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NTSB Order No. EA-4582

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of August, 1997

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-14130
)	SE-14131
)	
JOHN E. SOSSAMAN and)	
PETER D. RIGG,)	
)	
Respondents.)	
)	
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OPINION AND ORDER

Respondents have appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered in this proceeding at the conclusion of an evidentiary hearing begun on November 9-10, 1995, in Brussels, Belgium and concluded on February 28-29, 1996, in Miami, Florida.¹ In that decision, the law judge found that respondents violated section 121.701(a) of

¹An excerpt from the hearing transcript containing the

the Federal Aviation Regulations (FARs), 14 C.F.R. Part 121, in that they failed to make, or have made, a record in the aircraft's logbook of action they took in Belgium to ascertain their aircraft's airworthiness.² The law judge did not sustain the other charges in the complaint,³ and reduced the sanctions from 180 to 45-day suspensions of Respondent Sossaman's Airline Transport Pilot (ATP) certificate and Respondent Rigg's Aircraft Mechanic and Flight Engineer certificates. After careful review of the briefs and the law judge's findings, we affirm the initial decision.

Both complaints allege, in pertinent part, as follows:

2. On or about April 16, 1994, [Mr. Sossaman acted as pilot-in-command and Mr. Rigg acted as flight engineer] of a Boeing 707 aircraft, identification no. N528SJ, on a flight in the vicinity of Ostend Airport, Ostend, Belgium.
3. During the flight described above, and while landing, the aircraft underwent a hard landing and a tail strike, resulting in damage to the

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initial decision is attached.

²The regulation reads, as follows:

§ 121.701 Maintenance log: Aircraft

(a) Each person who takes action in the case of a reported or observed failure or malfunction of an airframe, engine, propeller, or appliance that is critical to the safety of flight shall make, or have made, a record of that action in the airplane's maintenance log.

³The suspension orders (complaints) also charged Respondent Sossaman with violations of FAR sections 91.7(a) and (b) and 121.537(f), while Respondent Rigg was also charged with violations of FAR sections 91.7(a) and 91.13(a). 14 C.F.R. Parts 91 and 121. The Administrator did not appeal the initial decision.

aircraft.

4. You thereafter inspected the aircraft and approved it for return to service as airworthy, and you made this statement in writing but not in the maintenance log.
5. You took action in the case of a reported or observed failure or malfunction of an airframe, engine, propeller, or appliance that is critical to the safety of flight without making, or having made, a record of that action in the airplane's maintenance log.
6. The aircraft described above was not in an airworthy condition.
7. On or about April 17, 1994, you acted as [pilot-in-command and flight engineer] of the aircraft described above, which was scheduled to fly from Ostend, Belgium.
8. Before takeoff and while seeking an expedited departure clearance, you reported to Belgian civil aviation authorities that you inspected the aircraft and approved it for return to service as airworthy by submitting the writing described above.

Respondents now admit that 1) the tail strike and hard landing occurred; 2) it rendered the aircraft unairworthy; 3) they conducted a pressurization check and a visual inspection of the aircraft; 4) they believed the aircraft was airworthy; 5) as requested by the Belgian Civil Aviation Authority, respondents issued written, signed statements attesting to the aircraft's airworthy condition.⁴

⁴Respondent Sossaman, in a hand-written statement submitted to the Belgian Civil Aviation Authority, said that he had "inspected [the aircraft] after a tail strike on landing. Said aircraft is found to be continued airworthy and I assume full responsibility for flight." (Exhibit (Ex.) C-14.) Respondent Rigg declared that "after inspection, I have determined that aircraft is airworthy and in good condition to fly back to Miami. Inspection was done after a tail strike on landing...." He

At hearing, Respondent Sossaman testified that, when the aircraft arrived, after midnight on April 16th, he did not know that the tail had scraped until after the flight "blocked in" and the first officer showed him where the scrape had occurred. (Tr. at 554.) Respondent Rigg also testified that, although he observed the scrape after landing, it was difficult to see since it was dark outside. (Tr. at 598.) Later that same day, Mr. Rigg called Florida West maintenance personnel in Miami to apprise them of the situation and was directed to pull up the floorboards in the aft baggage compartment to ascertain whether the frame was cracked. (Tr. at 601.) Because he only had a few tools with him, Respondent Rigg was able to remove only one floorboard but, nevertheless, determined that the stringers were neither bent nor cracked. (Tr. at 602.) Captain Sossaman also inspected the aircraft on April 16th during daylight hours. As further instructed by Florida West maintenance personnel, respondents performed a pressurization check, in which they applied maximum pressure successfully to the aircraft for about five minutes.⁵ (Tr. at 558.) They then conducted another visual inspection and found nothing changed from their earlier inspection. Respondents then provided the written statements to the Belgian Civil Aviation Authority, in which they attested to

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further stated that after an "internal and external inspection I have determined that the damage is minor and needs no further action." (Ex. C-13.)

⁵The entire test took approximately 30 minutes to complete.

the airworthiness of the aircraft.

