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

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FEDERAL AVIATION ADMINISTRATION,	)	)	
	)	)	
Complainant,	)	)	FAA Docket No. [To Be Assigned]
	)	)	
v.	)	)	(Civil Penalty Action)
	)	)	
SKYWEST AIRLINES, INC.	)	)	
	)	)	
Respondent.	)	)	FDMS Nos. FAA-2011-0782
	)	)	
_____		)	

INITIAL DECISION  
OF ADMINISTRATIVE LAW JUDGE RICHARD C. GOODWIN

**Found:** The charges were not proven. The Complaint is dismissed.

**I. Background**

Respondent SkyWest Airlines, Inc. ("Respondent," "SkyWest," or "the carrier"), is a Part 121 regional air carrier whose operations specifications ("op specs") require it to maintain its aircraft in accordance with the carrier's Continuous Airworthiness Maintenance Program ("CAMP"). This case turns on the question of whether SkyWest followed its CAMP by the manner in which it handled a discrepancy.

The underlying facts are undisputed. Complainant Federal Aviation Administration ("Complainant," "FAA," or "the agency") and SkyWest agree that on May 30, 2010, the carrier's flight #6140, operated by a Bombardier CRJ-200 regional jet, model CL-600-2B19 (registration N948SW), was preparing for takeoff from San Francisco ("SFO") when the cockpit received a display warning concerning pressure in the right air conditioning "pack." SkyWest treated the problem and returned the aircraft to service based at least in part on the pilot's Quick Reference Handbook ("QRH"). The QRH is an operations manual.

The agency contends that using the QRH was improper and violated the carrier's CAMP. As such, the next eight flights SkyWest operated with this aircraft, Complainant continues, were unairworthy. SkyWest counters that it was permitted to use the QRH to address the discrepancy. It violated no Federal Aviation Regulation ("FAR"), it maintains (*see, e.g.*, Tr. 11-12; *see* Tr. 55; Exh. C-7).

The FAA charged that Respondent violated the following FARs (all in 14 CFR): section 119.5(g), which prohibits a direct air carrier from operating in violation of an appropriate certificate and operations specifications; 119.5(l), which prohibits a Part 121 air carrier from operating in violation of its operating certificate or operations specifications; §121.153(a)(2), which requires an aircraft to operate in an airworthy condition; §121.709(b)(2)(i), requiring that an airworthiness release or log entry permitting aircraft operation after maintenance or alterations be prepared in accordance with procedures set out in appropriate manuals; and §121.605, proscribing the dispatch of an airplane unless it is airworthy. The Complaint asks for a total assessment in the amount of \$68,500.

An oral evidentiary hearing took place on October 1 and 2, 2012, in Salt Lake City, UT. The parties have now filed briefs and the matter is ready for decision.<sup>1</sup>

## II. Discussion and Findings

After careful consideration of all the evidence, I find and conclude that Complainant has not carried its burden of proof. The charges will be dismissed.

### A. The Occurrence

Flight 6140 displayed a caution message during takeoff. The pilot's maintenance log entry notes an "overpress [overpressure] condition display" in the right air conditioning pack. Complainant witness Wendell "Skeeter" Gehring, an aviation safety inspector employed at the carrier's Certificate Management Office ("CMO") at the Salt Lake City Airport and a pilot who holds an airframe and powerplant ("A & P") rating, explained. He testified that the message meant that the aircraft lacked the ability to regulate high pressure into the pack. The pilot could not pressurize the airplane. The left pack had been deferred per the Minimum Equipment List ("MEL") earlier that day, so the right pack had been the only source providing air conditioning and pressurization for the aircraft. The system shut off. After consulting the maintenance controller the pilot aborted the flight and returned to the gate (Tr. 17-20, 27-31, 61; Exh. C-2).

A SkyWest mechanic then undertook corrective action. Coordinating with the maintenance controller, he reset the pack using the pilot's QRH and tested. The mechanic demonstrated to the cockpit that advancing the throttle slowly would avoid a spike in pressure. The log entry states that the mechanic "[r]eset Rt/Pack as needed per QRH. System op checks good at this time. Static throttle with no overpress [overpressure] message displayed." The aircraft was given an airworthiness release. It proceeded to its next destination (Exh. C-2; Exh. C-5, pp. 2, 4, 8; Tr. 31-32, 43, 47-49, 84, 205).

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<sup>1</sup> "Compl. Br." = Complainant's Brief; "Resp. Br." = Respondent's Post Trial Brief; and "Compl. Reply Br." = Complainant's Reply Brief.

