, that shortly after the incident, Patrick Martel told the inspector that he was not under any supervision. (Tr. 52; Complainant's Exhibit G.)

⁶ Patrick Martel did not respond to Complainant's notice proposing to assess him a civil penalty. As a result, Complainant issued an order assessing Patrick Martel a civil penalty of \$1,100, which became final when Patrick Martel failed to appeal by the deadline. (Complainant's Exhibit L; Tr. 116-17.)

- 14 C.F.R. § 91.403(b), in that Sanford Air performed maintenance on an aircraft contrary to the applicable regulations, including Part 43; and
- 14 C.F.R. § 43.5(a), in that Sanford Air returned an aircraft to service that had undergone maintenance and failed to assure that the maintenance record entry required by § 43.9 had been made.

Although Sanford Air argued that it was not responsible for Patrick Martel's activities because they had taken place after hours and off company premises, the law judge decided the case in Complainant's favor. The law judge concluded that the circumstances showed that Walker was dealing with Sanford Air rather than with Patrick Martel individually.⁷ (Initial Decision at 4.)

On appeal, Sanford Air argues that Complainant failed to prove its case -- specifically, Sanford Air contends that Complainant failed to prove that Sanford Air was responsible for the improper repairs and that Sanford Air returned the aircraft to service. ("Motion of Appeal" [construed as an appeal brief] at 1.) Sanford Air notes that the law judge erred in stating that a maintenance release was stamped onto the receipt. (*Id.*) In his decision, the law judge stated as follows:

... [A] receipt marked "gear door cable repair" is dated April 29, 1995 (Ex. C-F). I find that to be the date on which the work at issue was accomplished (Ex. C-H; Tr. 29-30).⁸ I further conclude that it constituted a completed repair. Eny Martel, Donald Martel's wife and Sanford office manager and work scheduler (Tr. 130, 139), claimed that the April 29 invoice reflected no more than "troubleshooting," without any work actually being performed (Tr. 142-43), but I do not credit her self-serving assertion. Eny Martel had no expertise respecting aircraft repair and maintenance, a fact she acknowledged

⁷ A copy of the law judge's written initial decision is attached.

⁸ To the extent that this statement suggests that the only work at issue was performed on April 29, 1995, the law judge erred. The record shows that Patrick Martel performed repairs to the landing gear on several different occasions. (See, e.g., Complainant's Exhibits D and H.) All the repairs to the landing gear performed by Patrick Martel violated the safety regulations and are at issue in this case.

(Tr. 140, 146-47). Nor could she show any personal knowledge of the circumstances surrounding the making of the invoice which would tend to contradict its plain words. Her hearsay statement that a Sanford mechanic whom she could not identify (in a company with just two or three mechanics) had told her that no work had been done is of dubious credibility (*see* Tr. 143). The receipt, *onto which a maintenance release was stamped*, is the best evidence of what took place. Its plain words state and show that the repair was completed and the aircraft returned to service (Exh. C-I; Tr. 177-78).

(Initial Decision at 3; emphasis added.)

Sanford Air is correct that for Complainant to prevail, its case must be proven "by a preponderance of reliable, probative, and substantial evidence." 14 C.F.R. § 13.223. Sanford Air is also correct that the law judge erred when he indicated that a maintenance release was stamped onto the receipt for the gear door cable repair dated April 29, 1995. No maintenance release is stamped on the receipt. (Complainant's Exhibit F.) Nevertheless, the law judge's error is harmless. Even without any maintenance release on the receipt, a preponderance of the reliable, probative, and substantial evidence shows that Sanford Air returned the aircraft to service (though it did so improperly),⁹ and that Sanford Air is responsible for the improper repairs. Such evidence includes the following:

- Sanford Air is in the business of repairing aircraft. (Tr. 18.) Sanford Air generally performed the maintenance on Walker's aircraft. (*Id.*) In fact, Walker had his credit card number on file with Sanford Air. (Tr. 28.)
- When Walker approached Patrick Martel at the Sanford Air facility directly, he testified that he did so only because no one was at the main desk. (Tr. 18.) On each occasion, Walker went to the Sanford Air facility to arrange for the work, not to Patrick Martel's residence or to some other location. (*Id.*)
- Walker reasonably believed he was dealing with Sanford Air, particularly since Sanford Air billed and received payment for the

⁹ The return to service was improper given that Sanford Air failed, among other things, to repair the aircraft properly and to make the appropriate entries in the logbooks.

work performed by Patrick Martel. (*See, e.g., Complainant's Exhibit F.*) Walker did not pay Patrick Martel for the repairs to the landing gear -- Walker paid Sanford Air. (*Id.*)

- Nothing on the receipt indicates that the repair to the gear door cable was incomplete. (Complainant's Exhibit F.) Moreover, the record is devoid of any testimony that Patrick Martel or anyone else employed by Sanford Air advised Walker that even though Sanford Air had billed him and had received payment from him via his credit card, the repairs were incomplete.
- Although Sanford Air claims that it believed that Patrick Martel was simply looking at the aircraft rather than performing repairs, the invoice in the record for Patrick Martel's work, which was prepared and initialed by Sanford Air's office manager, expressly states: "Gear door cable *repair*." (Complainant's Exhibit F; emphasis added.)

Thus, the law judge did not err in holding Sanford Air responsible for the improper repairs in this case. It would violate common sense and threaten aviation safety to permit Sanford Air to evade responsibility for aircraft repairs for which it has billed the customer. Moreover, if Sanford Air was indeed unaware of Patrick Martel's activities, its own deficiencies in supervising Patrick Martel are the cause. The pilot as well as individuals on the ground could have been seriously injured or even killed as a result of the improper repairs performed under Sanford Air's auspices, and from which Sanford Air profited.

