Entered: February 8, 1979

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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EXCHANGE & GIFT DIVISION

LANGHORNE M. BOND, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, Complainant	
vs.	Docket SE-4097
INTERAIR SERVICES, INC., Respondent	

Ronald R. Hagadone, Esq., for the Complainant.

Leonard F. Thornton, Esq., and Kenneth Easley, Esq., for Respondent.

ORAL INITIAL DECISION AND ORDER

John E. Faulk, Administrative Law Judge:

This proceeding arises under the provisions of Section 609 of the Federal Aviation Act of 1958, as amended, 49USC1429. It comes here on plea of Interair Services, Incorporated, hereinafter referred to Interair, seeking review of the emergency order of revocation issued on behalf of the Administrator of the Federal Aviation Administration by the Regional Counsel for the Southern Region. Said order, which becomes the complaint, was issued on December 28, 1978, and amended on January 16 and January 23, 1979, as well as during the hearing.

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1 Public hearing was held in St. Petersburg, Florida,
2 beginning on February 5 and concluding on February 8, 1979.
3 At its conclusion, the parties presented oral arguments as
4 well as proposed findings, which are included with this
5 record and will be forwarded and included in the docket.
6 These arguments and findings, proposed findings, along with
7 all evidence of record, have been considered although not
8 necessarily discussed hereinafter in this oral decision
9 required to be given at the conclusion of the hearing by
10 the Board's Rules of Procedure.
11 The complaint, as amended, alleges that Interair
12 who holds air taxi/commercial operator's certificate number
13 8-SO-33, committed several acts which are said to be in
14 violation of sections 135.33; 135.43(a); 135.137; 135.138(a)
15 and (b); 121.3; 121.441; and 121.433 of the Federal Aviation
16 Regulations (FAR), as follows: Paragraph 2(a) et sec of
17 the complaint in that Interair operated civil aircraft on
18 passenger-carrying flights for compensation or hire on
19 behalf of U. S. Homes Corporation, Clearwater, Florida, as
20 follows: (1) On April 25, 1978; (2) On July 5, 6, and 7,
21 1978; (3) On July 13, 1978; (4) on August 9, 1978; and (5)
22 on August 10 and 11, 1978. The specifics are set forth in
23 the complaint, Paragraph 2(a), (1) through (5) thereof.
24 In support of these allegations mentioned above
25 Mr. Robert J. Strudler, Senior Vice-president of Operations,

U. S. Homes Corporation, testified as to his company's payment to Interair to transport his company personnel, including himself on certain flights, to and from points set forth above. He testified from financial records of his company and sponsored Administrative Exhibit Number A-1, which reflects that Interair billed and was paid by U. S. Homes for the flights descirbed above. Mr. Douglas Baker testified that with respect to the flight of August 10 and 11, Paragraph 2(a)(5) of the complaint, he recalls that he flew said flight as captain and recalls that there were three passengers aboard from U. S. Homes. A Mr. Leonard Hoock was second command.

With respect to the flight of July 13, Paragraph 2(a)(3) of the complaint, Mr. Alex Matway, President of Interair, testified that he was the pilot but that the flight was not flown on behalf of Interair. According to Mr. Matway's testimony, the flight was made as a sales demonstration flight in a Learjet, Model Number 35, the property of an autobile dealer in Miami, Florida. U. S. Homes was to pay all expenses and the Interair -- ~~Excuse me~~. And the Interair billing shown in Administrator's Exhibit A-1, page 4, was made; but a refund of said expenses should have been made to U. S. Homes. In this connection, Joseph E. Cough, a former Interair pilot, testified that on July 13 and 14, 1978, he, as second in command, and Mr. Baker as

