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Part 821 Comment

The NTSB rule 821.54(e) is currently as draconian as was the debtors' prisons. Debtors' prisons required the debtor to repay his debt to society and his creditors while behind bars, and the NTSB rule, assuming facts alleged by the FAA are true, requires the respondent to pay for the defense against a massive government assault while it takes away any means to generate capital to do so.

The emergency suspension / revocation power of the FAA is tantamount to guilty until you prove yourself innocent. Whatever legislatively can be done to curb the FAA's abuse of this power can be nothing but a good thing. Government agencies, in general, by popular consensus are out of control.

Take for example the egregious FAA overreach in the case of Air Trek, Inc., of which I am the President and half owner. In this emergency suspension turned revocation, the NTSB board stated the following: "Counsel for the [FAA] administrator almost immediately began having difficulties in presenting his case. At the outset of the nine day hearing...the administrator withdrew seven paragraphs in three counts and two regulatory violations. By the fourth day of the proceeding, the administrator had withdrawn half of the factual allegations, six counts and eight FAR violations." This amounted to over 2/3rds of the FAA's case that, by the fact it was withdrawn, had zero merit. The three violations that the FAA did prevail on were all minor, one which the ALJ termed "diminimus".

The initial emergency suspension came on Friday of Memorial Day weekend 2008 as a complete surprise since the five person / five day inspection a few weeks before had ended with an out-brief detailing only minor issues. After 30 years in business with no corporate or personal violation history, we were in completely uncharted waters. Throughout the long weekend, not knowing what else to do, I set out to document the falsity in each factual allegation in the complaint. By Tuesday morning there was enough documentation to completely refute 75% of the allegations and cast doubt on half of the rest. After retaining an Aviation Counsel on Tuesday, after several referrals, all my responses and documentation were reviewed and the devastating news came. None of it mattered, because in an NTSB law judge's review of the "emergency nature of the case" he is required to assume every factual allegation made by the FAA is true.

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I could have demonstrated zero merit to the extent necessary to show to any intellectually honest person that no emergency existed within five days. This would have saved 65 jobs, the financial devastation of my company and the loss of service to our customers.

Anyone who wants to see what an oxymoron "a factual allegation" can be or is delusional enough to think the FAA has to have the truth to come after you or your company needs only to watch two U-Tube videos entitled "Air Trek FAA Deposition Part 1" and "Air Trek FAA Deposition Part 2". Even without my documentation this one Inspector's 18 minutes of deposition excerpts would have convinced an ALJ no emergency existed.

Pardon this digression... The FAA's "star witness" was ruled "not credible" in the judge's decision and the witness's testimony was disregarded. Most unbelievably, at least one member of the inspection team as well as the FAA lead counsel have received promotions since the revocation.

YES, Part 821 needs to be revised to allow input from the respondent. Furthermore, if there is any doubt which way a judgment should be made, the ALJ's decision should be weighted in favor of the respondent in a judicial effort to protect the rights of the accused. I believe that was the intent of the Founding Fathers.

In closing, the only other suggestion I have is this should be referred to as the "Air Trek Amendment".



Wayne A. Carr
President and Chief Pilot
Air Trek, Inc.

P.S. The board may next want to tackle the practice of accepting hearsay testimony into evidence during an NTSB trial. I think you will find this also ranks way up on the outrageous scale of most people.