

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of:

LEE PHILIP BOHAN

FAA Order No. 94-38

Served: December 9, 1994

Docket No. CP93SO0092

DECISION AND ORDER

Respondent Lee Philip Bohan, a Maintenance Coordinator for Delta Air Lines, Inc., (Delta), has appealed the oral initial decision of Chief Administrative Law Judge John J. Mathias.¹ The law judge found that Respondent authorized deferral of the inoperative forward observer seat oxygen mask in a Boeing 737 aircraft, although it could not be deferred under the aircraft's Minimum Equipment List (MEL).² The law judge assessed a civil penalty of \$100, finding Respondent's violation of the Federal Aviation Regulations (FAR) to be a technical one without safety implications. The FAA has not appealed the law judge's decision. For the reasons set forth below, the decision of the law judge is affirmed.

On April 28, 1992, prior to the takeoff of Delta aircraft N311WA from Kansas City, Missouri, to Dallas, Texas, an FAA maintenance inspector discovered that the

¹ A copy of the portion of the transcript containing the oral initial decision is attached.

² The law judge found that Respondent violated Section 43.13(a) of the Federal Aviation Regulations, 14 C.F.R. § 43.13(a), which provides in relevant part:

Each person performing maintenance, alteration, or preventative maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator.

forward observer seat oxygen mask in the B-737 aircraft was inoperative.³ Delta maintenance in Kansas City was unable to repair or replace the oxygen mask. Weyland Strickland, the on-duty Delta Maintenance Coordinator for Delta B-737 aircraft in Atlanta, Georgia, was consulted. He concluded that the aircraft could not leave Kansas City until the oxygen mask was repaired or replaced because the forward observer seat oxygen mask was not listed in Delta's Minimum Equipment List (MEL) for B-737 aircraft.⁴ Delta maintenance in Kansas City ordered a replacement oxygen mask. The flight was cancelled, and the passengers were taken off the aircraft for a flight on another airline.

Soon thereafter Respondent replaced Strickland as the on-duty maintenance coordinator for Delta B-737 aircraft. Respondent contacted Delta maintenance in Kansas City and reversed Strickland's prior order. Respondent concluded that the aircraft could be operated because Delta's MEL for B-737 aircraft permitted the deferral of the forward observer seat.⁵ He interpreted that term to include the forward observer seat oxygen mask, making the broken forward observer seat oxygen mask deferrable. Respondent sent a teletype authorizing the deferral under

³ The forward observer seat or "jump seat," located in the cockpit of the aircraft, is occupied by FAA inspectors during enroute inspections. The FAA maintenance inspector who discovered the broken oxygen mask had planned to ride in the forward observer seat to Dallas.

⁴ Delta's Minimum Equipment List (MEL) was based on the Master Minimum Equipment List (MMEL) issued by the FAA for B-737 aircraft. Both the MMEL and the MEL list items of equipment on the aircraft which may be inoperative for a specific period of time while the aircraft remains in operation. The MEL cannot be less restrictive than the MMEL, and must be approved by the FAA.

⁵ Delta's MEL for the B-737 in effect on April 28, 1992, permitted deferral of the "forward observer seat." It did not mention the forward observer seat oxygen mask or any other associated equipment.

The deferral of the forward observer seat in the MEL was conditioned on a passenger seat in the passenger cabin being made available to the FAA inspector for the performance of official duties, and that repairs be made on the inoperative item within two flight days. See Complainant's Exhibit CX-A.

the MEL with instructions to place the teletype in the aircraft log.⁶ Based on Respondent's authorization, Delta aircraft N311WA flew to Dallas with 40 passengers on board.