1 captain, had flown Interair's only Learjet 25 from St.
2 Petersburg to Richmond, Virginia; and company records
3 substantiate the Richmond flight.
4 It is found that all flights shown above, except
5 the flight referred to in Paragraph 2(a)(3) of the complaint,
6 were conducted for compensation or hire on behalf of U. S.
7 Homes Corporation.
8 With respect to Paragraph 2(b) as well as Paragraph
9 3 and 4, et sec, of the complaint, Messrs. Cough, Burdick,
10 Baker, Gelinas, all former pilots of Interair, testified
11 that they were told in what manner they were to enter their
12 flights in the company flight and duty records; that is, as
13 Part 91 or Part 135 operations. On flights other than part
14 135 an asterisk was placed next to the flight. Mr. Dorman,
15 the foremer chief pilot at Interair, testified that he or
16 Mr. Matway made that determination as to whether he or Mr.
17 Matway would be placed beside the flight or not. The records
18 of Interair show asterisks next to all flights shown in
19 Paragraph 2(a)(2) through (5) of the complaint. See, for
20 example, Administrator's Exhibit A-11.
21 It is found that the flights shown in Paragraph
22 2(a)(2),(4), and (5), were identified as flights conducted
23 under Part 91 when they should've been shown as flights
24 conducted under Part 135 of the FAR.
25 Turning to Pargraph 2(d)(1) and 4(h)(1) of the

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1 complaint, Mr. Thomas Smith of the St. Petersburg General
2 AViation District Office, GADO, testified that he inspected
3 the records of Interair at their offices on December 8 and
4 14, 1978. During these visits Mr. Smith copied information
5 from the flight and duty records of Interair and the results
6 of his efforts are found in Administrator's Exhibits 5
7 through 14 and summarized in Administrator's A-18; and
8 Administrator's A-4 represents the GADO's records indicating
9 dates pilots of Interair received Part 135 qualification
10 checks. It is Mr. Smith unrefuted testimony that as of
11 April 25, 1978, the records of Interair fail to reflect that
12 Interair had a pilot authorized to conduct Part 135 flights
13 in a Cessna 402 aircraft. While Mr. Smith acknowledges
14 there was a GADO memorandum sent to air taxi operators to
15 the effect that pilots qualified in a Cessna 310 series
16 would be also qualified for the 400 series, the memorandum
17 pertained only to the flight check and did not relate to the
18 oral or written examination. Accordingly, it's found that
19 Interair had no pilots authorized to conduct Part 135
20 flights in a Cessna 402 aircraft on April 12 and 25, 1978.
21 Interair admits the allegation contained in
22 Paragraph 2(d)(2) of the complaint; however, Respondent's
23 Exhibit R-2, the aircraft log book pertaining to a flight in
24 a Cessna 402 on April 25, 1978, does reflect that Mr. Hoock
25 is shown as the second command on the flight in question.

1 These records were not reviewed by Mr. Smith on his visit
2 of December 8 and 14, 1978. Thus while the flight and duty
3 records fail to reflect a proper notation, the records of
4 Interair pertaining to the aircraft used in the operation
5 is so noted. In view of the severity of the other charges,
6 this appears to be only a minor violation as to form.
7 In Paragraph 2(e)(1) and (2) of the complaint, it
8 is alleged that Mr. Leonard Hoock served as second command
9 on the flight of August 10 and 11, 1978, even though he had
10 not completed training required by Section 135.137 and had
11 not taken the tests required by sections 135.138(a) and (b)
12 of the FAR. While Respondent's Exhibit R-1 shows Mr. Hoock
13 as conducting flights on August 10 and 11, 1978, and R-2
14 shows him to be second in command, these records fail to
15 show whether Mr. Hoock complied with Sections 135.137 and
16 135.138 (a) and (b) of the FAR. Mr. Smith's investigation
17 also failed to turn up any records of Interair that showed
18 compliance with these sections. Also, Mr. Matway testified
19 that Mr. Hoock held the necessary certificates. See
20 Respondent's Exhibit R-8. And that Mr. Hoock had informed
21 him that he did have the necessary check ride and would have
22 his previous employer send them to Mr. Hoock or apparently
23 to Mr. Matway. They were not received by Interair. Mr.
24 Hoock was employed at Interair for approximately two months.
25 In addition, Interair's training folder for Mr. Hoock failed

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to show the appropriate entry.

It is found that Mr. Hoock had not completed the training required by Sections 135.137 and taken the tests required by Section 135.138 (a) and (b) of the FAR as alleged.

