

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board held here in Phoenix this 23rd day of April 2013. The matter was on for hearing on an Order of Suspension issued by the Administrator alleging regulatory violation of FARs 91.405(a), 91.405(b), and 91.13(a).

The matter was heard before me, William R. Mullins. I'm the Administrative Law Judge for the National Transportation Safety Board, and as provided by the Board's Rules I will issue a decision at this time.

The matter came on for hearing pursuant to notice on Order of Remand to the parties. The Administrator was present

1 throughout these proceedings and represented by Mr. Adam Runkel,
2 Esquire, of the Western Pacific Region, Federal Aviation
3 Administration. The Respondent was present throughout these
4 proceedings and represented by his counsel, Mr. Michael Pearson,
5 Esquire of Curry, Pearson & Wooten here in the Phoenix area.

6 The parties were afforded a full opportunity to offer
7 evidence and there was none.

8 DISCUSSION

9 As I said earlier, this matter came down on remand from
10 the National Transportation Safety Board after an Order for
11 Summary Judgment was entered for the Administrator by Judge
12 Patrick Geraghty, and the Board remanded it for a full hearing and
13 Judge Geraghty recused himself and I was assigned this matter.

14 The Board's Order on Remand states, and I read this
15 earlier, but I want it clear in this part of the transcript that,
16 "At the hearing the law judge should not limit the acceptance of
17 evidence to the issues described above." And those were the
18 issues that were discussed in the Board's Decision. "The
19 Administrator" -- and I can't emphasize this enough, "The
20 Administrator has the burden of fully proving the allegations set
21 forth in the complaint." And, "Following the Administrator's case
22 in chief, Respondent may put on his case in chief."

23 Well, the Administrator did not put on a case in chief.
24 The Administrator elected to not call any witnesses, not put on
25 any evidence. The only thing that was provided to me was a

1 request to take judicial notice of the Sanction Guidance Table,
2 which, absent evidence, is not even a requirement that I even take
3 notice of it.

4 The Respondent through counsel has argued for judgment
5 in his favor based on the failure to present any evidence. And
6 ultimately, based -- particularly based on the Board's comments to
7 the effect that, "The Administrator has the burden of fully
8 proving the allegations set forth in the complaint," and then in a
9 footnote the Board addressed the case of Administrator v. Swann,
10 stating that the Board's role is to determine after reviewing the
11 evidence whether the Administrator fulfilled the burden of proof.
12 Here there was no evidence. And then there were a couple of other
13 cases, Opat and Van der Horst, and those were all cited under
14 Footnote 16 of the Order of Remand back from the Board.

15 Based on the failure of the Administrator to present any
16 evidence, the Order of Suspension will be dismissed.

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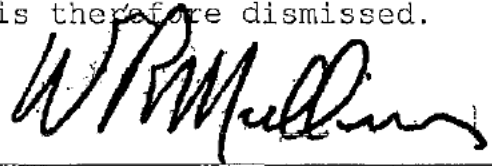
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1 ORDER

2 IT IS THEREFORE ORDERED that safety in air commerce and
3 safety in air transportation does not require an affirmation of
4 the Administrator's Order of Suspension. Specifically, the
5 Administrator declined to put on any evidence at this regularly
6 scheduled hearing, and based on the failure to present any
7 evidence, the Order of Suspension is therefore dismissed.

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10 EDITED ON

WILLIAM R. MULLINS

11 MAY 21, 2013

Administrative Law Judge

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APPEAL

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ADMINISTRATIVE LAW JUDGE MULLINS: And, gentlemen, you
have the right to appeal this order today, and you may do so by
filing your Notice of Appeal within 10 days. I mean, you don't
need to appeal, Mr. Pearson, but the Administrator has a right to
appeal, and you may do so by filing your notice within 10 days.

And would you like a copy of that?

MR. RUNKEL: That's not necessary, Your Honor.

ADMINISTRATIVE LAW JUDGE MULLINS: Okay. And I assume
since you folks have been up there before, you know where to send
your pleadings and so forth.

I have a copy if you'd like one, Mr. Pearson.

MR. PEARSON: Your Honor, we do, we know how to

1 submit -- the process.

2 ADMINISTRATIVE LAW JUDGE MULLINS: Okay.

3 MR. PEARSON: At this time I'd like to make one further
4 request, or if you'd like me to make it at the end of your --

5 ADMINISTRATIVE LAW JUDGE MULLINS: Go ahead.

6 MR. PEARSON: Well, Your Honor, under the Equal Access
7 for Justice Act, I want to put on the record that since the FAA
8 failed to meet their burden of proof, to present witnesses to meet
9 their burden of proof, and quite frankly, ignored the NTSB's
10 order, we will be making a petition for all fees in this matter
11 under the Equal Access for Justice Act. Thank you, Your Honor.

12 ADMINISTRATIVE LAW JUDGE MULLINS: I -- as I've reviewed
13 this, I fully anticipated that that was going to happen.

14 MR. PEARSON: Thank you, Judge.

15 ADMINISTRATIVE LAW JUDGE MULLINS: All right. If there
16 are no more questions, that will conclude these proceedings.
17 Thank you, gentlemen.

18 MR. RUNKEL: Thank you, Your Honor.

19 MR. PEARSON: Thank you, Your Honor.

20 (Whereupon, at 10:02 a.m., the hearing in the above-
21 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: [REDACTED] L. [REDACTED]

DOCKET NUMBER: [REDACTED]

PLACE: Phoenix, Arizona

DATE: April 23, 2013

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

Deborah Gonzalez
Official Reporter