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VIA ELECTRONIC TRANSMISSION
AND FIRST CLASS MAIL

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Matthew E. Hampton
Assistant Inspector General for Aviation Audits
Office of Inspector General
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: FAA Safety Oversight of Southwest Airlines | Project No. 18A3007A000

Dear Mr. Hampton:

We read with a sense of gratitude your audit announcement of June 20, 2018, which advised that the Office of Inspector General of the Department of Transportation (OIG) would be investigating not just operational issues at Southwest Airlines (SWA or Southwest), but also the Federal Aviation Administration's (FAA) safety oversight of SWA's operations.

Over the last three years, our law firm has handled thirty-eight whistleblower cases for aircraft maintenance employees at SWA and American Airlines, Inc. (AA or American), filed with the federal Occupational Safety and Health Administration (OSHA) pursuant to Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121, commonly referred to as AIR 21. Existing federal protocols require OSHA to focus on employment discrimination issues presented in the complaint, while the FAA is required to conduct an expedited investigation of the operational safety issues presented in the complaint.

We have observed an unfortunate laxity in the FAA's investigatory approach to SWA as contrasted with its approach to American. This laxity exists in at least three identifiable categories:

- (1) the FAA's failure to take enforcement action against SWA pursuant to 14 C.F.R. § 119.65(d)(3) in response to coercive carrier practices designed to induce maintenance employees to deviate from federal aviation standards;

- (2) the FAA's failure to conduct investigations of SWA safety violations raised in the complainants' amended complaints; and,
- (3) the hostility of FAA investigators to AIR 21 witnesses who are understandably possessed with a sense of trepidation due to the retaliatory treatment that they have already suffered.

We recognize that we submit herewith a large volume of documents. The submission of these documents is not intended to burden your investigators, but rather to provide immediately accessible substantiation of the concerns identified herein. Please know that we are at the OIG's disposal with respect to any further assistance it may require, including the procuring of witnesses to supplement the documentary evidence provided herein.

We would also note that, whereas the state of maintenance safety culture at our major carriers is troubling, it is far worse at foreign and domestic repair stations where FAA oversight is negligible and resources to assist the aircraft mechanics' resistance to unsafe practices do not exist.

I.

FAA FAILURE TO ENFORCE 14 C.F.R. § 119.65(d)(3) AT SOUTHWEST

A. Legal Background

In the early years of our law firm's practice, our experience had been that the FAA limited the scope of its investigation to incidents involving the introduction of aircraft into the National Airspace System (NAS) in an unairworthy condition. The position of the FAA investigators was that the mistreatment of maintenance employees was the concern of OSHA, not the FAA. In one notable exchange between our law firm and an FAA investigator, we asked whether he would confirm that – irrespective of how coerced, threatened, or browbeaten the aircraft mechanics might be by their supervisors – the FAA would consider the matter to be outside of its jurisdiction unless the aircraft had operated in revenue service in an unairworthy condition. He conveyed his understanding that such coercive practices were beyond his jurisdiction as an FAA investigator.

In 2015, however, we were told by the FAA investigators assigned to an AA whistleblower case filed in Chicago that the agency had altered its position based on a new legal interpretation of 14 C.F.R. § 119.65(d)(3). This regulation provides in pertinent part:

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section **and anyone in a position to exercise control over operations conducted under the operating certification must ...**

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(emphasis supplied). As reflected in the American investigation cases discussed below, the new interpretation provided that coercive management practices that are designed to induce non-compliance with federal aviation standards constituted a violation of 14 C.F.R. § 119.65(d)(3). By contrast, the Southwest investigation cases discussed below indicate that the FAA investigators assigned to this carrier hew to the older, more limited interpretation of the regulation.

B. FAA Enforcement at American

Recent FAA investigations relating to AA operations in Miami, Dallas, and Chicago all found that AA management representatives had violated federal aviation standards by subjecting aircraft mechanics to coercive pressure to shortcut applicable maintenance procedures or to refrain from reporting maintenance discrepancies.

