

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of: STAMBAUGH'S AIR SERVICE, INC.**

FAA Order No. 2001-7

Docket No. CP99WP0032  
DMS No. FAA-1999-6647<sup>1</sup>

Served: May 16, 2001

**DECISION AND ORDER**<sup>2</sup>

Respondent Stambaugh's Air Service, Inc. (Stambaugh's), an aviation repair station, has appealed the law judge's initial decision,<sup>3</sup> which found that Stambaugh's performed maintenance for an air carrier without using a method permitted by the air carrier's maintenance manual, a violation of 14 C.F.R. § 145.2.<sup>4</sup> The law judge assessed Stambaugh's a \$900 civil penalty. On appeal, Stambaugh's argues that the law judge erred in finding the violation. This decision denies Stambaugh's appeal and affirms the law judge's initial decision.

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions are available on LEXIS and WestLaw. They can also be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 66 Fed. Reg. 7532, 7549 (January 23, 2001).

<sup>3</sup> A copy of the law judge's written initial decision is attached.

<sup>4</sup> 14 C.F.R. § 145.2 provides, in relevant part, as follows:

- (a) Each repair station that performs any maintenance ... for an air carrier or commercial operator having a continuous airworthiness program under part 121 ... shall comply with subpart L of part 121 .... In addition, such repair station shall perform that work in accordance with the air carrier's or commercial operator's manual.

### **I. Facts**

On August 20, 1996, Stambaugh's, an aviation repair station near Harrisburg, Pennsylvania, entered into a written maintenance agreement with Viscount Air Service, Inc. (Viscount), an air carrier with a continuous airworthiness program under 14 C.F.R. Part 121. (Respondent's Exhibit 1.) Among other things, Stambaugh's agreed to perform a "C-check" -- a regularly scheduled, legally required inspection of an aircraft for structural and mechanical defects<sup>5</sup> -- and AD (Airworthiness Directive) inspections on an airplane Viscount leased and operated, a Boeing Model 737 with registration number N313VA. (Tr. 69-70; Respondent's Exhibit 1 at 13-14.)

Viscount did not own N313VA or its engines. (Complainant's Exhibit 1 at 1.) It simply operated the aircraft. (Complainant's Exhibit 2 at 1, 2.) First Security Bank, National Association (formerly known as First Security Bank, Utah) owned the aircraft for the benefit of the Polaris Aircraft Income Fund IV. (Respondent's Exhibit 6 at 1.) G.E. Capital Aviation Services, Inc. (GECAS) provided aircraft management services for the bank and mutual fund. (Respondent's Exhibit 4 at 1.) The parties stipulated that GECAS owned the engines. (Tr. 95.)

On September 4, 1996, Stambaugh's removed an engine bearing serial number 674174 from N313VA. (Complainant's Exhibit 3 at 1.) Stambaugh's Vice President, Mr. Scott Stambaugh, testified at the hearing that Stambaugh's removed the engine because GECAS wanted the engine back. (Tr. 82.) However, he had nothing in writing

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<sup>5</sup> Meagher v. Compania Mexicana de Aviacion, S.A., 1992 U.S. Dist. LEXIS 4757 (S.D.N.Y. 1992).

to that effect (Tr. 130), and conceded that on the form recording the engine removal,<sup>6</sup> Stambaugh's wrote in the space for "Reason for Removal" that it was removing the engine to comply with AD [Airworthiness Directive] 94-20-01. (Tr. 130-31; Complainant's Exhibit 3 at 1.)<sup>7</sup>

Viscount's operations specifications and continuous airworthiness maintenance program required it to develop maintenance procedures for the aircraft it operated. (Tr. 25.) To fulfill the requirement, Viscount developed maintenance check cards for various procedures. (*Id.*) Viscount Maintenance Check Card No. 7102 contained the required procedure for removing an engine, and required the use of either a load indicating system or a load limiting hoist when removing an engine. (Tr. 24; Complainant's Exhibit 3 at 1.) According to the FAA airworthiness inspector who testified at the hearing, a load indicating system and a load limiting hoist are equipment that permit a technician removing or installing an engine to monitor the stresses applied to the aircraft, wings, and engine. (Tr. 25.) The FAA inspector testified that improper removal of an engine may cause stresses that may not be detectable through daily inspection. (Tr. 25-26.) The skin could bulge, rivets could pop, and the aircraft skin could crack. (Tr. 27.) The engine could even fall off in flight. (Tr. 27-28.)<sup>8</sup>

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<sup>6</sup> Stambaugh's recorded the engine removal on Viscount's Boeing 737 Maintenance Check Card No. 7102.

