News from the Hill

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Courtroom Drama over the Major/Minor Distinction

When is an installation a major alteration, requiring FAA-approved data, and when is it a minor alteration? This is an important question, because the process of obtaining FAA-approved data can be costly and/or time-consuming for some installations, and the savings in costs and time can be tremendous if there is no need to obtain FAA approval of the data underlying the installation.

Many AEA members have found that if their local FAAoffice considers a task to be a major repair or alteration, but another FAA office considers the same task to be minor, the well-informed customers will bring their work to repair stations in the region where the work is treated as minor because the work is usually the same – only the paperwork is different. Thus, the line that distinguishes major from minor can represent a substantial competitive element for many repair stations.

The major/minor question was the central issue in a recent case involving repair station owner and mechanic Neil Weaver. Weaver was accused of wrongdoing by virtue of his characterization of an installation as a minor repair.

The case began on August 23, 2001, when Weaver asked the Reno Flight Standards District Office to issue a field approval for the installation of a VM1000 (an engine management system display) in a Beech aircraft. The Reno FSDO refused to issue the field approval so on October 15, Weaver accomplished the installation and documented it as a minor alteration.

The Charges

The FAA claimed that Weaver had wrongfully described the installation as a minor alteration, when it should have been described as a major alteration. They claimed this was a violation of section 43.12(a)(1) of the federal aviation regulations, which prohibits anyone from making a fraudulent or intentionally false entry in a maintenance record or report required to be made or kept under Part 43 of the regulations. These allegations supported revocation of Weaver's mechanics's certificate with inspection authorization. The FAA also revoked his business' repair station certificate.

The FAA also claimed that this fraud demonstrated that Weaver lacked "the good moral character that is required to hold his airline transport certificate." They revoked his airline transport certificate as a part of this action. The FAA conducted all of these revocations as emergency revocations.

Weaver fought the FAA's claims, explaining that the work he performed really was minor, and therefore the Part 43 record entries were accurate.

The Evidence

At trial, FAA inspector William Kunder testified that installing a VM1000 would be a major alteration because (1) the instrumentation replaces at least 10 other engine instruments, (2) the VM1000 uses a LCD-type screen, and (3) a failure in the electronics would blank out the screen, thereby rendering the pilot of the aircraft without any instrumentation available to him for operation of the aircraft.

Upon application for the field approval, Weaver's principal maintenance inspector, Donald Morgan, issued a letter to Weaver that denied the request for the field approval and recommended seeking FAA approval of the relevant data through the STC process.

Kunder admitted that FSDOs can and do come to different conclusions on these questions. Although one FSDO might deny a field approval on an installation, another might disagree and be willing to issue the field approval. Similarly two FSDOs or even two FAA employees may have different ideas about what constitutes a major alteration, and what constitutes a minor alteration.

When Weaver took the stand in his own defense, he explained that he had first sought a field approval because

his customer had asked for one. When the field approval was denied, though, he began to research the standards and definitions that apply to the major/minor distinction. Weaver found the definition of a major alteration at section 1.1 of the federal aviation regulations and he explained that he had thoroughly researched whether the installation in question could meet the definition of a major alteration.

Weaver explained how he had analyzed each of the regulatory criteria for a major alteration. He showed how he had determined that none of the regulatory criteria for a major alteration were met, which was the basis for the finding that the installation was a minor alteration and not a major one.

The Judge's Decision

In analyzing this case, the judge imposes on the FAA the burden of proof. This means that the FAA has the burden of producing enough evidence to demonstrate the truth of the violations alleged, and if it does not then Weaver will not be found in violation. The FAAmust sustain the burden of proof by a preponderance of the reliable and probative evidence, which means the evidence must tend to indicate that a violation occurred – this has often been called a "51 percent" burden, because all the FAA needs to show is that more of the evidence (by effectiveness or weight, as opposed to the volume of evidence) tends to favor the agency's assertions, rather than the respondent's contentions. If the FAA's conclusion is not proved by a preponderance, the burden of proof is not met and the respondent (Weaver) is not found in violation of the regulations.

The judge explained that one does not have to rely on an FAAemployee's informal pronouncement concerning a major/minor determination—there are other methods of determining whether an installation is a minor alteration or a major one. One of the ways that the judge mentioned was to rely on the pertinent federal aviation regulations.

The judge noted that even the FAA's witness, Kunder, admitted that FSDOs can have different opinions about whether an alteration is major or minor. If FSDOs can come to contradictory conclusions then this means that some FSDOs can be wrong in their assessments. He therefore approached the major/minor question from the point of view that it was possible for the FAA to be wrong in its determination that the VM1000 installation was a major alteration.

To find that the FAAcould have reasonably been wrong, though, meant that the evidence had to show that it was reasonable to believe Weaver's claims that the work was a minor alteration. The judge found that Weaver, did, in fact, research the issue and come to a conclusion opposite than the FAA. The judge concluded that the FAA"has not established by a preponderance of the evidence that [Weaver] knowingly made a false entry. Whether or not it was a minor or a major installation is a gray determination on the evidence in front of [the Court] and, therefore, it does not preclude that the respondent could have come to a contrary conclusion without having reached an intentionally false determination." Ultimately, the court found in Weaver's favor and it set aside and vacated the FAA's emergency order of revocation.

What Does This Case Mean for the Rest of Us?

The fact that the judge found in Weaver's favor does not necessarily mean he was right. It means that the FAA could not prove he was wrong, and since they had the burden of proof, they could not prove that he had engaged in an intentional falsehood. One way to look at this is that the judge found that there was at least an even chance (perhaps a slighter better than even chance) that Weaver's analysis of the major/minor question was the correct analysis.

Even without a clear finding that Mr. Weaver was right, as a matter of law, there are nonetheless some important lessons to be learned from this case.

First of all, this was a 'intentional falsehood' case. Had it been brought as a violation of a different regulation, the FAA might have been more successful in their claim (so don't take this case as a license to declare every installation you perform as a minor alteration). The judge explained that he felt that bringing the major/minor analysis to the Reno FSDO to give the FSDO a chance to change their mind would have been the preferable course of action for Weaver, although he stopped short of saying that this would have been required.

On the other side of the coin, though, it does show that sometimes the FAA is wrong in its major/minor determination, and the courts are not afraid to listen to the repair station over the FAAwhen the plain language of the regulations is in front of the judge, and the repair station's analysis is more true to the regulations than is the analysis of the FAA.

Also, the mere fact that someone applies for a field approval does not mean that the data to be approved necessarily applies to a major repair or alteration. In fact, AEA conducted a research project in which AEA contractor Dale Horner found that a significant number of field approvals are issued for functions that are minor alterations—so many repair stations are applying for field approval on clearly minor repairs (where field approval is not necessary under the regulations, although it is sometimes useful for other reasons).

The FAAwins so many of the maintenance-related civil penalty cases that

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it is nice to see one judge setting reasonable law that helps to strike a reasonable balance between the government and industry.

Finally, though, this emergency revocation resulted in Weaver being unable to do business for many months. He incurred substantial legal bills. And when he applied for reimbursement of legal fees under the law that allows some successful litigants to obtain attorneys' fees, his application was denied by the government. These sorts of actions are expensive so it is always important to remember the costs of any legal action and to weigh the costs against the expected benefits in your business plan. AEA members facing major/minor problems should feel free to call the Association to discuss strategies for addressing these problems in a manner calculated to promote good business practices and good relations with your local FAA offices. q

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