On June 1, 2010, following a complete system failure on approach to SFO, SkyWest mechanics replaced the right pack pressure regulating and shutoff valve.<sup>2</sup> This was accomplished in accordance with the carrier's General Maintenance Manual ("GMM"). The aircraft had been operated eight times since the May 30, 2010 occurrence (Exh C-7, pps. 1, 10, and 17; Tr. 55-58, 150).

### **B. Complainant's Position**

I find that Complainant's witnesses were credible.

Inspector Gehring testified that SkyWest had failed to follow correct procedures for handling the occurrence. In using the QRH, an operations manual, Respondent had failed to address what he characterized as a "mechanical irregularity." Using the CAMP, which is manufacturer's data for maintenance, was the proper course. The QRH, by contrast, is "manufacturer's data for flight." It is not part of the CAMP, Gehring stated (Tr. 27, 33, 61, 102; Compl. Br., p. 4).

Complainant witnesses testified further about the nature of the QRH and its appropriate role. A pilot manual kept in the cockpit, it gives pilots a checklist of how to operate the aircraft in an "abnormal" event during flight (Tr. 32-33). Andrew Ayers, SkyWest's principal operations inspector and Complainant's second witness, elaborated that the QRH is "essentially an extract" from the manufacturer's Airplane Flight Manual ("AFM") which allows the airplane to continue flight while having irregularities or abnormalities addressed. It is an operational document and, Ayers stressed, not meant for "corrective action of mechanical irregularities."<sup>3</sup>

Mechanics attempting to operate some system on the aircraft must follow the CAMP, inspector Gehring continued. The CAMP stems from other SkyWest maintenance manuals, including provisions of the carrier's GMM – in which SkyWest's CAMP is described – plus its Fault Isolation Manual ("FIM") (Exh. C-3) and Aircraft Maintenance Manual ("AMM") (Exh. C-4). And every maintenance task is addressed in the CAMP, he insisted: it will include "all the relevant instructions for maintenance personnel to do their work . . ." (Tr. 107). The witness maintained that mechanics may not consult an operations manual under any conditions.

Inspector Gehring asserted that the AMM should have been used to address the occurrence. The AMM contains a three-part operational test of the air conditioning system. This test is not in the QRH. Gehring also cited the FIM as a useful guide (Tr. 25-26, 32-41, 54, 61-63, 96, 106, 126, 129, 258-60).

Inspector Gehring concluded that using a QRH procedure rendered the aircraft unairworthy. The pack following the purported fix was unable to handle high-pressure air, he

<sup>2</sup> The Aircraft Maintenance Log entry, at paragraph #3, Corrective Action, reads, "Replaced Rt A/C Pack PROSOV IAW AMM 21-51-43." That is, the mechanic replaced the right air conditioning pack pressure regulating and shutoff valve in accordance with Aircraft Maintenance Manual 21-51-43. Exhs. C-2 and R-1, p. 1 (which consist of the same documents); see Tr. 55-56, 111, 116, 125-26, 198. The entry goes on to say, "ops check good."

<sup>3</sup> Tr. 140-41; Exh. C-10; Compl. Br., p. 5. The witness mistakenly referenced an "Aircraft Flight Manual" (Tr. 139) but it is clear that he meant the Airplane Flight Manual. See Exh. C-10.

testified; as such, it did not meet its type design.<sup>4</sup> Further, because maintenance had not been properly performed, the aircraft's safety was unknown. As such the aircraft had to be considered unsafe (Tr. 66-68).

### **C. Respondent's Position**

I find that Respondent's witnesses were credible as well.

Respondent asserted that SkyWest's response to the occurrence violated no FAR. Its use of the QRH was proper. Maintenance personnel may consult operational manuals such as the QRH in appropriate circumstances in determining the nature of a problem and in fashioning a solution, SkyWest states – and these were such circumstances.

Respondent contended that the CRJ-200 was known to experience an overpressure situation in a one-pack setting when the throttle was accelerated too quickly. Darrell Cook, SkyWest's director of quality and a licensed A & P mechanic who has performed maintenance on the make and model of aircraft involved in this matter, testified that this condition has been recognized among line mechanics and maintenance controllers for at least fifteen years. Neither the GMM nor the AMM addresses this situation, he contended, but asserted that the MEL appendix does: it instructs the pilot to perform a "Normal Static . . . takeoff procedure" and to "[a]dvance the thrust levers slowly to prevent an overpressure of the operating pack." (Exh. R-2; Tr. 157-61).