<sup>7</sup> During cross-examination, Stambaugh's Vice President suggested that the company intentionally listed an incorrect or false reason for removing the engine because "it may sound better than customer is in bankruptcy and it's being repossessed." (Tr. 133.) Obviously, repair stations are under a duty to complete maintenance records accurately. Then he stated that when GECAS was getting its engine back, a GECAS representative probably did a record search and found that there was an open AD on it. (Tr. 133-34.)

<sup>8</sup> Viscount's Maintenance Check Card No. 7102 contains the following statement:

It is undisputed that Stambaugh's did not use a load indicating system or a load limiting hoist when removing the engine. (Tr. 29, 85; Respondent's Exhibits 2 and 3.) Stambaugh's did not have such equipment at its facility. (Tr. 29; Respondent's Exhibit 2.) Because Stambaugh's did not use a load indicating system or a load limiting hoist, it inspected the airframe for loose fasteners, cracks, and signs of visible damage. (Tr. 77-78; Respondent's Exhibits 2 and 3.) Stambaugh's Vice President testified that Stambaugh's followed the Boeing manual when it removed the engine, although Stambaugh's recorded the work on a Viscount maintenance check card. (Tr. 78.) Later, Stambaugh's re-installed the engine in the same aircraft. (Tr. 126-27, 159; Complainant's Exhibit 3.)

On September 13, 1996, GECAS sent Stambaugh's a letter indicating that Viscount had defaulted on its lease of N313VA. (Respondent's Exhibit 6 at 1.) The letter instructed Stambaugh's to preserve the aircraft, engines, and parts. (*Id.*) On September 17, 1996, a bankruptcy court issued a stipulated order stating, among other

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WARNING: Failure to perform steps 25 through 32 in sequence, step by step, may impose undue loads that could result in damage to engine, equipment, or airframe and possible injury to personnel. When using the load indicating system hoist equipment do not exceed the following limits:

Inboard forward	1900 pounds
Inboard aft	3000 pounds
Outboard	3000 pounds

CAUTION: The following steps 25 through 32 must be performed in order of sequence. Do not raise or lower inboard aft chain fall when the forward cone bolts are seated and at the same time, the forward chain falls are loaded.

(Complainant's Exhibit 3 at 4-5.)

things, that the engine at issue, bearing serial number 674174, had been returned to GECAS. (Respondent's Exhibit 4 at 2.)<sup>9</sup>

An FAA inspector visited Stambaugh's facility on September 18 through September 20, 1996, to determine whether Viscount was fulfilling its duty as an air carrier to oversee its contract maintenance provider. (Tr. 15, 18, 20-21.) The inspector testified that on his second day at Stambaugh's facility, Viscount's quality control representative advised him that Stambaugh's failed to use a load limiting device when removing the engine from N313VA. (Tr. 23, 35.) After reviewing the Viscount maintenance check card that Stambaugh's completed when removing the engine, the FAA inspector asked to see the load indicating or limiting equipment, but Stambaugh's chief inspector told him the equipment was unavailable and had not been used. (Tr. 23, 29.)

Complainant then brought the instant civil penalty action against Stambaugh's, alleging that Stambaugh's performed work for Viscount not in accordance with Viscount's manual. While the maximum civil penalty for a violation of 14 C.F.R. § 145.2, if proven, was \$1,100,<sup>10</sup> Complainant sought a \$900 civil penalty from Stambaugh's. (Complaint at 4.)

## **II. The Law Judge's Decision**

The law judge who presided over the hearing retired before issuing the initial

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<sup>9</sup> In paragraph 4, the bankruptcy order provides that the engine bearing serial number 674174 was leased to Viscount pursuant to the N303VA aircraft lease. However, the Viscount maintenance check card that Stambaugh's completed (Complainant's Exhibit 3 at 1) indicates that Stambaugh's removed the engine bearing serial number 674174 from aircraft N313VA rather than from aircraft N303VA.

<sup>10</sup> 49 U.S.C. § 46301(a)(1) (providing for a civil penalty not to exceed \$1,000); as modified by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461. An increase to \$1,100 is provided for in 14 C.F.R. §§13.301-13.305.

decision in this matter. (Initial Decision at 1-2.) As a result, the case was reassigned to another law judge, who issued the initial decision without holding a second hearing. (*Id.*) In the written initial decision, the law judge found that Stambaugh's removed the engine without using either method specified by the air carrier's maintenance check card, and in so doing, Stambaugh's violated 14 C.F.R. § 145.2. (Initial Decision at 3.)

