

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of:**

**EVERGREEN HELICOPTERS  
OF ALASKA, INC.**

FAA Order No. 2000-12

Served: June 8, 2000

Docket No. CP97AL0001

**DECISION AND ORDER**<sup>1</sup>

Complainant Federal Aviation Administration (FAA) has appealed the initial decision of Chief Administrative Law Judge Roy J. Maurer, which dismissed Complainant's \$10,000 civil penalty action against Evergreen Helicopters of Alaska, Inc. (Evergreen). This decision denies Complainant's appeal and affirms the law judge's order of dismissal.

**I. Facts**

The facts of this case are undisputed. Evergreen, a U.S. air carrier, holds an FAA-issued certificate to conduct commuter and on-demand operations under Part 135 of the Federal Aviation Regulations (14 C.F.R. Part 135).<sup>2</sup> In February 1996, under a contract with the United Nations (U.N.), Evergreen transported passengers on a U.S.-registered

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<sup>1</sup> The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 65 Fed. Reg. 1654, 1671 (January 11, 2000).

<sup>2</sup> Part 135 is entitled "Operating Requirements: Commuter and On-Demand Operations."

CASA 212 airplane as part of a U.N. peacekeeping mission, using Angolan pilots on 19 flights that took place entirely inside Angola. The pilots held only Angolan airline transport pilot certificates; they did not hold U.S. airline transport pilot certificates.

## **II. The Dispute**

Complainant's position in this case has been that Evergreen violated 14 C.F.R. § 135.243(a) by using pilots who lacked U.S. airline transport pilot certificates.

Section 135.243(a) provides, in pertinent part, as follows:

### **§ 135.243 Pilot in command qualifications.**

(a) No certificate holder may use a person ... as pilot in command in passenger-carrying operations—

(1) ... of an airplane having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more ... , unless that person holds an airline transport pilot certificate with appropriate category and class ratings ....

Complainant has argued that Section 135.243(a)(1)'s requirement of an airline transport pilot certificate means a *U.S.* certificate, even though the regulation does not expressly say so.

Evergreen, on the other hand, has argued that it committed no violations because the regulation does not state that the pilot in command must have a *U.S.* airline transport pilot certificate. Evergreen also points out that 14 C.F.R. § 61.3 provides that when an aircraft is operated within a foreign country, "a current pilot license issued by the country in which the aircraft is operated may be used."

## **II. Decision of the Administrative Law Judge**

By joint motion, the parties asked the law judge to decide the case without a hearing, which he agreed to do in an order served March 11, 1998. In an order served

May 6, 1998, the law judge dismissed the agency's case against Evergreen. His reasoning was as follows:

- The question in this case is whether Section 135.243(a)(1) dictates that the pilots should have had U.S.-issued airline transport pilot certificates.
- The pilots may have been properly licensed because Section 135.243(a)(1) does not expressly impose a U.S.-issued certificate requirement. Also, Section 61.3(a)<sup>3</sup> expressly provides that the pilot of a U.S.-registered aircraft may use a license issued by the country within which the aircraft is operated, and this language indicates the FAA's intent to comply with the Convention on International Civil Aviation ("Chicago Convention").<sup>4</sup> Both the U.S. and Angola are signatories of the Chicago Convention.
- The U.S. Court of Appeals for the District of Columbia has issued two decisions holding that Article 33 of the Chicago Convention imposes an obligation on the United States "to recognize as valid any [personnel] license issued by any other signatory, provided that the requirements underlying such licenses are 'equal to or above the minimum standards which may be established from time to time pursuant to this [the Chicago] Convention.'" Professional Pilots v. FAA, 118 F.3d 758, 768 (D.C. Cir. 1997); *see also* British Caledonian Airways v. Bond, 665 F.2d 1153, 1162 (D.C. Cir 1981).
- The parties were unable to produce any documentary evidence regarding whether airline transport pilot licenses issued by Angola meet or exceed the standards for such licenses in Annex 1 (entitled "Personnel Licensing") of the Chicago Convention.
- Complainant submitted an affidavit stating that the FAA does not have knowledge of the civil aviation system in Angola, including the standards for certification of Angolan airmen.