The law judge found that on the day of the incident Delta's MEL did not permit deferral of the broken forward observer seat oxygen mask, and that Respondent's authorization to the contrary, violated the FAR. The law judge found that Delta's MEL in effect on April 28, 1992, permitted deferral of the forward observer seat but not of "associated equipment" such as the oxygen mask and audio panel. The law judge found further that on the day of the incident Delta submitted a revised MEL to the FAA which permitted deferral of the forward observer seat *and* associated equipment, but that the revised MEL was not effective until it was approved by the FAA on May 22, 1992.⁷

On appeal, Respondent argues that he correctly deferred the forward observer seat oxygen mask under the Delta MEL for B-737 aircraft in effect on the day of the incident because "practically everyone in the aviation industry" considered associated equipment to be included in the term "forward observer seat." Respondent relies on the testimony of Harry Scarratt, a Delta-FAA liaison manager, to support his argument. Scarratt testified that between the issuance of the MMEL

⁶ Respondent's teletype "cleared" the captain's earlier logbook entry indicating that the forward observer seat oxygen mask was broken. FAA Airworthiness Inspector Michael Giraud testified that because Kansas City was a Delta maintenance station the broken mask should have been replaced there and a corresponding maintenance entry made in the logbook. (TR 89 - 91).

⁷ Delta's revised B-737 MEL approved by the FAA on May 22, 1992, permitted deferral of the "forward observer seat (including associated equipment)." The same conditions as in the prior MEL applied: a passenger seat for the FAA inspector for performance of official duties, and repair of the inoperative item within two flight days. See Exhibit CX-F.

The FAA had revised the B-737 MMEL to permit deferral of associated equipment in 1991 (See: Respondent's Exhibit RX-E), but Delta did not seek to revise its MEL to allow for deferral of the associated equipment until the day of the incident. (TR 87).

and the revised MMEL,⁸ three other airlines told Delta that their FAA Principal Operations Inspectors (POIs) believed that the "forward observer seat" included associated equipment. (TR 187).

Scarratt, however, did not identify the three airlines, the airline officials who allegedly made the statements, the persons at Delta to whom the statements were made, or the POI's involved, and he did not provide any other details. The law judge correctly gave Scarratt's testimony little weight because without further elaboration or corroboration, it was vague and self-serving.⁹ Scarratt's testimony, furthermore, was rebutted by his colleague, Strickland, the first Delta maintenance coordinator, and by FAA Airworthiness Inspector Michael Giraud, both of whom testified that the Delta MEL in effect on the day of the incident did not permit deferral of the oxygen mask.¹⁰

A comparison of the Delta MEL in effect on the day of the incident, which did not expressly defer associated equipment, and the subsequent MEL which did defer associated equipment, supports the law judge's finding that the former MEL did not authorize deferral of the oxygen mask.¹¹

⁸ See footnote 4.

⁹ Contrary to Respondent's argument, FAA Airworthiness Inspector Michael Giraud's testimony did not support Scarratt on this point. Giraud testified only that he was aware of a letter from Delta to the FAA in which Delta claimed, without providing any details, that other FAA regions interpreted the forward observer seat provision to include associated equipment. (TR 113). See CX-I p.3.

¹⁰ Additionally, the Captain of N311WA testified that both he and his first officer believed at the time of the incident that the broken forward observer seat oxygen mask was a "no go" item. (TR 160). The Captain subsequently modified his testimony stating that the forward observer seat oxygen mask was a "no go" item if someone was seated there. (TR 169).

¹¹ Respondent's argument that "grammatically," the addition of the phrase "including associated equipment" in parentheses to the second MEL, indicates an explanatory comment and not a new item, does not rebut the record evidence that the first MEL did not authorize deferral of the oxygen mask.

