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UNITED STATES DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, D.C.

APR 16 P 2:22

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FEDERAL AVIATION ADMINISTRATION, )	
Complainant, )	FAA DOCKET NO. CP08CE0003
v. )	(Civil Penalty Action)
TRANS STATES AIRLINES, INC. )	
Respondent. )	DMS NO. FAA-2008-0508
_____ )	

**INITIAL DECISION  
OF ADMINISTRATIVE LAW JUDGE RICHARD C. GOODWIN**

- Found:** 1) Respondent violated 14 C.F.R. §§43.13(a), 119.5(l), and 121.153(a)(2) as charged in the complaint;  
2) Respondent is hereby assessed a civil penalty of \$40,000.

**I. Background**

Trans States Airlines (hereinafter "Trans States" or "Respondent") is a Part 121 certificated air carrier located in Bridgeton, MO. The Federal Aviation Administration (hereinafter "Complainant," "FAA," or "the agency") alleges that it operated an aircraft twenty-eight times over five days after failing to perform required maintenance. Respondent's failure rendered the aircraft unairworthy, the agency continues. The plane should not have flown until the maintenance issues had been properly addressed. Trans States thus violated the following Federal Aviation Regulations ("FARs"), according to Complainant: section 43.13(a), which requires aircraft maintenance to comply with relevant manuals or other techniques that are acceptable to the Administrator; section 119.5(l), which prohibits Part 121 operations in violation of an air carrier's operations specifications; and section 121.153(a)(2), which proscribes operations unless the aircraft is airworthy. Complainant seeks a total civil penalty under 49 U.S.C. §46301 of \$50,000.

Trans States denied the charges (Tr. 19).

A hearing was held on November 17, 2008 in St. Louis, MO. I determined that a written decision was reasonable and appropriate under the circumstances (Tr. 312). The parties have filed briefs and the matter now is ready for decision.

I conclude that Complainant has proven its case on all counts and that the facts and circumstances warrant an assessment against Respondent of \$40,000.

## **II. Discussion**

Aviation safety inspector Pedro Rodriguez of the agency's St. Louis Flight Standards District Office was assigned to oversee Trans States (Tr. 25-26). He and inspector Jeff Ciembronowicz stopped by Respondent's hangar in the wee small hours of November 7, 2006 for standard surveillance (Tr. 27, 225). They found mechanic David Mayberry performing maintenance on the fire extinguishing bottles of Respondent's Embraer 145 aircraft, N841HK (Tr. 27, 57).

This aircraft was equipped with three fire bottles: the left engine, right engine, and APU (auxiliary power unit) bottles. Mayberry's assignment was to accomplish a "time change" (removal and replacement) of the bottles' squibs, or cartridges. The engine bottles contain two squibs each and the APU, one, for a total of five squibs. Squibs are explosive devices whose purpose is to perforate the bottle to release the fire-extinguishing agent (Tr. 63, 99-100; Exh. C-6, p. 3; Exh. C-7, p. 5). Mayberry was in an aft compartment of the aircraft, performing that task, when the inspectors arrived (Tr. 27-29, 59, 110, 116, 119, 237, 257-59, 285, 291-92; Exhs. C-1, C-2, C-4 and R-1).

Mayberry was relatively green. He had received his airframe and powerplant certificate about fourteen months' previously and had been hired by Trans States two months earlier (Tr. 108). He had never previously performed maintenance on fire bottles (Tr. 139). Nor had he been trained in this procedure. Yet Mayberry was attempting the maintenance without technical data available. The computer was not working, and hard copies of germane manuals were not at hand. Mayberry acknowledged as much. He had glanced at the data beforehand, he said, but had nothing in front of him or readily accessible as he performed the task. Performance in this fashion, Complainant asserts, violated proper maintenance procedures (Tr. 30-32, 50, 76, 103-04, 131, 141-45; Exh. R-1).

Mayberry also was working without supervision. His supervisor, Wesley Perkins, soon stopped by. Perkins was aware that Mayberry was unsupervised. He knew also that Mayberry was working without technical data (Tr. 33-34, 64-65, 139, 244-45).