Moving along to Paragraph 3(a) of the complaint, it is alleged that eight flights named in subparagraphs (1) through (8) thereof were conducted for compensation or hire on behalf of Florida Power Company. In this connection Mr. Robert Hallowell testified that he is the manager of payroll disbursements and accounting for the Florida Power Company. Under his supervision are all accounts payable for his company. This witness testified that the billings from Interair as shown on Administrator's Exhibit A-2, pages 1 through 8, were paid by Florida Power Company for air services rendered on the dates shown in the complaint. Mr. Hallowell had in his possession his company's cancelled checks. In addition, the flights listed in the complaint, subparagraphs (1) through (8), coincide with the billings shown in Administrator's Exhibit A-2, pages 1 through 8.

Accordingly, it is found that the flights alleged in Paragraphs 3(a)(1) through (8) in the complaint were conducted by Interair for compensation or hire.

With respect to Paragraph 3(b) of the complaint, Mr. Cough testified that his pilot log book reflected that

1 on July 13, 1978, he flew as second in command on a flight
2 from St. Petersburg to Richmond, Virginia, in Learjet 25N23AM.
3 Douglas Baker was the captain. And on July 14, 1978, he and
4 Captain Baker returned to St. Petersburg. The flight was
5 on behalf of Interair. He was told to show an asterisk by
6 the flight when it was entered into the flight and duty
7 records and it's so reflected in Administrator's Exhibit A-13,
8 which means that the flight was conducted under Part 91 of
9 the FAR; however, as reflected in Administrator's Exhibit
10 A-2, the flight of July 13 and 14 were conducted for
11 compensation or hire by Interair for the Florida Power
12 Company. As a result these flights should have been shown
13 in Interair's records as operations conducted pursuant to
14 Part 135 of the FAR. Likewise, the flight of October 13,
15 1978, should have been so listed in the records of Interair.
16 Again, Administrator's Exhibit A-2 substantiates that this
17 was a for-hire operation as well as Administrator's Exhibit
18 A-10, which reflects the October 13, 1978 flight was shown
19 in Interair's records as a Part 91 rather than a Part 135
20 operation.
21 In Paragraph 4(d)(1) and (3) of the complaint,
22 subparagraph (2) having been deleted by Administrator's
23 counsel, it is alleged that Mr. Cough served as second in
24 command on the July 13 and 14, 1978 flight without first
25 having complied with Sections 135.138(a) and (b) of the FAR.

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As heretofore noted, Administrator's Exhibit Number 13, along with Mr. Cough's log books, indicated Mr. Cough flew as second in command on this flight; however, Interair's records do not reflect that Mr. Cough had met the requirements of Section 135.138(a) and (b). Indeed, Administrator's Exhibit A-4 indicates that Mr. Cough was no so qualified until August 28, 1978. As a result it is found that Mr. Cough had not met the requirements of Sections 135.138(a) and (b) of the FAR as alleged in Paragraph 3(d)(3) of the complaint.

Mr. Smith testified in connection with Paragraph 3(e) ofthe complaint that Administrator's Exhibits Number 5 through 15 failed to reveal any information concerning the flight of August 8, August 11, September 6, October 10, and October 11, 1978. Paragraphs 3(a)(2), (3), (4), (6), and (7), respectively, of the complaint. However, Interair placed in evidence Exhibits R-5 and R-6 which, according to Mr. Matway, are the flight logs of two different Interair aircraft, a Beech 58 and a Cessna 402, indicating that flights were made for Florida Power Company on August 11 and September 6, 1978. And counsel for the Administrator stipulated, consistent with Administrator's Exhibit A-2, page 3, that Exhibit R-5 does in fact reflect that the August 11, 1978 flight was made. However, Mr. Smith's testimony with respect to the flights of August 8, October 10,

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and October 11 remain uncontroverted. Accordingly, it is found that the flight and duty records of Interair fail to reflect these three flights.

As to Paragraph 3(f) of the complaint, Mr. Smith testified that he had received from a Mr. Gene Sells a list taken from memory of flights conducted by Mr. Sells, Sells' record having been taken or lost by another former employee of Interair. See Administrator's Exhibit A-15. Thereon it is shown that a flight on September 12, 1978, and Administrator's Exhibit A-2, page 5, reflects that Interair billed and was paid by Florida Power Company for this flight in a Bell Jet Ranger helicopter. However, Mr. Sells was not in the city at the time and Interair had no pilots -- had no helicopter pilots at that time qualified pursuant Part 135 operations. Mr. Smith also testified that Mr. Ernest Haire holds only a private pilot certificate and owns a helicopter which is used by Interair and that Mr. Haire has not been checked out for Part 135 operations. Mr. Billy Griffin, the individual from the Florida Power Company, who was a passenger on the September 12, 1978 flight, testified that the pilot of the flight introduced himself as Ernest Haire. Mr. Matway testified that this was Mr. Haire's flight and not one for Interair. Interair did the billing for the flight and handled details in order to keep customers but did not conduct the flight as a part of Interair's