The law judge found that Stambaugh's removed the engine as part of the C-check and under Airworthiness Directive No. 94-20-01. (Initial Decision at 3.) He also found that Viscount's operations specifications applied when Stambaugh's removed the engine. (*Id.*) The law judge pointed out that the September 17, 1996, bankruptcy court order provided that "Viscount reserves the right to have the engines removed from its ops specs upon at least 20 days written notice to GECAS." (Initial Decision at 7.) The bankruptcy order also stated that the engines "shall remain on Viscount's maintenance program during the performance of the repairs." (*Id.*) Further, the aircraft was listed on Viscount's operations specifications generated before and after the engine removal, on August 22, 1996, and on October 1, 1996. (*Id.*)

Stambaugh's argued that it had removed the engine for GECAS and, because GECAS was neither an air carrier nor a commercial operator, Section 145.2 did not apply. The law judge rejected Stambaugh's contention that it removed the engine for GECAS, noting that Stambaugh's failed to produce a contract with GECAS, a work order, or an invoice. (Initial Decision at 6.)

According to the law judge, actual ownership of the engine did not matter, because Section 145.2 is directed to the operator – Viscount – rather than the owner of the particular part being maintained. (Initial Decision at 4.) As long as the aircraft was

subject to Viscount's operations specifications, which it was, Stambaugh's had to follow the air carrier's maintenance procedures. (*Id.*)

The law judge also found that Stambaugh's failed to demonstrate that GECAS had legal possession of the engine on or by September 4, 1996. (Initial Decision at 4.) While Viscount's bankruptcy court order of September 17, 1996, stated that the engine was "deemed returned to GECAS" and that Viscount retained no interest in it, the order did not show that GECAS legally possessed it by September 4, 1996. (*Id.* at 5.) In any event, the law judge said, actual or legal possession was irrelevant, because the operations specifications were in effect on the day Stambaugh's removed the engine. (*Id.*)

While Stambaugh's contended that maintenance fell under Part 91 because Viscount breached its lease of the aircraft and was not in control of the aircraft when Stambaugh's removed the engine, the law judge said that Stambaugh's offered no written evidence to show that the aircraft was anything but a Viscount aircraft on September 4, 1996, the date of the engine removal. (Initial Decision at 5.) The law judge rejected Stambaugh's claim that the maintenance check card was not actually a Viscount card. According to the law judge, the card was what it said it was. (*Id.* at 7.)

The law judge assessed the \$900 civil penalty proposed by Complainant. The law judge stated that the violation was serious because an improperly performed engine removal can create stresses and cracks in the aircraft and can have consequences ranging from bulging of the skin and popped rivets to the departure of an engine in flight. (Initial Decision at 9.)

As a mitigating factor, the law judge noted that the FAA Principal Maintenance Inspector for Stambaugh's raised no objection to the method the repair station used. (*Id.*)

The law judge stated that although the aircraft's manufacturer, Boeing, did not object to the procedure Stambaugh's used, Boeing stated that Stambaugh's method was not the method recommended by Boeing's maintenance manual. (*Id.*) Against this background, the law judge found that \$900 would deter Stambaugh's and similar repair stations from further violations.

### **III. Stambaugh's Appeal Brief**

Stambaugh's has two principal arguments on appeal.<sup>11</sup> First, it argues that the law judge erred in finding that Stambaugh's removed the engine for Viscount, an air carrier. According to Stambaugh's, the law judge should have found that Stambaugh's removed the engine for GECAS, given the evidence in the record that GECAS owned the engine, ordered the engine removal, and paid for it. Stambaugh's asserts that it could not have committed the violation because 14 C.F.R. § 145.2 only applies to maintenance performed for air carriers and commercial operators, and GECAS is neither.

Second, Stambaugh's argues that the law judge erred in finding that Stambaugh's used an improper method when it removed the engine. Stambaugh's argues that Boeing sent Stambaugh's a memorandum (Respondent's Exhibit 2) indicating that Stambaugh's alternate method of removing the engine was acceptable. Stambaugh's argues that it has 30 years of experience and that it knew when it removed the engine that its method would be acceptable to Boeing. Stambaugh's also asserts that its FAA Principal Maintenance Inspector did not challenge the method it used.

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<sup>11</sup> Other arguments contained in Stambaugh's appeal brief have been considered, rejected, and found unworthy of discussion.

#### IV. Analysis

It is critical that repair stations faithfully execute their responsibilities. The issuance of a repair station certificate bestows on the holder a trust and responsibility to carry out its enterprise with the highest regard for air safety. In the Matter of Woodhouse, FAA Order No. 1994-2 at 5 (March 10, 1994), citing Propeller Service Corporation, 13 C.A.B. 242, 243 (1953).