The pilots simply had failed to follow this protocol, said Respondent's witness Craig Fabian, an attorney and a licensed A & P mechanic who has worked on the flight line and as a maintenance controller. It was then appropriate, he said, to reset the system – per the QRH -- and attempt another takeoff. A reset procedure is not maintenance, Mr. Fabian asserted. But it enabled the ops check, which does constitute maintenance, to take place. The corrective action noted in SkyWest's aircraft maintenance log, which set out the reset and the ops check, was a mixture of nonmaintenance and maintenance, he concluded (Tr. 172, 206; Exh. C-2; *see* Initial Decision ("I.D."), p. 2).

Mr. Fabian believed that the aircraft was airworthy when it was subsequently dispatched. In his view, application of the MEL had returned it to its properly altered condition. That it flew without fault for eight legs also demonstrates its airworthiness, he stated (Tr. 192-93).

### **D. Decision**

I find and conclude that Complainant failed to show that Respondent's actions violated any FARs. The carrier's reliance on the QRH was appropriate. The fix SkyWest performed had operational elements sufficient to deny Complainant its proof. The aircraft was airworthy following SkyWest's actions addressing the discrepancy.

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<sup>4</sup> To be airworthy an aircraft must conform to its type design and be in a condition for safe operation. *See, e.g., Husted and Husted Air Charter, Inc.*, FAA Order No. 2010-9 (June 16, 2010), p. 13.

Mr. Fabian's explanation of the matter was pithy and persuasive. The left air conditioning pack for this aircraft had been deferred per the MEL. The MEL appendix instructs pilots in a single pack configuration to "advance the thrust levers slowly" to prevent overpressure (Exh. R-2). The cockpit either was unaware of or ignored the protocol, and did not follow it. The pilots received a display warning of overpressure.<sup>5</sup> Following consultation with maintenance, the cockpit reset the system – an operational procedure -- per the QRH. An ops check, a maintenance procedure, was successfully accomplished (Tr. 183-84, 192). The pilots then advanced the throttle relatively slowly per the MEL instructions. This time, no display warning appeared. The aircraft had been returned to its properly altered condition (Tr. 192). It was airworthy and ready to go (Tr. 193). These events had violated no FAR.

Once the pilot wrote up the discrepancy, maintenance indeed was triggered under SkyWest's GMM (Tr. 205). Yet it had been unnecessary to have maintenance review the occurrence in the first place. Signing off on the discrepancy and formally returning the aircraft to service was done out of an abundance of caution. The reset had addressed the situation adequately and correctly. The maintenance controller could have allowed the pilot to continue flight rather than return to the gate -- and the agency would never have become involved (Tr. 47-48, 172-73, 178; Resp. Br., pp. 2, 5; see Exh. C-5, p. 8 (maintenance controller stated to interviewers that "I could have had them [the flight crew] reset it there, but thought it was better to have maintenance check it out . . .")). No maintenance necessary to render the aircraft airworthy, then, had been performed, I conclude. In this light, Complainant could show no violations.

This decision also relies on the idea that maintenance technicians in appropriate circumstances may employ operational methods and techniques to fashion solutions to discrepancies. SkyWest documents themselves, I find, endorse this mixture of maintenance- and operation-based approaches. Standard Procedure ("SP") 8600 is a SkyWest maintenance document and part of the carrier's GMM. Yet it references the QRH as containing the procedure the pilot would use for a known condition after leaving the gate but prior to actually taking off – just like the scenario under review. It permits the maintenance controller to instruct the crew to reset and go (Exh. R-4; Tr. 50, 176-78, 261). Additionally, SP 7555, also part of the GMM, references the Airplane Flight Manual – which is the source document of the QRH (Exh. R-5; Tr. 50, 198, 207).

As a corollary to the above principle, I do not find it inappropriate, as Complainant contends, for a mechanic to refer to an operational manual not specifically included in the GMM or the CAMP (Tr. 179). I agree with Mr. Fabian's assertion that mechanics sometimes need operating manuals to determine how a system should operate or to perform certain functions. An operating manual can help a mechanic determine if a problem exists that would require maintenance (Tr. 186). This is a "common" scenario, Fabian said (Tr. 182). In his own experience he noted that he was not always able to find a remedy by referring to a

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<sup>5</sup> Exh. C-2. Inspector Gehring suggested that the crew initially had performed a "normal static takeoff" per the MEL, and that this should not have led to spiking the system. Tr. 77, 83. He insisted that the resulting overpressure display was not a known condition. Tr. 75-76, 81-85, 130; see Resp. Reply Br., pp. 8-9. The weight of the evidence, however, particularly the testimony of Mr. Cook, shows otherwise. Complainant's arguments in this regard are thus rejected. I note that Mr. Gehring, in contrast to Mr. Cook, has never performed maintenance on a CRJ. Tr. 73.

