



# WHAT THE AEROBEARINGS ENFORCEMENT CASE MEANS FOR TECHNICIANS, AIRCRAFT OWNERS AND OPERATORS

STORY BY LINDSEY MCFARREN

In May 2017, the Federal Aviation Administration inspected the Part 145 repair station owned by Kornitsky Group LLC, doing business as AeroBearings LLC. In March 2018, the agency issued an emergency revocation of the company’s Part 145 repair station certificate. The case revolved primarily around return to service documentation – 8130-3 forms – which the FAA claimed AeroBearings falsified by omitting certain information.

AeroBearings previously held FAA Air Agency Certificate No. 8AZR921B for aeronautical anti-friction bearings used in turbine engines, auxiliary power units, rotorcraft drive systems, and accessory applications.

**“IF THE COURT UPHOLDS THE NTSB’S DECISION, MAINTENANCE PROFESSIONALS SHOULD BE CAUTIOUS OF WHAT THEY INCLUDE OR OMIT FROM MAINTENANCE RECORDS.”**

**KENT JACKSON**, *founding partner of Jetlaw*

This article will focus on the appeals process and forward. For more history on this case, read “FAA Enforcement Action – Understand the Process and Know How to Respond” in the September 2018 issue of *Avionics News*.

AeroBearings appealed the case to an administrative law judge, which overturned the FAA’s revocation. The FAA appealed the ALJ’s decision, and the case went to the National Transportation Safety Board for review. In a 2-1 vote, the NTSB upheld the FAA’s revocation.

Then-NTSB Chairman Robert Sumwalt submitted a statement concurring in part with the majority’s position and dissenting in part, stating, “I concur with the majority that the acting administrator proved, by a

preponderance of the reliable evidence, violations of 14 CFR §§ 43.13(a), 145.201(b), (c)(1) and (2), and that those charges should not have been dismissed for violation of the Board's stale complaint rule, as alleged by respondent. For the reasons noted herein, however, I dissent from 25 of the majority's findings of intentional falsification under 14 CFR § 145.12(a), and its reversal of the law judge's choice of sanction."

Sumwalt's dissent bordered on scathing, adding, "I do not share the majority's enthusiasm for such expansion of this jurisprudence, when doing so – practically, if not intentionally – absolves the Board of its responsibility to undertake the very analysis of a respondent's subjective intent and understanding called for in *Acting Administrator v. Reynolds*."

Sumwalt pointed to the "three-prong standard" for determining intentional falsification and said the third prong – knowledge of the falsity of the fact – is crucial to this case because the ALJ determined there was no proof of intentional falsification.

The majority's opinion called the AeroBearings case "an excellent opportunity to expressly expand the Board's 'willful disregard' standard ... to mechanic intentional falsification cases."

Previously, for the FAA to prove falsification, the agency had to meet certain standards for intentional falsification. An omission in a maintenance record could be considered falsification but only if the mechanic had intent to falsify the record. Omissions immaterial to future work on the aircraft and left out of the record for simplicity or time's sake were not considered falsification.

Sumwalt supported the ALJ's decision to withdraw the revocation and instead require the company to recreate technical data providing evidence of appropriate inspections and maintenance to the

satisfaction of the FAA, with the company's repair station certificate indefinitely suspended until such time as that correction occurred.

Sumwalt pointed to another case in which the Board affirmed an ALJ's reduction from revocation to indefinite suspension in the case of *Administrator v. Air Trek*, saying "it defies logic" that the Air Trek violations could be resolved with suspension and new operations and maintenance procedures and training while AeroBearings' violations deserved revocation. Using this and one other case in which the FAA invoked an indefinite suspension, Sumwalt dissented from the majority's reversal of the ALJ's choice of sanction and affirmed the ALJ's order of indefinite suspension pending compliance with regulations.

In the end, the Board nevertheless upheld the FAA's revocation, leading AeroBearings to appeal to the U.S. Court of Appeals for the District of Columbia Circuit. In a Jan. 11, 2019, hearing, the court considered the NTSB's decision and focused on whether omitting information without the intention to deceive or withhold information is actually falsification.

The court's opinion is still pending as this article goes to press.

"If the court upholds the NTSB's decision, maintenance professionals should be cautious of what they include or omit from maintenance records," said Kent Jackson, founding partner of Jetlaw, a Washington, D.C., aviation law firm. "Chairman Sumwalt's dissent was accurate. This case could establish a dangerous new precedent for 'falsification,' which is not just a matter of certification action against a technician's certificate but could also have criminal implications."



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In the meantime, aircraft owners, operators, and maintenance professionals are left to determine how to handle bearings handled by AeroBearings.

It's interesting to note the FAA did not issue an airworthiness directive related to AeroBearings products. It would seem any violation so significant, so critical in its impact to safety that it justifies an emergency order of revocation would justify more than a quiet recommendation to aircraft operators to check their equipment.

But that's exactly how the FAA responded – by publishing a safety alert for operators. SAFO 18008 warns aircraft owners, operators, air agencies, suppliers, distributors and maintenance technicians of improper maintenance performed by AeroBearings LLC.

Technically, SAFOs are not legally binding or statutory in nature, but the fine print (literally) on every SAFO issues a back-handed warning: “SAFO content should be especially valuable to air carriers in meeting their statutory duty to provide service with the highest possible degree of safety in the public interest. Besides the specific action recommended in a SAFO, an alternative action may be as effective in addressing the safety issue named in the SAFO.”

Does this language mean any air carrier that ignores or merely misses this SAFO is not “meeting their statutory duty” and therefore not providing “the highest possible degree of safety?”

The SAFO recommends aircraft owners, operators, maintenance technicians and others should:

1. Inspect their records and inventory for any bearings approved for return to service by AeroBearings LLC.
2. Quarantine and inspect any bearings not installed, then conduct a recertification inspection to determine airworthiness prior to installation.
3. Inspect any installed bearings at the next piece parts exposure.

It is prudent for maintenance technicians and aircraft owners and operators to consider the guidance outlined in the SAFO since the FAA alleges the airworthiness of the bearings is in question, even though the enforcement case hinges primarily on paperwork technicalities.

“SAFOs are not necessarily legally binding, but the fine print on each SAFO should give air carriers, in particular, pause,” Jackson said. “All individuals using AeroBearings products should follow the advice in the SAFO.” □