



LEGAL EASE

AVIATION LAW MADE SIMPLE

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

Yes, You are Responsible for A&P Mechanics

It is not unusual to hear of repair stations partnering with A&P mechanics (staff mechanics or independent contractors) who perform work outside of the scope of the repair station's certificate.

Respondeat superior is the legal theory under which an employer is responsible for the actions of the employee.

The mechanic performs the work and signs the approval for return-to-service under his or her own certificate number. The work needs to be within the mechanic's certificate privileges. For example, an A&P mechanic cannot perform repairs or alterations of instruments.

But what if the work is done incorrectly? Is the repair station responsible or is it insulated from responsibility?

The FAA recently investigated this issue in the case of a repair station contracting for work that it could not perform under its repair station ratings. The work was performed by mechanics who approved the work under their own certificates. The repair station acted as the billing agent, collecting from the clients, and it paid wages to the mechanics.

The case did not find the repair station had violated contracting rules. It did not find anything wrong with using A&P mechanics. But it did find the maintenance work was done incorrectly, and it found the repair station had violated the regulations.

The Story

Julie's Aircraft Service is a Part 145 repair station in El Paso, Texas. It has a contract to perform unscheduled, on-call maintenance for Continental Airlines. The repair station's certificate does not permit it to work on these aircraft; therefore, it relies on A&P mechanics to

perform and approve the work — the work falls within the certificated privileges of the A&P mechanics. The mechanics, after completing the work, would sign off under their individual certificate numbers, and Continental would pay Julie's — not the individual mechanics. The FAA admitted this sort of transaction is both permissible and normal in the industry.

On Jan. 16, 2006, Julie's assigned three mechanics to perform maintenance on a Continental Boeing 737-500. A Continental pilot observed a fluid leak beneath the No. 2 engine during his preflight walk-around. Continental contacted Julie's, and three Julie's mechanics went to examine the aircraft.

The mechanics ran the engine with the cowlings open. They ran it up to 97 percent power. Two of the mechanics were located below the engine — counting oil drips from the vent line. One of the mechanics rose and turned forward, then he was sucked into the engine and killed instantly.

The FAA's investigation found the mechanics did not bring the appropriate manuals to the worksite; therefore, the mechanics failed to follow the instructions found in the Boeing and Continental manuals. The manuals would have directed the mechanics to close the cowlings when the engine was run at greater than idle power, and they would have established danger zones, which had been "violated" by the mechanics on the ground. The mechanics failed to follow the safety procedures and the leak-check procedures found in the engine manuals.

Charging the Repair Station

It seems clear the FAA could charge someone with a violation of 14 CFR, 43.13(a). This is the regulation that requires maintenance be performed according to acceptable methods, techniques or practices. Case law has established that where the maintenance manual establishes a procedure and the maintenance provider diverges from that procedure, a violation may be found unless the maintenance provider has obtained an indication from the FAA that the alternative practice is acceptable to the FAA.

The thing making this case unusual is, instead of charging the remaining mechanic with the Part 43 violation, the FAA charged the repair station that had booked the work.

Julie's Aircraft Service contended it was not responsible for the actions of the mechanics because

the work was performed under their A&P certificates — not under the repair station's Part 145 certificate. The judge, however, found the mechanics were working within the scope of their employment by the repair station; therefore, the repair station was responsible for their regulatory violations under a legal theory known as respondeat superior.

Respondeat superior is the legal theory under which an employer is responsible for the actions of the employee. Normally, this is considered a tort doctrine, but it has been used in FAA regulatory actions in the past to impute an employee's culpability to the employer.

In this case, the administrative law judge found Julie's repair station responsible for the Part 43 violations of the employees. The repair station was fined \$1,100, but in a case like this, the real penalties can arise as a consequence of civil suits, which often are filed in the wake of a tragedy such as this.

Litigants in these civil suits likely will use the finding of a regulatory violation to establish that Julie's was negligent, per se, based on the legal doctrine finding negligence in any case in which a regulatory violation occurred.

Lessons Learned

Although this is an engine case, it nonetheless holds some important lessons for the avionics community.

For repair stations contract-outing work to their A&P employees when the job scope exceeds the

repair station's ratings, they need to remember the repair station remains responsible for the quality of the work and for all other functions performed by the mechanics under the doctrine of respondeat superior. Thus, the repair station should provide oversight and make sure the work is performed correctly if the repair station's own employees are performing the work, even when the employees intend to perform and approve the work under their own certificate numbers.

Most importantly, we all are responsible for safety.

The fact that the courts are willing to extend liability to the repair station, even when the repair station was merely serving as a payment agent and was not the certificate holder doing the work, sends a strong message that the administrative law judges are willing to ignore the bright lines of certification in order to hold a repair station responsible when its employees make a mistake.

Repair stations need to pay attention to this message and be sure they remain adequately protected from liability.

One way a repair station can protect itself from liability is to subcontract to independent contractors in this sort of situation. When the formalities of independent contractor status are observed, the repair station should not be liable under respondeat superior for the acts of the independent contractors.

If employees will be used as

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independent contractors (during their off-hours, for example), they should be paid in a separate manner from their payment as employees, and a contractual structure should be established permitting the independent contractors the discretion to accomplish the work in a manner they are responsible for — rather than following the strict instructions of the repair station. Beware, however, contract language can provide alternate

theories of liability, and it is very easy to do something that makes these mechanics common-law employees for purposes of respondeat superior.

A better way for a repair station to protect itself is to have a quality assurance system in place for work contracted to employees, so that such work is performed according to the high standards of quality usually associated with AEA member shops.

During the first week of April at the AEA International Convention & Trade Show in Dallas, I will be

teaching two FastTrak sessions: one on complying with export regulations and one on strategies for protecting your right to get paid by a customer. As usual, you will be able to find me on the trade show floor and at convention events, answering member questions about the regulations and the manner in which they are changing. Please feel to introduce yourself. □

If you have comments or questions about this article, send e-mails to avionicsnews@aea.net.