Trans States' operations specifications ("op specs") obligate the carrier to maintain this aircraft pursuant to the requirements of the agency's Continuous

Airworthiness Maintenance Program, or CAMP (Tr. 36-37; Exh. C-3). The op specs also specify that

Each aircraft and its component parts, accessories, and appliances are maintained in an airworthy condition in accordance with the time limits for the accomplishment of the overhaul, replacement, periodic inspection, and routine checks of the aircraft and its component parts, accessories, and appliances.

Exh. C-3. To accomplish maintenance, the op specs refer mechanics to CAMP requirements or directly to appropriate documents. These documents generally are aircraft, manufacturer, and component manuals and associated guidelines. They require that fire bottle cartridges be regularly removed and replaced. They detail how this task is to be performed. Cartridge removal also triggers a requirement to inspect the bottle from which the cartridge is removed. The inspection must verify that the weight of the bottle's contents, or required internal pressure, is within acceptable limits; inspection also must assure that visual signs of degradation are absent. (A bottle that does not pass inspection must be overhauled). Trans States' maintenance and inspection programs for all its cylinders -- which include its fire-extinguishing bottles -- must be in writing (Exhs. C-4 through C-9; Exh. R-9, p. 6; Tr. 43-44, 49-50).

A hard copy of a relevant manual presently was retrieved (Tr. 226-27, 242). It showed that removing the squibs while inside the aircraft violated proper maintenance techniques. Mayberry should have removed the bottles, intact, from the aircraft first.<sup>1</sup>

The agency inspectors left the Trans States employees with instructions to properly accomplish the maintenance (Tr. 53, 227). Messrs. Mayberry and Perkins testified that, under Perkins' supervision, Mayberry did just that. He removed the fire extinguishing bottles from the aircraft and only then removed and replaced the cartridges in accordance with proper procedure and data. Mayberry also stated that he inspected the bottles, and found them satisfactory (Tr. 133-34, 155-59, 228-31, 245-46; Exh. R-7).

Inspector Rodriguez returned on November 9, two days after his first visit, to follow up. He found Respondent's maintenance documentation to be deficient. Trans States' records failed to show that the bottles had been removed from the aircraft. Nor did they show that the bottles had been inspected. Moreover, the removal and replacement of the engine squibs referenced incorrect data. Trans States had referenced data written for the APU fire bottle not only for the APU bottle, but for the left and right engine bottles as well. The procedures are not

<sup>1</sup> Tr. 34, 45-56, 76, 172-73; Exh. C-6, p. 3. Neither Mayberry nor Perkins seemed to be aware of this requirement. Tr. 46, 51-52; Exh. R-1. In fact, neither seemed aware of any of the procedures for proper bottle maintenance. Tr. 50, 53, 63, 78.

the same (Exhs. C-2, C-6, and C-7; Exh. R-9, p. 6; Tr. 47-48, 57-60, 65-67, 206, 215, 305-06).

Trans States employees Mayberry and Perkins, as well as its Director of Quality Assurance, Paul Becherer, each acknowledged that Mayberry, the line mechanic, had entered incorrect data for the engine bottles' removal and replacement (Tr. 215, 241, 274, 277). Perkins, Mayberry's supervisor, also conceded that an aircraft returned to service following maintenance using incorrect data is not an airworthy aircraft (Tr. 241). Inspector Rodriguez spoke to Respondent's chief inspector, Aaron Armstrong, about the situation (Tr. 66-67, 83-84).

Trans States' mechanics returned to the fire bottles. On November 11, 2006, two days after inspector Rodriguez' second visit to the hangar, work orders on the bottles were signed off. This time the documents record that inspections were performed on the three fire bottles. However, Trans States used incorrect and incomplete data for the inspection of the two engine bottles (Exh. C-9; Tr. 68-69).

The Embraer aircraft had operated twenty-eight times between the inspectors' initial visit on November 7 and the date of the second set of incorrect maintenance documents, November 11.<sup>2</sup>

I find each of the violations alleged. The evidence showed that Respondent violated §§43.13(a), 119.5(l), and 121.153(a)(2) as the Complaint asserts.