Prior to the incident, the POI for Delta at the FAA Georgia Flight Standards District Office had unequivocally informed Delta officials by letter dated October 11, 1991, (*see*: Complainant's Exhibit CX-I, p.8) that the oxygen mask was not covered in the deferral of the forward observer seat granted in the Delta MEL that was then current. Respondent, who as a maintenance coordinator was responsible for Delta maintenance personnel nationwide, should have been aware of the FAA interpretation of Delta's MEL. Assuming for this decision only that Respondent had the authority to interpret a MEL provision as meaning more than its plain language, Respondent should have realized that this MEL provision did not include the oxygen mask. As the law judge noted, Respondent should have known that he needed to check further before deferring this oxygen mask because other types of Delta Boeing aircraft at the time had MELs specifically including forward observer seat associated equipment.

Respondent's final argument is that even if the MEL in effect on the day of the incident did not permit deferral of the oxygen mask, Respondent cannot have violated 14 C.F.R. § 43.13(a) because he did not perform "maintenance" when he deferred the oxygen mask. Respondent notes that all the witnesses at the hearing except Inspector Giraud testified that a maintenance coordinator does not perform maintenance.

Although Respondent did not perform physical maintenance¹² on the aircraft, his decision to defer the broken oxygen mask under the MEL was a maintenance decision because it authorized the non-repair or non-replacement of the item. *See* Letter from Assistant Chief Counsel, FAA Regulations and Enforcement Division, (March 5, 1992) (stating that deferral of an inoperative item in accordance with the MEL is a maintenance function).

¹² Pursuant to Section 1.1, 14 C.F.R. § 1.1, "maintenance means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."

Section 43.13(a) requires the use of methods, techniques and practices acceptable to the Administrator. The MEL in effect on the day of the incident required that the broken B-737 forward observer seat oxygen mask be repaired or replaced before the aircraft could take off from Kansas City. Respondent performed maintenance contrary to the methods, techniques, and practices acceptable to the Administrator when he authorized the non-repair or non-replacement of the broken oxygen mask. To hold otherwise would be to narrowly restrict Section 43.13(a) to the mechanic or inspector in physical contact with the aircraft although the important maintenance decisions, including the decision not to perform maintenance, are made by supervisors or other officials with corresponding authority.¹³ As the law judge noted in his decision:

...it is clear that the failure to do the necessary maintenance is a violation of Section 43.13(a) in that it's effecting a non-repair In this case the mechanic on the scene was overridden by Mr. Bohan. In effect, Mr. Bohan took over the maintenance of the aircraft at that point and became the mechanic, albeit his work was from a distance. Mr. Bohan was the only one who could take responsibility for the decision not to do the maintenance then and there.

(Initial Decision, 307).¹⁴

Although Respondent's violation had no safety implications, a civil penalty is warranted because "the Respondent second-guessed the MEL in this case and

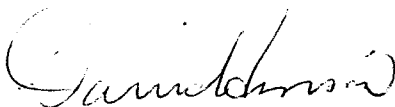
¹³ Section 43.13(a), 14 C.F.R. § 43.13(a), applies to "each person performing maintenance." A "person" may be an "individual, firm, partnership, corporation, company, association, joint-stock association or government entity." See: 14 C.F.R. § 1.1. If a corporation or other legal entity may perform maintenance and be subject to the provisions of Section 43.13(a), the regulation is clearly not limited to the individual performing physical maintenance.

¹⁴ Administrator v. Hansen, NTSB Order No. EA-3903 (June 16, 1993), cited by Respondent, is not persuasive precedent in support of Respondent's argument. In Hansen, the National Transportation Safety Board held that a flight engineer who signed an airworthiness release in the aircraft log after the mechanic told him that all discrepancies resulting from an FAA ramp inspection had been cleared, did not perform maintenance under Section 43.13(a). Unlike the instant case, the flight engineer in Hansen did not decide whether to perform maintenance on the aircraft.

although any consequence therefrom was inconsequential ... if he should second-guess some other MEL, it might be far more serious, possibly even disastrous."

(Initial Decision, 310)

Accordingly, the decision of the law judge is affirmed.¹⁵



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 9th day of December , 1994.

¹⁵ 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. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. § 13.16(b)(4) and 13.233(j)(2) (1992).