1. AA Miami Station

A 2017 FAA investigatory report concerning AA's Miami station concluded that an aircraft technician had been subject to retaliation in the form of removal from his bid assignment and reassignment to taxiing aircraft because:

the complainant had generated numerous Baggage Compartment write-ups ... [and] that these findings resulted in taking an aircraft out of service since the Miami Base didn't have the replacement parts in stock or the ability to repair the damage documented.

(Attachment A at 3). Citing 14 C.F.R. § 119.65(d)(3), the FAA found that the reassignment was for the purpose of pressuring the complainant to not document discrepancies. The FAA documented a Compliance Action that included AA's commitment to reinforce its commitment to its Continuous Airworthiness Maintenance Program (CAMP) in the carrier's Miami operations. *Id.*

2. AA Dallas Station

A 2015 FAA investigatory report concerning AA's Dallas station confirmed multiple instances of mechanics being pressured by supervisory personnel to disregard maintenance discrepancies and to deviate from maintenance procedures in performing repairs. Without specifically citing 14 C.F.R. § 119.65(d)(3), the FAA investigators determined that such coercive conduct substantiated a violation of FAA standards related to air carrier safety. In terms of remedial action, the FAA report advised: "The CMO Manager has agreed to discuss this issue with AA Senior Management at the next possible opportunity." (Attachment B at 4).

3. AA Chicago Station

A 2015 FAA investigatory report focusing on AA's Chicago station, but also referencing similar problems at AA's Tulsa, Dallas, and New York stations, concluded: "Detailed evidence has

been provided to sustain each of the allegations contained in the Whistleblower Complaint, including:

- Mechanics pressured to deviate from proper maintenance procedures.
- Mechanics pressured to not write up identified discrepancies/deficiencies.
- Aircraft with radome damage that exceed limitations was repaired without issuance of appropriate Field Engineering Authorization and returned to service.

The Investigation Team report found that:

American Airlines Mechanics were pressured through the burden of mental distress by having the weight of social or economic imposition placed upon them. The Mechanics were pressured to deviate from proper maintenance procedures and/or not write up identified discrepancies/deficiencies.

* * *

The outcome of the pressures are [sic] having a direct effect on safety in which aircraft have been released into the NAS in an Un-Airworthy Condition or not meeting its Type Design.

(Attachment C - Investigation Team Report at 26).

Among the specific allegations substantiated by the cited investigation was that Regional Maintenance Director Evita Rodriguez instructed AA technicians:

You need to strike a balance between safety and productivity. When I was stationed in JFK, I signed for sumping the Airbus, yet I never did. I am looking for that balance.

(Attachment C - at 11). Subsequent to the FAA investigation, AA gave Ms. Rodriguez a promotion.

In a memorandum dated March 25, 2015, H. Clayton Foushee, FAA Director of Audit and Evaluation, found that the FAA report reflected an “exemplary investigation” substantiating that AA managers had pressured its aircraft mechanics “to not record discrepancies, take shortcuts with maintenance activities, or improperly sign-off on work which was not actually completed.”

Director Foushee concluded that the above-referenced degradation of AA’s maintenance culture:

may be much more prevalent across American’s organization than even the complainant’s [sic] alleged, affecting maintenance activities in Dallas, New York, Miami and beyond. Additionally, there exists a substantial likelihood that American has not properly conducted lightning strike inspections for a protracted period of time.

(Attachment D). Director Foushee concluded his memorandum with the following recommendation to Aviation Flight Standards (AFS):

Although the whistleblower investigation has been completed, we strongly recommend AFS continue additional investigation to determine the scope, depth, and root cause of these issues.

*Id.*¹

C. FAA Enforcement at Southwest

1. SWA Los Angeles Station

A November 2017 AIR 21 complaint by five Los Angeles aircraft mechanics alleged, *inter alia*, that, in retaliation for reporting maintenance discrepancies, they had received written discipline and threats of termination. In addition, the complainants alleged that they had been subject to repeated threats by Supervisor John Tomczyk that, unless they refrained from reporting aircraft damage, he would take retaliatory action against the aircraft mechanic who had previously released the aircraft. (Attachment E).

