amounted to a user fee and not an unlawful tax under Virginia Common Law.

Jonathan Wynne

GoJet Airlines, LLC v. Fed. Aviation Admin., 743 F.3d 1168 (8th Cir. 2014) (Holding that GoJet operated an unairworthy aircraft, and operated an aircraft in a careless or reckless manner so as to endanger the life or property of another. The Court also held that it could review the FAA's unilateral decision to terminate its VDRP process and commence a civil penalty action against GoJet, but found that the FAA did not abuse its discretion when it terminated its VDRP process and commenced a civil penalty action against GoJet).

While mechanics were replacing a brake assembly on an airplane operated by GoJet Airlines, LLC ("GoJet"), the mechanics neglected to remove a gear pin used to lock the assembly in place during the repairs. The mechanics failed to make an entry in a logbook that they needed to remove gear pins before flight, that they used during their repair. Therefore, on the plane's next flight, the pilots were forced to return to the departure airport after a warning light alerted them that the plane's landing gear would not retract.

After this incident, GoJet immediately disclosed this gear pin error to the Federal Aviation Administration ("FAA"). GoJet invoked the FAA's Voluntary Disclosure Reporting Program ("VDRP"), which grants an air carrier protection from civil penalty actions if the carrier "voluntarily discloses regulatory violations and satisfies VDRP compliance requirements." One such requirement is that the carrier must develop and execute a "comprehensive fix," which is an action plan proposed by the carrier and accepted by the FAA to "preclude recurrence of the apparent violation that has been voluntarily disclosed."

Subsequent to GoJet's disclosure of the gear pin error, the FAA accepted the VDRP notification, and GoJet submitted its proposed comprehensive fix plan. However, FAA Inspector Gary Cooper ("Cooper") rejected the proposal, finding that GoJet's proposal did not preclude the recurrence of its violation, and GoJet failed to propose an "acceptable alternative" prior to Cooper's deadline. Therefore, the FAA "commenced this civil penalty enforcement action."

At an administrative hearing in front of an administrative law judge, the FAA Administrator ruled that GoJet "violated FAA regulations when it failed to make the logbook entry and to remove the gear pin."

GoJet then filed a petition for review, requesting the Eighth Circuit Court of Appeals to review the FAA's agency action.

GoJet first argued that it did not violate 14 C.F.R. § 121.153(a)(2), which prohibits operating an unairworthy aircraft. The Court stated that the definition of an unairworthy aircraft is "well settled," and analyzed this issue using a two-part test. Using this test, the Court looked at whether GoJet's airplane 1) conformed with the type certificate approved for that model aircraft, and 2) was in a condition for safe operation.

Because GoJet's airplane's type certificate required that all landing gear must be operable, the Court upheld the Administrator's decision that GoJet had not conformed with its type-certificate. The Court noted that GoJet had not received an approved special operating protocol known as a Minimum Equipment List "MEL" which would have approved a change to a type design. As for the second part of the test, requiring a plane to be in a condition for safe operation, GoJet argued in its petition for judicial review that its airplane could be flown safely when gear pins had not been removed. However, the Court stated that it only reviews Administrator's final agency actions, not portions of an Administrator's decision, and found that the type-certificate non-conformity in this case regarding inoperable landing gear, was "so clearly related to safe operation of the airplane," that finding that the airplane was not airworthy was warranted based solely on "*this* non-conformity."

GoJet next argued that it did not violate 14 C.F.R. § 91.13(a), which prohibits operating an aircraft in a careless or reckless manner that endangers the life or property of another. The Administrator had ruled that careless or reckless operation of a plan was a "residual violation" of GoJet operating an unairworthy aircraft. GoJet however, argued that its case was extraordinary, since its plane could be safely flown with fixed landing gear, and did not threaten anyone's life or property.

The Court found that the Administrator's decision was not arbitrary or capricious, and found that showing potential danger was enough to prove a violation of § 91.13(a). Since Cooper had explained at the administrative hearing that inoperable landing gear posed potential danger, the Court found that the Administrator had not erred in finding that GoJet violated § 91.13(a).

GoJet next argued that the FAA erred procedurally when Cooper terminated the VDRP process unilaterally, and instigated civil penalty proceedings against GoJet. The Court reviewed GoJet's procedural claim for an abuse of discretion. It found that after Cooper did not accept GoJet's comprehensive fix, he gave GoJet an opportunity to submit a different comprehensive fix "or face enforcement action." Because GoJet failed to submit another comprehensive fix by the deadline Cooper had given, the Court found that FAA rightfully pursued a civil penalty action

against GoJet. Therefore, the Court did not find that the FAA had abused its discretion when it terminated the VDRP self-disclosure proceeding and commenced a civil penalty action against GoJet.

Accordingly, the Court denied GoJet's petition for review.

Brittany Choun

Town of Barnstable, Mass. v. F.A.A., 740 F.3d 681 (D.C. Cir. 2014) (holding that the FAA's 2012 determination that the Nantucket Sound offshore wind farm posed no hazard to air navigation was reasonable, and an environmental impact statement was not required for the wind farm under NEPA because it would serve no purpose).

The U.S. Department of Interior approved a lease to Cape Wind Associates ("Cape Wind") for the development of an offshore wind farm in Nantucket Sound. Before beginning construction, the lease required Cape Wind to obtain a Determination of No Hazard to Air Navigation ("no hazard") from the Federal Aviation Administration ("FAA"). In 2009, the FAA determined the proposed wind turbines would have an electromagnetic effect on local radar facilities and conducted an aeronautical study. After the study, the FAA issued a no hazard determination because the proposed structures would not have an adverse effect on aircraft operating under visual flight rules ("VFR") under § 6-3-8(c)(1) of the FAA Handbook ("Handbook") because the structures were less than 500 feet high and did not affect takeoffs or landings.

The town of Barnstable ("Town") successfully challenged the FAA's no hazard designation in *Town of Barnstable, Mass. v.* FAA, 659 F.3d 28 (D.C. Cir. 2011) ("Barnstable I"). In Barnstable I, the court held that the no hazard determinations were inadequately justified because the FAA did not address whether the turbines would require a change in the regular course or altitude of VFR flights, which would constitute an adverse effect under § 6-3-3.

By 2012, the radar at a nearby airport had been upgraded and the FAA concluded the structures would neither exceed an obstruction standard nor have a physical or electromagnetic effect on an air navigation facility. Therefore, the FAA determined that the Handbook required no further adverse effects analysis. Although the FAA did not believe further analysis was required, the FAA hired a company to study the project's effect on VFR flights. The company determined there would not be a significant effect on VFR flights.

The Town filed a petition for review of the FAA's no hazard determinations, claiming the FAA failed (1) to analyze the safety risks to VFR