Sanford Air also argues that the case should be dismissed because the law judge failed to issue a decision within 30 days.¹⁰ The basis for this argument is

¹⁰ Sanford Air filed a notice of appeal, but failed to perfect the appeal by filing an appeal brief, as required by 14 C.F.R. § 13.233(c). After determining that the notice of appeal contained sufficient information to meet the appeal brief requirements, the Administrator construed the notice of appeal as an appeal brief. Sanford Air later filed a petition to file an additional brief, in which it argued that:

1. Complainant's reply brief failed to address the issue of the law judge's failure to render an initial decision within 30 days; and
2. Complainant's reply brief contained numerous factual errors.

14 C.F.R. § 13.232(c), which provides that “[t]he administrative law judge may issue a written initial decision *not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief. . . .*” (Emphasis added.)

The hearing in this case began and ended on May 31, 1996. The law judge did not require, and the parties did not submit, post-hearing briefs. At the conclusion of the hearing, the law judge indicated that once he received the transcript, he would begin work on his decision, and he would complete the decision as soon as his calendar permitted. (Tr. 179.) The law judge’s decision was not issued until September 16, 1996. Thus, it was approximately 2½ months late.

The Administrator rejected the first contention, noting that Complainant’s reply brief had an entire section devoted to the law judge’s failure to render an initial decision within the 30-day timeframe. As for Sanford Air’s claim that Complainant’s reply brief contained numerous factual errors, the Administrator gave Sanford Air the benefit of the doubt and permitted it to file an additional brief. The Administrator specifically instructed Sanford Air, however, that its additional brief should be limited to the alleged factual errors contained in Complainant’s reply brief, and should specify the alleged factual errors in detail.

Complainant has asked the Administrator to strike Sanford Air’s additional brief because it consists only of argument and fails to identify any factual errors in Complainant’s brief. (Response to Additional Argument at 1-2.) A review of Sanford Air’s additional brief supports Complainant’s position. For example, Sanford Air states in its additional brief as follows:

In the eventual logbook entry, Patrick Martel used the identifier “SFM.” Complainant attempted to construe this to be a logo or trademark of Sanford Air, Inc. That is factually incorrect as SFM is the FAA identifier for Sanford Regional Airport and has no connection whatsoever to Sanford Air, Inc. . . .

(Additional Brief at 2.) At no place in Complainant’s reply brief does Complainant refer to the identifier “SFM.”

Sanford Air’s additional brief is stricken. Note that the principal arguments contained in Sanford Air’s additional brief (*e.g.*, that the case should be dismissed due to the law judge’s failure to issue a written decision within 30 days; that Sanford Air is not responsible for Patrick Martel’s actions; that Sanford Air did not return the airplane to service; that the airplane owner violated the regulations by flying the airplane without ensuring that the repairs were properly performed; and that FAA Inspectors Murray and Radio are using their authority improperly in an attempt to “get” Donald Martel) are also contained in its appeal brief, though in a more concise form.

An official who fails to comply with a statutory time limit does not lose jurisdiction unless the statute expressly states loss of jurisdiction as a consequence for failing to comply. McCarthy v. FAA & NTSB, 954 F.2d 1147, 1152 (6th Cir. 1992), quoting St. Regis Mohawk Tribe, New York v. Brock, 769 F.2d 37, 41 (2d Cir. 1985), *cert. denied*, 476 U.S. 1140 (1986); Roadway Express v. U.S. Department of Labor, 929 F.2d 1060, 1066 (5th Cir. 1991). This principle has been upheld even in a case where a decision was issued years late. Passaic Valley Sewer Commissioners v. U.S. Department of Labor, 992 F.2d 474, 477 n.7 (3rd Cir. 1993). While the instant case involves a regulatory rather than a statutory time limit, it is reasonable to apply the same rule. Here, the Rules of Practice do not specify any consequence for the law judge's failure to issue the initial decision within 30 days. Thus, it would be inappropriate to dismiss the case.

The courts have indicated that if time is the real concern, the party's remedy is to initiate an action to compel the issuance of the decision. Passaic Valley Sewer Commissioners v. U.S. Department of Labor, 992 F.2d 474, 477 n.7 (3rd Cir. 1993); Roadway Express v. U.S. Department of Labor, 929 F.2d 1060, 1066 (5th Cir. 1991); Fort Worth National Corporation v. FSLIC, 469 F.2d 47, 58 (5th Cir. 1972). Sanford Air did not initiate an action to compel. The courts have also required the party complaining of the delay to show prejudice. *Id.* Sanford Air has neither asserted nor shown any prejudice from the delay. For all of these reasons, Sanford Air's request for dismissal is rejected.¹¹

¹¹ Sanford Air also argues on appeal that: (1) the owner of the aircraft violated the safety regulations by failing to ensure that the work was properly accomplished and the logbooks complete before he flew the airplane; and (2) the FAA inspectors involved in this case have had a bad relationship with the president of Sanford Air and are out to "get" him. The issue in this case, however, is not whether the owner of the airplane violated the regulations, or what type of relationship Sanford Air has had with the FAA inspectors. Rather, the issue

For the foregoing reasons, Sanford Air's appeal is denied and the law judge's decision assessing a civil penalty of \$4,750¹² is affirmed.¹³


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 7th day of October, 1997.

here is whether Sanford Air violated the regulations. A preponderance of the reliable, probative, and substantial evidence in the record shows that it did.

¹² Complainant requested a \$5,000 civil penalty, but chose not to appeal the reduction in the sanction. Sanford Air's appeal brief challenges only the law judge's finding of violations, and not the amount of the sanction.

¹³ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1997).