In the aftermath of the agency's investigation, the FAA issued a standard letter to the complainants advising them that no violation of federal aviation standards had been substantiated. (Attachment F). Nonetheless, the complainants obtained a copy of the underlying investigatory report which confirmed that the FAA investigators had found that coercive management practices, which compromised safety, pervaded the Los Angeles station:

all of the mechanics interviewed except two felt pressured and under scrutiny as to whether they were either doing their job correctly or if they were finding too many things wrong with the aircraft

(Attachment G at 4). "Mechanics are told, 'Dallas is watching us' don't make us look bad with delays." FAA investigators determined:

there is the absence of a "Just Safety Culture." Safety Promotion, a key part of an effective SMS [Safety Management System] seems to be deficient. There seems to be a lack of an environment of trust, effective communication and the willingness for employees to share mistakes, concerns or failure without the fear of threats or reprisal. This ultimately leads to a degraded level of safety that the SMS is trying to maintain at the highest possible level.

(Attachment G at 5).

The FAA's determination not to find a violation of 14 C.F.R. § 119.65(d)(3), notwithstanding its

¹ Based on Freedom of Information Act requests, it appears that no further AFS investigation was conducted.

findings of pervasive pressure and fear that compromised safety, stands in sharp contrast to the enforcement standards applied by FAA investigators to their oversight of American's Miami, Dallas, and Chicago stations. Unfortunately, the FAA's inaction was apparently perceived as a green light by Southwest Supervisor John Tomczyk who is the subject of a new AIR 21 complaint for having assaulted, and threatened termination of, a mechanic who refused to install warped parts on an aircraft. (Attachment H).

2. SWA Las Vegas Station

A 2017 AIR 21 action by five Las Vegas aircraft mechanics alleged that they were subject to threats of discipline, outsourcing of their work, being individually targeted by SWA for lawsuits, and blacklisting in retaliation for reporting aircraft damage. (Attachment I). Although the FAA investigatory report did find that SWA had violated federal aviation standards by issuing unauthorized documented procedures for the performance of aircraft maintenance to its Las Vegas mechanics, it determined that the alleged pressure exerted by management representatives to not report aircraft damage did not violate aviation standards. The agency's determination apparently rested on its finding that:

No evidence or supporting documentation indicated that the perceived pressure caused anyone to second guess or not report aircraft damage as required.

Attachment J. at 4. In other words, notwithstanding the existence of coercive pressure to deviate from federal aviation standards, it appears these FAA investigators would not find a violation under 14 C.F.R. § 119.65(d)(3) unless an aircraft mechanic were to actually release an unairworthy aircraft into revenue service and then provide the documentary evidence that he had done so. Again, this is not the standard applied to FAA investigators at American's maintenance operations.

Among the complainants' allegations were that SWA Supervisor Mike Kochersperger had advised a SWA mechanic that, with respect to reporting aircraft damage, he might have to choose between keeping his FAA license and keeping his job. Significantly, this allegation was subsequently confirmed by Supervisor Kochersperger's own sworn testimony in which he admitted to presenting a mechanic under his supervision with the following Hobson's Choice:

"If you're worried about your [FAA] license ... write them up. ... If you're worried about your job, then I don't know."

(Attachment K at 94-95). Thus, as at Las Vegas, the FAA appears to have given a green light to SWA to condition continued employment as an aircraft mechanic on a willingness to violate federal aviation standards.

3. SWA Dallas Station

A September 2017 FAA report addressing whistleblower complaints raised by Dallas-based Southwest maintenance inspectors found that coercive conduct toward maintenance employees

was having an adverse impact on “all forms” of the maintenance operations, including “troubleshooting, completion of work, inspections, technical support and training.” The FAA report provides a bone-chilling description of Southwest’s coercive culture:

The motivation behind management questioning AMTs and Inspectors when they discover anything outside the scope of a maintenance task and the subsequent use of formal [disciplinary] fact-finding meetings which management utilizes to formally document an inquiry into airworthiness discrepancies, *appears as a tool used to influence a relaxing of standards, to look the other way, or to gain a degree of approval through a leniency of standards.* The result of this pattern is a capitulation of airworthiness and a culture of fear and retribution. ... The influence being utilized to pressure technicians and question findings influences the programs and reliability tracking of the aircraft both of which have a negative impact on the overall Continuous Airworthiness Maintenance Program (CAMP).