The evidence showed that Respondent failed to comply with mandated maintenance procedures. Records referenced incorrect data (as Trans States officials conceded); the carrier failed to perform required inspections; and, in its second go-around, failed again to properly enter the inspections, leaving in doubt Respondent's use of proper techniques. Such conduct constitutes a violation of FAR §43.13(a). Additionally, in failing to implement the requirements of its operations specifications – which obligate the carrier to follow the CAMP maintenance requirements – Trans States also violated §119.5(l). Finally, I agree with inspector Rodriguez that by flying twenty-eight times while necessary maintenance had been incompletely addressed, Trans States operated an unairworthy aircraft (Tr. 72) – a conclusion Respondent's own officials acknowledged.<sup>3</sup> Such conduct constitutes a violation of §121.153(a)(2) of the FARs.

<sup>2</sup> Exh. C-10; Tr. 71-72. The Complaint originally had asserted that thirty-two flights were involved; at the hearing, agency counsel amended the total to twenty-eight. Tr. 5-6.

<sup>3</sup> In addition to supervisor Perkins' acknowledgement (Tr. 241), Director of Quality Assurance Becherer agreed that an aircraft operated after a failure to effect a required fire-bottle inspection would have been unairworthy. Tr. 268.

Respondent argues in its defense that if the fire-extinguishing bottles had been installed incorrectly or had not had the proper pressure, systems in place on the aircraft would have signaled the cockpit that the bottles were inoperative (Tr. 269-70). This argument misses the point. The gravamen of the violations simply is that Respondent's upkeep of these bottles fell short of requirements. They were not maintained in accordance with standards. It is reassuring to know that aircraft systems exist which are designed to prevent or minimize any hazards resulting from fire-extinguishing bottles which are in a less than satisfactory condition, but that fact does not address Respondent's conduct under examination today.

All other arguments offered by Respondent in defense of Complainant's allegations have been considered and rejected.<sup>4</sup>

### III. Penalty

I conclude that a civil penalty in the amount of \$40,000 is appropriate to the circumstances of this case.

A civil penalty must reflect the totality of the circumstances surrounding the violations. *Folsom's Air Service, Inc.*, FAA Order No. 2008-11 (November 6, 2008), p. 12; *Eastern Air Center, Inc.*, FAA Order No. 2008-3 (January 28, 2008). It should provide sufficient incentive to deter the respondent and similarly-situated entities from future violations. *Folsom's Air Service, Inc., Id.*, p. 20.

The issue of penalty was not addressed at the hearing. Complainant argued in its brief that Respondent's behavior was "egregious" and "irresponsible" and suggested that its proposed penalty of \$50,000 was modest when measured against the maximum possible levy of \$850,000.<sup>5</sup> Respondent's brief contested the merits of the allegations, and did not address penalty.

Respondent's violations, and its conduct in the matter, warrant a substantial fine.

The record shows that Respondent operated its Embraer 145 aircraft twenty-eight times over five days while the aircraft's fire-extinguishing equipment had not been properly maintained. Such equipment is absolutely vital for safe flight. A non-working fire-extinguishing bottle – resulting from, for example, a leak, pressurization problems, or a nonfiring cartridge – would render ineffective

<sup>4</sup> Mr. Becherer stated several times that the fire bottles had been "re-inspected" between November 9 and November 11, implying that the bottles had been initially inspected in conformance with requirements prior to inspector Rodriguez' second visit to Trans States' hangar on November 9. When invited to make the implicit claim explicit, however, Becherer declined. Tr. 254-56, 266, 272.

<sup>5</sup> Complainant derived this sum as follows: Three violations of both §43.13(a) and §119.5(l) (one for each fire-extinguishing bottle), for a total of six violations; plus twenty-eight violations, representing twenty-eight operations, of §121.153(a)(2), for a total of thirty-four violations.  $34 \times \$25,000$  (the maximum civil penalty per violation under 49 U.S.C. §46301) = \$850,000. Compl. Post Hearing Br., pp. 10-11.

an aircraft's principal tools for fighting a fire. The chance of losing the aircraft and its passengers to an on-board fire would be raised to unacceptable levels (Tr. 62). Respondent's acts and omissions meant that each of these twenty-eight operations carried an unwarranted, and entirely preventable, risk of catastrophe (Tr. 86-87). The penalty assessed should reflect adequately the nature of the exposure.