1 operations. Credibility findings are made in favor of the
2 Administrator in this regard, and it is found that the
3 operations were conducted by Mr. Haire on behalf of Interair
4 and that Mr. Haire had not met the requirements of Section
5 135.137 of the FAR.
6 The last item under Paragraph 3 of the complaint
7 is subparagraph (g)(1) and (2). Therein it is alleged that
8 Mr. Larry Wright was the pilot of the October 10, 1978 flight
9 and at that time had not met the requirements of Section
10 135.137 and 135. 138(a) and (b) of the FAR. Mr. Wright
11 testified that he was a helicopter pilot for the National
12 Guard. Also, he testified that he was the pilot of a
13 flight in October of 1978 and that the flight was for the
14 Florida Power Company. He does not, however, remember the
15 exact day of the flight. Mr. Wright was contacted by Mr.
16 Haire to make the flight and he doesn't know whether it was
17 an air taxi flight or not. He was not paid for this flight,
18 nor does he have any knowledge concerning any payments for
19 the flight. Mr. Griffin, the passenger from Florida Power
20 Company testified he did not know the pilot's name on this
21 flight, but the pilot told him that he was a helicopter
22 pilot for the National Guard and was filling in for the
23 flight of that date. Mr. Griffin indicated that the pilot
24 took a side trip of his own during the course of the flight.
25 The flight was billed by Interair and according to Mr. Matway,

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this was done in order to keep the customers coming back to his company. It is found that the flight was flown by Mr. Wright and that Mr. Wright had not met the requirements of Section 135.137 and 135.138(a) and (b) of the FAR. It is further found that the flight was conducted on behalf of Interair.

Turning to the last charge of the complaint, which is voluminous, Paragraph 4(a), et sec, it is alleged that the 25 flights enumerated therein were all conducted for compensation or hire on behalf of the Gardinier Company. Ms. Julia Briar Marr testified that she is the French-American coordinator for Gardinier, Incorporated. Ms. Marr's duties include working directly with the personnel of her company in connection with their air travel, charter and otherwise. She personally made the arrangements for the flights, verifies the billing and causes the checks to be issue for payment of this charter service rendered. In this connection she testified that Administrator's Exhibit A-3 represents billings made by Interair for her company for charter services as well as indicating that payments were made to Interair by her company. Administrator's Exhibit A-3 does coincide with the allegation contained in Paragraph 4(a)(1) through (25) of the complaint. The above evidence does establish that the flights alleged in Paragraph 4(a) et sec, were conducted by Interair for compensation or hire

1 for the Gardinier Company; and it is so found. In this
2 connection it is alleged that certain flights as shown in
3 Paragraph 4(b) and 4(i) of the complaint to be as Part 91
4 flights when they should have been conducted as Part 135
5 operations. As such, information required by Section 135.43(a)
6 should have been shown in the company's records of Interair.
7 Mr. Cough testified with respect to the flights of May 1
8 and November 1, 1978, that he was aboard such flights; and
9 they were flown in a Lear 25N23AM for the Gardinier Corpora-
10 tion. He also testified that he had received the training
11 as required by Section 135.138(a) and (b) as to the May 1,
12 1978 flight. Also, these flights were shown by Mr. Cough
13 as Part 91 flights. As to the flight of October 11, 1978,
14 Mr. Burdick testified that he was the pilot in command on
15 said flight and that the flight was conducted for the
16 Gardinier company. Nevertheless, he entered the flight as
17 a Part 91 operation. Also, he testified that he was not
18 qualified under Part 135 to conduct the flight on November
19 the 6th, 1978, and that on this flight he served as second
20 in command. The flight was for the Gardinier company;
21 however, he entered the flight as a Part 91 operation. Mr.
22 Douglas Baker testified that on May 30 and July 22nd and on
23 August 28th, 1978, he was the captain on said flights and
24 they were conducted for the Gardinier Corporation. He listed
25 these flights as Part 91 in the company's records of Interair.