(Attachment L at 54-55)(emphasis supplied).

The FAA reported that, despite the environment of intimidation, one inspector insisted on documenting damage to an aircraft’s flight control rudder balance weight that was “substantial,” but that, “rather than being praised for finding a serious airworthiness issue,” the inspector was “questioned as to how and why he came to notice” the damage. The courage of this particular inspector led to the fortunate disclosure of a “systemic” issue affecting fleet-wide safety:

Although the carrier will point out the discrepancy was addressed, the impact to the employees and the overall maintenance organization arguably is impacted by the questioning. As noted above, this event led to the discovery of a systemic issue with the fleet and now has involvement with the carrier’s engineering and the aircraft manufacturer.

(Attachment L at 54-55).

Notwithstanding the above findings, the investigators declined to substantiate a violation of 14 C.F.R. § 119.65(d)(3) based, apparently, on their view that, in order to provide a violation of this regulation:

There must be evidence the individual in discharging their duties failed to meet an applicable Federal Aviation Regulation or failed to maintain safe operations by causing an aircraft to be operate [sic] in an unairworthy condition.

Id. at 7.

As with the SWA Las Vegas investigation, despite a carrier’s exercise of coercive pressure to violate federal aviation standards, the FAA investigators declined to find a violation in Dallas because of the absence of documented evidence that the carrier succeeded in these efforts. Again, the FAA’s investigator applied a more lenient standard to Southwest than that applied to American.

4. SWA Phoenix Station

A Phoenix-based aircraft mechanic filed an AIR 21 complaint, dated September 8, 2017, in which he alleged that he was subject to intimidation, coercion, discipline, threats of discipline and improper interrogation, in retaliation for reporting aircraft damage. The complaint was specific with respect to the aircraft tail numbers and the damage reported by the complainant.

The FAA response, however, was to effectively disavow the applicability of 14 C.F.R. § 119.65(d)(3) to coercive management practices designed to induce non-compliance with federal aviation standards unless the aircraft was actually released in an unairworthy condition:

Our analysis determined your complaint meets general acceptance criteria for the FAA's Whistleblower Protection Program (WBPP). However, because you exercised your responsibilities under the Federal Aviation Regulations (FARs) related to safe operations, you prevented air carrier operations contrary to the FARs. Consequently, there is no alleged violation of a regulation order or standard for the FAA to investigation.

(Attachment M). The FAA's determination reflects that 14 C.F.R. § 119.65(d)(3), as a regulatory obligation independent of other FAR standards, is not applied to Southwest. In other words, the FAA considers SWA at liberty to engage in coercive management practices designed to induce non-compliance with federal aviation standards.

II.

FAA FAILURE TO INVESTIGATE SWA SAFETY VIOLATIONS

A. FAA Failure to Investigate Allegations in Amended Complaints

The AIR 21 statute has the shortest limitations period of the whistleblower statutes enforced by OSHA – 90 days. Due to this tight filing deadline, as well as the unfortunate tendency among air carriers to retaliate against whistleblowers based on their filings, it is common for complainants to submit amended complaints presenting additional allegations of unlawful carrier action. Unfortunately, FAA investigators assigned to SWA operations have repeatedly declined to conduct any investigation of serious safety violations alleged in amended whistleblower complaints.

1. Failure to Investigate Violations Reported by Dallas Inspectors

In their Second Amended Complaint, Dallas-based SWA Inspectors provided internal Southwest correspondence in which management representatives acknowledged that the carrier's cleaning

practices violated FAA Airworthiness Directives (AD) that prohibited the exposure of sensitive aircraft components to high pressure washing processes. (Attachment N, attachments G and H therein). Notwithstanding the carrier's acknowledgment of its non-compliance, a complainant was subjected to retaliation when he complained that the carrier persisted with these unlawful practices. (*Id.* at ¶¶ 34-43).