manufacturer's manual (Tr. 182). Conversely, I do not endorse Complainant's argument that a mechanic must be limited to following documents found under the maintenance umbrella. Respondent showed that it is contrary to years of industry practice to suppose that such materials would cover every situation a mechanic will face (*see* Resp. Br., pp. 3, 7). In this case, neither of the maintenance manuals specifically cited by Complainant witnesses, the AMM and the FIM, offered a solution. There must be room for adaptation to the myriad circumstances maintenance personnel observe. Indeed, the statement in SkyWest's GMM – a maintenance manual, of course -- that “[q]ualified mechanics . . . can determine or develop the method, technique, or practice to return the component or aircraft to its originally or properly altered condition” signals such a flexible approach, I find (Tr. 180-82, 206-07; Exh. C-1, p. 4, ¶1.2(a); *see* Resp. Br., p. 10). Nothing stated in the GMM or in the regulations in any event limits mechanics to maintenance manuals in discerning the nature of a problem or formulating a proper solution (*see* Tr. 185-86, 190-91). It is the substance of any document used by a maintenance person and not its title which should be the proper focus of an investigation and repair, I find (*see* Tr. 195).

Finally, the fact that the airplane flew an additional eight legs until a subsequent system failure grounded the aircraft again neither proves nor disproves that it had been airworthy following the fix examined here. Complainant stated that these circumstances showed that each operation following the occurrence and release had been unairworthy; Respondent asserted that the breakdown following the eighth flight demonstrated that a “more persistent” fault had existed (*see* Tr. 194). The repair of June 1, I find, proves nothing about the condition of the aircraft when SkyWest had released it on May 30. Neither party demonstrated sufficiently probative causative factors.<sup>6</sup>

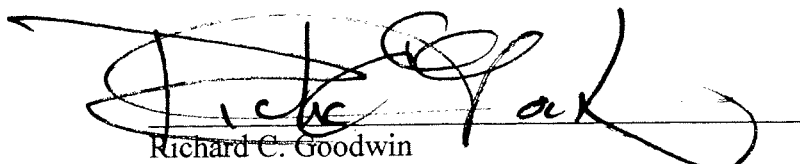
All arguments by both parties have been carefully considered. Those not explicitly discussed are rejected.<sup>7</sup>

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<sup>6</sup> *See also* Tr. 122-24; Resp. Br., p. 11. No proof was adduced that, as inspector Gehring maintained, the aircraft following the fix could not handle high pressure air. *See* Tr. 66-68.

<sup>7</sup> One additional matter will be addressed here. I find there is insufficient evidence to show, as Complainant contends, that the static throttle run failed to pressurize the system to the level necessary to test the system. Tr. 201-02; *see, e.g.*, Compl. Br., p. 3.

I find and conclude that the agency failed to prove that Respondent SkyWest Airlines violated any of the FARs with which it is charged. The Complaint is dismissed.<sup>8</sup>



Richard C. Goodwin  
Administrative Law Judge

Attachment – Service List

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<sup>8</sup> This decision may be appealed to the Administrator of the FAA. The notice of appeal must conform to sections 13.210, 13.211(e) and 13.233 of the Rules of Practice, which require that a notice of appeal 1) be filed not later than 10 days (plus an additional five days if mailed) from the service date of this decision, and 2) be perfected with a written brief or memorandum not later than 50 days (plus an additional five, if mailed) from the service date of this decision. The notice of appeal and brief or memorandum must either be a) mailed to the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, Attn: Hearing Docket Clerk, AGC-430, Wilbur Wright Building—Suite 2W1000, or b) delivered personally or via expedited courier service to the Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, D.C. 20591, Attn: Hearing Docket Clerk, AGC-430. A copy of the notice of appeal and brief or memorandum also must be sent to agency counsel. Service upon the presiding judge is optional.

**SERVICE LIST****ORIGINAL & ONE COPY**

Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591  
Attention: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building—Suite 2W1000<sup>1</sup>

**ONE COPY**

Todd C. Emerson, *Respondent's Counsel*  
Director – Government and Legal Affairs  
SkyWest Airlines  
444 South River Road  
St. George, UT 84790  
TEL: 435-634-3530  
FAX: 435-634-3505

Robert Spitzer, *Complainant's Counsel*  
Attorney, Office of Regional Counsel  
Northwest Mountain Region, ANM-7  
Federal Aviation Administration  
1601 Lind Avenue, S.W.  
Renton, WA 98057  
TEL: 425-227-1417  
FAX: 425-227-1007

The Honorable Richard C. Goodwin, *Administrative Law Judge*  
Office of Hearings, M-20  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E. (E11-310)  
Washington, DC 20590  
TEL: 202-366-2139 Attorney-Advisor  
202-366-5121 Staff Assistant  
FAX: 202-366-7536

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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.