



ACCIDENT INVESTIGATION AND PREVENTION (AIG) DIVISIONAL MEETING (2008)

Montréal, 13 to 18 October 2008

Agenda Item 1: Annex 13 1.2: Chapter 5 of Annex 13

USE OF INFORMATION FROM FLIGHT DATA RECORDER (FDR) — MISUSE OF DATA

(Presented by International Federation of Air Line Pilots' Associations)

SUMMARY

This paper offers an example of inappropriate use of flight recorder. IFALPA urges ICAO to define the necessary safeguards against such events.

Action by the meeting is in paragraph 5.

1. THE FACTS

1.1 In January 2004, a crew of 2 pilots and 4 cabin attendants were scheduled on a flight for a major European airline. On the crewmembers list appeared the name of a line check Captain.

1.2 Upon arrival at the aircraft the complete crew met the line check Captain (from now on, Inspector). His exclusive duty was to carry out a co-pilot's line check. While the Inspector was reviewing the flight documentation, the Captain of the flight closed the cockpit door in order to talk about a personal issue with the co-pilot. After that, all pre-flight tasks were completed by the crew.

1.3 Several attempts to open the cockpit door were done by the Inspector without succeeding. The presence of a maintenance technician was required to solve the problem.

1.4 After opening the door, the Inspector asked if the pre-flight briefing had been completed. The crew answered affirmatively. Afterwards, the Inspector ordered the Captain of the flight to repeat the briefing. The pilot in command said that this duty had already been performed and that he had no intention of repeating it. Then the Inspector said to him that he was suspended as pilot in command of this flight and he requested for another Captain (to the Flight Ops Dept) to complete the line. Meanwhile, the Inspector assumed the authority of the scheduled flight and ordered to remove the CVR tape from the airplane. This task was made by maintenance staff.

1.5 All attempts on the part of the Captain of the flight to obtain an explanation about this suspension were unsuccessful. The Inspector notified all his decisions to the Fleet Chief Pilot and the Flight Operations Assistant Manager. Both confirmed these decisions without any previous contact with the Captain. They assumed the Inspector's version of the facts without contrasting them with the suspended Captain. In fact, during the trial, the FO Assistant Manager declared that the Captain's incapacitation was assumed. Another Captain was assigned to complete the line.

2. THE TRIAL

2.1 As a result of this incident, the Captain was suspended and a disciplinary report was initiated. Several actions taken by the Captain's Pilot Association resulted in the revoking of the Captain's suspension. Nonetheless, the report was not closed, and thus the Captain, with the assistance of his Pilot Association, brought a lawsuit against the airline.

2.2 In July 2004, the judge declared the inadmissibility of the disciplinary actions taken by the airline against the Captain.

2.3 On the other hand, the country's Professional Board of Pilots opened an enquiry on the Inspector, the Fleet Chief Pilot, the Flight Operations Assistant Manager and the Manager of Operations.

3. THE ANALYSIS OF THE SENTENCE

3.1 Several remarkable issues appear in this sentence: the Captain's authority, the abuse of the Inspector and the Management Pilots, and the importance of IFALPA and Pilots Associations as defenders of the pilot's rights.

3.2 This judgement reaffirms the unquestionable authority of the Captain. Moreover, it states that the line check pilot's action was incorrect and disproportionate as he abused his authority, thus violating ICAO regulations regarding CVR tape removal.

"The Captain of the aircraft is the person designated by the operator to be the maximum Authority aboard...being responsible for the aircraft and its flight crew."

"The line check pilot, as a representative of the Civil Aviation Authority and designated by the operator, forms part of the flight crew and is formally subordinated to the Captain's orders, as he declared at the oral proceedings."

"The line check pilot was not entitled to give the order of repeating the briefing to the Captain. His exclusive responsibility was to check the First Officer of that flight. Therefore, he abused his authority, placing his pride in the first place."

3.3 The judgement also states that *"the line check pilot's unilateral version of the facts was ratified and assumed by the Flight Operations supervisors. Therefore, they wrongly thought they were legitimising the principle of authority as they did not contrast the suspended Captain's view of the facts."*

3.4 The carrier has shown an authoritarian view of its power by applying disciplinary measures against the Captain of the flight which were not considered within Internal Discipline Regulations. These measures were accompanied by *"the unfortunate and abusive action of the line check pilot, who not only exceeded his own limited authority, but also took the liberty of giving the order to remove the CVR, thus violating international regulations such as the Chicago Convention on*

International Civil Aviation and ICAO's Annex 13, both signed by the airline's country. This violation has caused protest letters addressed to the airline's president submitted by international bodies such as IFALPA. Furthermore, due to this violation, the country's Professional Board of Pilots has started disciplinary proceedings against the flight operations supervisors who actively took part in the above mentioned events".

4. CONCLUSION

4.1 ICAO Annex 13 ("Aircraft accident and incident investigation"), paragraph 5.7 states that effective use shall be made of flight recorders (including CVR) in the investigation of an accident or an incident.

4.2 Answering the IFALPA protest letter, the President of the airline declared that the reason for the CVR tape removal was to permit the Captain of the flight to use the information recorded in the event of a formal investigation.

4.3 It is clear that this was NOT a safety incident, despite the airline's efforts to justify the supervisors' actions.

4.4 As stated in the judgement, there is not enough evidence to prove the airline's version of the facts (supposedly an incapacitation of the pilot in command). The question underlying this issue is as follows: how can a major airline violate ICAO international legislation at present?

4.5 We can only think of one explanation. There is a worldwide trend within airlines to focus on business issues rather than safety ones. Therefore, airlines' top management does not involve enough in developing safety aspects. Their main concern is to "fit the budget". Without any doubt, the airline economic results can be definitive in the life of the company. But sometimes the airlines forget the safety aspects of the business. And safety is, in terms of business survival, as important as financial management. An aircraft accident is an "unexpected loss" that nobody wishes to suffer.

4.6 UK CAA's document CAP712 (Safety Management Systems for Commercial Air Transport Operators) describes the fundamental requirement of Safety Management as follows:

"Safety culture in an organisation can be described as the way in which it conducts its business and particularly in the way it manages safety. It emanates from the communicated principles of top management and results in all staff exhibiting a safety ethos which transcends departmental boundaries."