On August 3, 2017, complainants' counsel inquired whether the allegations contained in the Second Amended Complaint would be reviewed by the existing FAA investigatory team. (Attachment O at 3). In the absence of a response, complainants' counsel again raised the issue on August 11, 2017, and received a response from FAA Investigator Bob Laurion that he did not know whether the current team or another FAA team would investigate the issue but that "[e]ither way, we will inform you." *Id.* at 2.

After three months without a response, complainants' counsel emailed again, on November 17, 2017, requesting that the FAA identify the persons who would investigate the FAR violations identified in the Second Amended Complaint. Investigator Laurion advised that the information had been provided to the Audit and Analysis Branch and that he was unable to provide any further information. *Id.* at 1.

The FAA never interviewed the inspectors concerning the allegations in the complainants' Second or Third Amended Complaints so it would appear that no substantive investigation of the underlying FAR violations was ever conducted.

Even with respect to the allegations in the original complaint that the FAA did investigate, the dismissal of many of the allegations is based on the agency's refusal to engage in any credibility assessments where witness accounts are in dispute, or review documentary evidence other than that provided directly to them by the complainants.

2. Failure to Investigate Violations Reported by LAX Aircraft Mechanic

Similarly, complainants' counsel in an LAX AIR 21 complaint brought to the attention of the FAA investigator that SWA Supervisor John Tomczyk had engaged in further extortionate threats to suppress reports of aircraft damage to the effect that, if the threatened aircraft mechanic failed to fraudulently sign off on the plane's airworthiness, Tomczyk would take action against the mechanic who had previously released the aircraft. (Attachment P at 2 and attached mechanic statement). The FAA investigation was closed.

The complainants subsequently amended their complaint to include the additional allegations of Supervisor Tomczyk's more recent extortionate threats; however, neither complainants' counsel nor any of the mechanic witnesses were ever contacted by the FAA.

III.

HOSTILE TREATMENT OF WITNESSES

It has been our unfortunate experience to interview a number of aircraft mechanics over the last several years who have advised us that they were too fearful to object to coercive practices or, worse still, had made up their minds to succumb to the coercion and knowingly release unairworthy aircraft into revenue service. One mechanic advised us that, since he had an eight-month child at home, if SWA wanted him to ignore gouges that exceed tolerable limits, then he would ignore them.


Our experience with FAA inspectors has run the full spectrum. Some have been sympathetic and insightful. Others, however, have been overtly hostile. Generally, we have kept our silence with respect to ill treatment by FAA investigators due to our clients' apprehension that any complaint would subject them to retaliation.

Nonetheless, during the course of the FAA's investigation of the above-referenced SWA Dallas matter, the investigators' treatment of the inspector witnesses had become so severe that we memorialized it in an email dated June 26, 2017, which explained the witnesses' reluctance to further participate in the investigation due to:

(a) the FAA investigators' open hostility toward, and argumentativeness with, the interviewees, (b) FAA investigator intimations that the interviewees themselves were susceptible to FAA enforcement action, (c) FAA disinterest in addressing the atmosphere of coercion of AMTs at SWA, as contrasted with our recent interaction with FAA investigators in analogous matters who advised of their receipt of a letter of instruction from FAA legal counsel to FAA investigators that such coercion was actionable under the FARs, and (d) the FAA's proffer, later unilaterally rescinded, that it would provide a new team of investigators due to [the] atmosphere of the initial interviews.

(Attachment O at 7). We believe that the witnesses who were subject to this ill treatment would be willing to talk to the OIG if so requested.

We want to thank you for your attention to this matter and reiterate our offer to assist your investigation in any way possible, including the arrangement of mechanic/inspector interviews.

Sincerely,

Lee Seham

cc: Bret Oestreich
National Director
Aircraft Mechanics Fraternal Association

Gary Peterson
President
Transport Workers Union, Local 591

Senator Claire McCaskill