On April 17th as the aircraft was being prepared for flight, Belgian airport inspector Noel Borny notified the crew that he had determined the aircraft was not airworthy and, thus, the flight was canceled.⁶

Respondents assert several arguments on appeal. First, they allege that they were deprived of notice and an opportunity to be heard because, while the complaints charged respondents with failing to document their determination that the aircraft was airworthy, the law judge, they claim, based his finding of a section 121.701(a) violation on a conclusion that respondents had failed to make a timely entry of both the tail strike discrepancy and the pressurization check, the result being a violation that was not based on the charges set forth in the complaints. We find this argument unconvincing. The respondents were charged, not with failing to make the aforementioned specific entries, but with failing to enter whatever action they took to discern the airworthiness of the aircraft, an assessment they clearly made, as evidenced by their written statements to the Belgian Civil Aviation Authority and their own testimony. The law judge utilized his factual determinations to assess credibility, an

⁶Mr. Borny testified to his observation that the tail of the aircraft was damaged. He saw small holes in the metal and noticed metallic tape over the holes. (Tr. at 129.) Michel Duchateau, a principal inspector for the Belgian Civil Aviation Authority testified that he looked at the tail section of the aircraft on April 18th and saw dents, scrapes, and holes in the skin. (Tr. at 192.) From the inside of the cargo compartment, with the floor boards removed, he could see that the frame was cracked and bent. (Tr. at 193, 206-07.)

evaluation that, unless arbitrary, capricious, or not in

accordance with law, we will not disturb.⁷ The tail strike/hard landing resulted in a discrepancy with respect to which the respondents concede they took action. That action, specifically, a determination as to whether the aircraft was still airworthy, as well as the steps taken to arrive at that conclusion, were required to be entered into the aircraft logbook. Respondents had ample notice that these were the circumstances surrounding the violation with which they were charged. They admit performing inspections (visual and a pressurization check) to determine whether the aircraft was airworthy after the tail strike and consequent scraping. Thus, they took "action in the case of a reported or observed failure or malfunction of an airframe" and were required to enter or have entered a record of that action into the maintenance log book. They further admit, and it is apparent from the copies of the logbook pages (Exs. C-18 and C-19), that they did not make an entry of their airworthiness assessment or of any of the specific inspections they say they made before reaching that assessment.

⁷For example, Mr. Rigg testified that he wrote "tail strike on landing" in the logbook on April 16th sometime after he arrived at the hotel. (Tr. at 599.) Mr. Duchateau stated, however, that when he saw the logbook on April 18th, there was no such entry. (Tr. at 210.) FAA Operations Inspector Thomas Proven also testified that the logbook did not contain a reference to a maintenance discrepancy when he saw the book and the aircraft, on or about April 19th. (Tr. at 348-49, 641.) The entry subsequently appeared on a fax of the logbook page sent to Inspector Proven sometime between the evening of April 19th and April 21st. (Tr. at 271-72.) The law judge specifically resolved the conflicting accounts in favor of the Administrator. (Tr. at 738.)

Respondents also argue that, since section 121.701(a) does not specify when the logbook entry must be made, the Florida West rules on the timing of entries should apply, namely, that the entry must be made before departure. In essence, they assert that they planned to make those entries prior to departure on April 17th, but Mr. Borny grounded the flight before they had the chance. Thus, as the flight did not depart, they could not have violated the regulation. Respondents further insist that the law judge's speculation that, if Mr. Borny had not stopped the flight, it would have departed without the required logbook entries, is an inappropriate basis for the finding of a violation. Again, their argument is unavailing. Whether or not respondents would have made the entry before takeoff is beside the point. Based on the facts as found established by the law judge, respondents had not made any airworthiness-related entry in the logbook before Messrs. Duchateau and Proven saw the logbook on or about April 18th and 19th.⁸ (Tr. at 197, 348-49.)

The Administrator acknowledges that the regulation does not specify a precise time requirement for recordation of the logbook entries, but maintains that the entries must be made within a reasonable time after the action was performed. This interpretation is entirely consistent with the purpose of the logbook entry requirement which, as we have stated, "is to assure

⁸Even if respondents' attestation of their intent to make the entries immediately before takeoff is believed, the timing, a day after the action had been taken, under the circumstances of this case, would have been unreasonable.

that maintenance personnel and subsequent flight crews are apprised of all mechanical irregularities, so that appropriate action may be taken...." See Administrator v. Hardisson, NTSB Order No. EA-3997 at 5 (1993), and cases cited therein. The FAA's safety program is dependent on the accurate and timely entry of required information into logbooks. See, e.g., Administrator v. Reno, NTSB Order No. EA-3622 at 9-10 (1992). Although respondents inspected the aircraft on April 16th and made a determination that same day that the aircraft was airworthy, they did not record the entries on the 17th while preparing for flight, or in the days after the flight was canceled. The reasonable period of time for making an entry had certainly expired by then.

Lastly, respondents argue that a 45-day suspension is excessive, especially since the other charges were dismissed. The law judge, mindful that the other charges were not sustained, reduced the periods of suspension from 180 to 45 days. A sanction of such duration is consistent with the Administrator's sanction guidance table.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeals are denied; and
2. The 45-day suspensions of Respondent Sossaman's ATP certificate and Respondent Rigg's Aircraft Mechanic and Flight Engineer certificates, shall begin 30 days after service of this order.⁹

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁹For the purpose of this order, respondents must physically surrender their certificates to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).