Consideration of an appropriate civil penalty also must address the surrounding circumstances. The situation in this matter arose when an inexperienced mechanic who had never attempted the task before him – a three- to four-hour undertaking, at best (Tr. 163-64) – tried to perform it from memory. Proper technique mandated that relevant data be at hand. As inspector Rodriguez testified, the mechanic must follow the data "to the tee" (Tr. 30). But the mechanic responsible, Mr. Mayberry, did little more than "glance" at the relevant material beforehand. It was not accessible to him while he was working. Essentially, Mr. Mayberry was flying blind. This was irresponsible and dangerous.

Mayberry also was attempting this maintenance unsupervised, despite his inexperience and the consequence of such a task improperly performed. When confronted, neither he nor his supervisor appeared to be aware of the proper methods for accomplishing the maintenance. These circumstances compounded the carelessness – and risk of peril – that Respondent brought to this task. The maintenance eventually completed, moreover, went unrecorded.

I reject any intimation that the violations at issue were merely "paperwork" or "recordkeeping" violations. These offenses are not trifling. As the Administrator has noted, recordkeeping is the linchpin of the regulatory scheme by which safety in flight is maintained. The most feasible way for the FAA to fulfill its mandate of assuring that operators comply with safety standards generally is through records inspection. Complete and accurate recordkeeping is essential to this purpose. See *Watts Agricultural Aviation, Inc., d/b/a Growers Air Service*, FAA Order No. 91-8 (April 11, 1991).

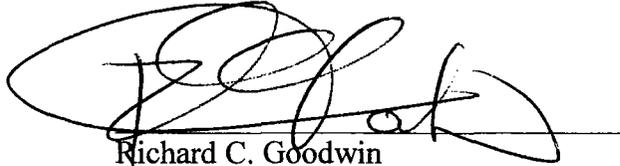
These circumstances warrant a significant penalty.

I find and conclude that a civil penalty assessment of \$40,000 is appropriate. It is commensurate with the nature and extent of the violations. It sufficiently accounts for the Respondent's conduct. I find also that the penalty has sufficient "bite," or deterrent effect (see *Toyota Motor Sales, Inc.*, FAA Order No. 94-28 (September 30, 1994), p. 11).

In sum, I find and conclude that a sanction amount of \$40,000 suitably accounts for the totality of the circumstances of this case.<sup>6</sup>

<sup>6</sup> While affording due regard to Complainant's plea for a civil penalty of \$50,000, I gave little weight to its argument that its suggested fine pales next to the maximum possible (see I.D., p. 5). The Administrator

Trans States Airlines, Inc. is hereby assessed a civil penalty of \$40,000 for violations of FAR §§43.13(a), 119.5(l), and 121.153(a)(2).<sup>7</sup>



Richard C. Goodwin  
Administrative Law Judge

Attachment – Service List

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frowns on a strictly mathematical approach to penalty. Multiplying the number of violations by a set dollar amount is unduly formulaic. *Interstate Chemical Company, Inc.*, FAA Order No. 2002-29 (December 6, 2002), p. 15.

<sup>7</sup>Any appeal from the Initial Decision to the Administrator must be in accordance with sections 13.210 and 13.233 of the Rules of Practice, which require 1) that a notice of appeal be filed no later than 10 days (plus an additional 5 for mailing) from the date of this decision and 2) that the appeal be perfected with a written brief or memorandum not later than 50 days (plus 5 for mailing) from the date of this decision. Each is to be sent to the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, Attn: Hearing Docket Clerk, AGC-430, Wilbur Wright Building—Suite 2W1000, and to agency counsel. Service upon the presiding judge is optional.

**SERVICE LIST  
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<sup>1</sup> Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.