The regulation that Stambaugh's allegedly violated provides, in relevant part, as follows: "Each repair station that performs any maintenance ... for an air carrier ... having a continuous airworthiness program under part 121 ... shall perform that work in accordance with the air carrier's .... manual." 14 C.F.R. § 145.2(a). Stambaugh's argues that it did not remove the engine "for an air carrier," within the meaning of Section 145.2(a), because GECAS, which was not an air carrier, owned the engine, ordered the removal, and paid for it.

Stambaugh's argument is not compelling. As long as a particular aircraft is listed on an air carrier's operations specifications, the aircraft may be operated legally in that air carrier's operations, regardless of who owns the aircraft or who requested or paid for work on it. To establish that maintenance on an aircraft listed on an air carrier's operations specifications is not "for an air carrier," within the meaning of Section 145.2, a repair station must provide documentation that the aircraft will no longer be operated in air carrier operations for a particular air carrier.

The law judge did not err in finding that Stambaugh's removed the engine for Viscount. Viscount's operations specifications generated both before and after the engine removal listed N313VA as an aircraft authorized for Viscount's Part 121 operations.

(Complainant's Exhibit 2 at 1, 2.) As an FAA inspector testified at the hearing, there was no break in the continuity of N313VA on Viscount's operations specifications. (Tr. 22.) There is no documentary evidence in the record indicating that on the date of the engine removal, N313VA was no longer listed on Viscount's operations specifications.

Further, the record is devoid of any other documentary evidence that N313VA would no longer be flown in Viscount's air carrier operations. Thus, the law judge did not err in determining that Stambaugh's was required to comply with Viscount's maintenance procedures, as reflected in Viscount Maintenance Check Card No. 7102.<sup>12</sup>

Nor did the law judge err in finding that Stambaugh's used an improper method when it removed the engine. Viscount Maintenance Check Card No. 7102 required Stambaugh's to use one of two methods in removing the engine. It did not provide for an

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<sup>12</sup> Stambaugh's argues at length that the law judge erred in finding that the engine removal was part of the C check. Stambaugh's Vice President did testify repeatedly that the C check did not include removal of the engine. (Tr. 72, 136, 157, 159.) However, at one point during cross-examination, he suggested that a C check cannot be performed without first removing the engine:

Q: And this [the engine removal] was not part of the C check?

A: You wouldn't have a C check card until you remove the engine.

(Tr. 159.)

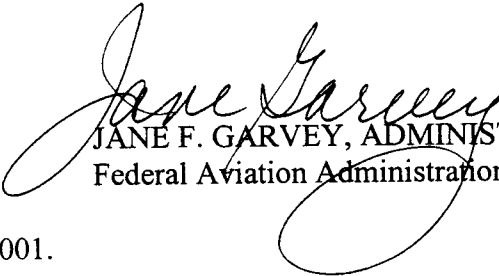
A law judge's credibility determinations ordinarily are entitled to deference because the law judge is able to observe the witnesses' demeanor. In the Matter of Gotbetter, FAA Order No. 2000-17 at 9 (August 11, 2000). However, in this case, the law judge who issued the initial decision did not preside over the hearing. As a result, deference need not be accorded the law judge's rejection of Mr. Stambaugh's testimony that the engine removal was not part of the C check and was ordered by GECAS.

Still, there is no reason to overturn the law judge's determination that Stambaugh's removed the engine as part of the C check and for Viscount. In light of all the evidence in the record, it is understandable that the law judge determined that it was more likely than not that Stambaugh's removed the engine to satisfy its maintenance contract with Viscount. Note that on the form recording the engine removal, Stambaugh's wrote that it was removing the engine to comply with an airworthiness directive rather than to return the engine to GECAS. (Complainant's Exhibit 3 at 1.)

In any event, even if the law judge erred in finding that Stambaugh's removed the engine as part of the C check, Stambaugh's was still required to comply with Viscount's maintenance procedures when it removed the engine because it had nothing in writing indicating that N313VA would no longer be flown in Viscount's air carrier operations.

alternate means of compliance; it did not permit Stambaugh's to remove the engine without the specified equipment.<sup>13</sup>

For the above reasons, Stambaugh's appeal is denied and a civil penalty of \$900 is assessed.<sup>14</sup>

  
JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 15th day of May, 2001.

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<sup>13</sup> Stambaugh's Vice President testified that its FAA Principal Maintenance Inspector was aware of the method used to remove the engine and saw no violation. (Tr. 91-93.) However, Stambaugh's Principal Maintenance Inspector did not himself testify and the record does not reveal the basis for his alleged determination that there was no violation. Expert testimony should be evaluated based on its logic, depth, and persuasiveness. In the Matter of America West, FAA Order No. 1996-3 at 23 (February 13, 1996). Without the basis for the inspector's determination, it cannot be found to have depth or to be logical or persuasive.

<sup>14</sup> Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (2000.)