By comparing this evidence with that shown in Administrator's Exhibits A-3 and A-4, the flights shown in Paragraph 4(b) of the complaint should have been shown as Part 135 operations and that it is also found that a violation of Section 135.137 and 135.138(a) and (b) have been shown with respect to the flight of November 4, 1978, as alleged in Paragraph 4(i)(4) of the complaint. The allegation as to Paragraph 4(i)(2) and (5) have not been proven. With respect to Paragraph 4(d)(1),(2), and (3), the Administrator's evidence is insufficient to carry his burden of proof by a preponderance of the evidence.

Turning to Paragraph 4(f) of the complaint, Respondent's Exhibit Number 2 does show that Mr. Hoock was listed as second in command; however, as heretofore noted, these records do not show that Mr. Hoock met the requirements of Sections 135.137 and 135.138(a) and (b). Concerning Mr. Matway's testimony that Mr. Hoock advised that he had met such requirement and would furnish same to Interair, it is found that Mr. Hoock was not qualified on Part 135 operations as alleged in Paragraph 4(f)(1), (2), and (3) of the complaint.

In Paragraph 4(g) of the complaint it is alleged that no information as to the flights listed was contained in the flight and duty records of Interair. While argument of counsel for Interair has been considered that the so-called

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1 flight and duty records are spread over several records,
2 the flight summary sheet should have reflected the flights
3 as a minimum. Accordingly, it is found that the allegation
4 contained in Paragraph 4(g) has been established by the
5 Administrator.
6 With respect to Paragraph 4(h)(2) through (5),
7 Administrator's Exhibit A-4 reflects that Interair had no
8 pilots qualified under Part 135 to fly single-engine aircraft
9 referred to in the complaint. While counsel for the
10 Respondent attempted to show on cross-examination that
11 Respondent did have pilots qualified for Part 135 single-
12 engine aircraft, Mr. Smith's testimony revealed that checks
13 in other type single-engine aircraft do not meet the
14 requirements. Thus it is found that Interair had no pilots
15 qualified to conduct Part 135 operations in a single-engine
16 aircraft as alleged in Paragraph 4(h) of the complaint.
17 As to Paragraph 4(k) of the complaint, the
18 Administrator put in hypothetical evidence through the
19 testimony of Mr. Smith and one other witness as to weight
20 computations of a Lear Model 25 jet operating between
21 Sarasota, Florida, and New York in either direction. These
22 computations indicated that Interair's Lear Model 25 operated
23 on the day shown in this paragraph of the complaint were in
24 excess of 12,500 pounds maximum certificated takeoff weight;
25 however, none of the pilots called to testify had any

recollection as to the several critical factors such as weight of passengers, exact fuel load carried on a given flight, winds aloft and the like. Accordingly, it is found that the Administrator has failed to carry his burden of proof by a preponderance of the evidence as to Paragraph 4(k) of the complaint.

Finally, it is alleged that crew members on flights listed in Paragraph 4(L) of the complaint had not completed the required training proficiency required by Part 121 of the FAR. Consistent with the finding made with respect to the preceding paragraph of the complaint, it is likewise found that the Administrator has failed to carry his burden of proof.

Sanction: The Administrator seeks revokation of the air taxi/commercial operator's certificate now held by Interair. In view of the findings heretofore made for and against the Respondent, it is found that safety in air commerce or air transportation requires a suspension of the air taxi/commercial operator's certificate now held by Interair for a period of seven months, effective December 28th, 1978.

ORDER

Now, therefore it is ordered that the air taxi/commercial operator's certificate number 8-SO-33 is hereby suspended for a period of seven months effective December 28,

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1 1978.

John E. Faulk
Administrative Law Judge

2 Appeal -- Is it necessary to read the appeal

3 rights to the parties?

4 MR. HAGADONE: Not on behalf of the Administrator,

5 Your Honor.

6 MR. THORNTON: No, it's not necessary.

7 JUDGE FAULK: All right. The Public Hearing in

8 this matter is now closed.

9 [Whereupon, the above-entitled matter was concluded.]

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11 SERVICE:

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