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<sup>3</sup> The alleged violations occurred in February 1996. Therefore, the 1996 version of the regulations apply to this case. While the law judge referred to 14 C.F.R. § 61.5(a), it is clear from his discussion that he meant 14 C.F.R. § 61.3(a) (1996).

<sup>4</sup> The citation for the Chicago Convention is 61 Stat. 1180, T.I.A.S. No. 1591 (December 7, 1944).

- Under Article 33 of the Chicago Convention, the United States is obligated to recognize as valid the licenses issued to these Angolan pilots by Angola, provided that the requirements underlying the licenses are “equal to or above the minimum standards” in Annex 1 of the Chicago Convention.
- The burden of proof under the FAA’s Rules of Practice in 14 C.F.R. Part 13 (Subpart G) is on the agency (*i.e.*, Complainant), and because Complainant had failed to show that the Angolan licenses failed to meet the minimum standards contained in Annex 1 of the Chicago Convention, its complaint must be dismissed.

(Order of Dismissal, served by Chief Administrative Law Judge Roy J. Maurer, May 6, 1998.)

### **III. Arguments on Appeal**

On appeal, Complainant renews its argument that a foreign airline transport pilot certificate does not constitute an “airline transport pilot certificate” under 14 C.F.R. § 135.243(a)(1). Complainant also argues that under the Chicago Convention, the state of registry of the aircraft and operator determines the pilot certification requirements, and the Chicago Convention does not require the United States to render valid airline transport pilot certificates issued by Angola.

In reply, Evergreen renews its arguments that 14 C.F.R. § 61.3 expressly permits use of foreign airline transport pilot certificates and that 14 C.F.R. § 135.243(a)(1) does not require a *U.S.*-issued airline transport pilot certificate. On appeal, Evergreen also argues that Complainant’s interpretation of Section 135.243(a)(1) is so far afield from the rule’s plain language that Evergreen lacked fair notice, violating Evergreen’s right to due process. Further, although Evergreen believes that Section 61.3 is dispositive of the case and the Chicago Convention analysis is not required, Evergreen argues that the

Chicago Convention neither requires a U.S. airline transport pilot certificate nor forbids use of an Angolan airline transport pilot certificate.

#### IV. Analysis

Regardless of what the drafters of the regulation might have intended, 14 C.F.R. § 135.243(a)(1), on its face, does not require that a pilot-in-command hold a U.S.-issued airline transport pilot certificate.<sup>5</sup> Moreover, as Evergreen points out, 14 C.F.R. § 61.3 expressly permits the use of a certificate issued by the country in which the aircraft is operated. This plain meaning interpretation of the regulations is consistent with a prior written interpretation issued by the agency's Assistant Chief Counsel for Regulation and Enforcement.<sup>6</sup>

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<sup>5</sup> In marked contrast, *see* 14 C.F.R. § 137.19(b) and (c), in which the drafters expressly required a U.S. certificate:

**§ 137.19 Certification requirements.**

...

(b) *Private operator – pilot.* The applicant must hold a current U.S. private, commercial, or airline transport certificate and be properly rated for the aircraft to be used.

(c) *Commercial operator – pilots.* The applicant must have available the services of at least one person who holds a current U.S. commercial or airline transport pilot certificate and who is properly rated for the aircraft to be used. The applicant himself may be the person available.

<sup>6</sup> Letter dated January 28, 1985, from John Cassady, FAA Assistant Chief Counsel for Regulation and Enforcement, to Mr. Ira Curtis, Interpretation 1985-1, 2 Federal Aviation Decisions I-46 (Clark Boardman Callaghan 1993).

The law judge did not err in dismissing Complainant's case. The law judge's decision is affirmed, although on different grounds.<sup>7</sup>

  
JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 8th day of June, 2000.

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<sup>7</sup> The law judge's Chicago Convention analysis is flawed. For example, in dismissing Complainant's case, the law judge relied on Article 33 of the Convention, which provides, in pertinent part, as follows:

certificates of competency and licenses issued or rendered valid by the contracting state in which the aircraft is registered [the aircraft in the instant case were U.S.-registered], shall be recognized as valid by the other contracting states [Angola], provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Article 33 simply does not apply to this case. The issue in this case was not whether *Angola* must render valid *U.S.* airline transport pilot certificates, but whether U.S. regulations required the pilots to hold U.S. airline transport pilot certificates.