

## **COMMENTS REGARDING OSC File No. DI-20-000827**

Please see comments below regarding the above OSC file. All comments are true and factual and are supported with attachments collected during my Certificate Holder Evaluation Process (CHEP) Inspection on Polar Airlines (P5CA) and Atlas Airlines (UIEA), which are maintained by the U.S. Office of Special Counsel (OSC) and other government entities. The Federal Aviation Administration (FAA) Investigation and the Flight Standards Service (FSS) investigation did not answer the questions submitted by the Office of Special Counsel. These answers have absolutely nothing to do with the original Memorandum of Request questions made for clarity to AFS 200. Aircraft Wet Lease Arrangements were never the driving issue in this investigation. Neither Atlas, nor Polar have Operations Specifications (OPS SPECS) for Aircraft Wet Lease Arrangements A028, even though they advertise this on their website. From website: "An Atlas Air ACMI (Aircraft, Crew, Maintenance and Insurance), or wet lease contract puts at your disposal not only a fully dedicated aircraft that is crewed, maintained, and insured, but also the global systems, scale, and efficiencies needed to meet your cargo needs—on your schedule, to your destinations, on time. Since our start in 1992 as an ACMI operator, we have become the world's largest ACMI provider with an unmatched global footprint and market knowledge".

After observing pilot training and checking in Miami, FL (MIA) and collecting data which was to be entered into the Safety Assurance System (SAS), it was discovered Polar Airlines did not have the Data Collection Tools (DCTs) used to enter observations and inspection findings in SAS. Polar was missing the DCT 2.1.2, Training of Check Airman and Instructors, as well as DCT 2.1.3, Simulators/Training Devices. Without these SAS DCTs, no inspection observation and evaluation findings could be entered into SAS for data Analysis, Assessment and Action (AAA).

Federal Aviation Regulation 14 CFR 121.401(a), each certificate holder shall: 14 CFR 121.401(a)(1) Establish and implement a training program that satisfies the requirements of this subpart and appendices E and F of this part and ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program. Polar Airlines fails to meet this regulation.

When speaking with company personnel, I received no clear answers as to why Polar was operating outside of the regulations. However, what I did receive, were letters from Atlas Airlines, speaking for Polar Airlines, as they considered them to be one and the same. No formal merger had been approved by the Department of Transportation (DOT), or the FAA. Atlas provided a copy of a request made to the Polar Principal Operations Inspector (POI), at the New York Flight Standards District Office (NYFSDO15) from the Polar Director of Operations (DO) to combine the two airlines training programs in 2011. This request was made and approved on the same day, with no official office tracking or management oversight. In the attached Memorandum, AFS 900 asked AFS 200 if the POI from the NYFSDO15 had the legal and

regulatory authority to approve such a request. In our investigations to this point, during the National Certificate Holder Evaluation Process (CHEP), we have not located any regulatory guidance, exemptions, deviations, previous approvals, or any historical precedent, which would allow Atlas Airlines (UIEA) and Polar Air Cargo (P5CA), to operate in this manner. Additional information will show during a telecon between AFS 900 and AFS 200, stating, "Polar does not have an approved training program under this part". During another telecon with AFS 200, AFS 280 and AFS 900, a member of the 280-team stated, "we have been letting them do it wrong for 10 years, how are we going to tell them to change it".

Atlas and Polar also used an in-house document, the Customer Service Agreement (CSA) for operating as a combined airline. This agreement between the two airlines was not an FAA accepted or approved document and was only signed by the DOs of Polar and Atlas. The FAA did not approve nor were they a signatory on this agreement. Also, it should be noted the CSA is not dated and Article 18 "implies" it is a merger agreement and the two companies will receive all the required Government approvals in the future, which they have not.

### **PERTINENT INFORMATION**

The FAA and Flight Standards investigations have morphed into something unrecognizable. Keeping in mind, this investigation started in October 2019, with a Memorandum from AFS 900 to AFS 200 asking for clarity regarding six questions. Somehow, after working through AFS 200, AFS 280 and AGC 240, for legal interpretation, only one of six original questions have been addressed. This is the Aircraft Wet Lease Arrangement. The Investigative Teams response to question 1c is inaccurate. Evidence gathered during the CHEP will show Atlas and Polar did not maintain Operational Control over all flights. After seven months, AFS 200 could not provide answers to the questions and directed me, by request of their management, to contact AFX-1. He provided no help and referred me back to the local Division Manager. AFS 200 did not provide any answers. AGC 240 after months passed stated "there was not enough evidence to proceed with an enforcement action". An enforcement action was never an option and was never brought up by anyone at AFS 900. Once again, we drift away from our original six questions.

Atlas and Polar also contend they each maintained Operation Control of their individual flights, which is incorrect. I was conducting a cockpit enroute inspection, where the flight release and the name of the Operational Control Center were different. Also, Polar and Atlas would interchange their names on flight plans and flight releases. This is not in compliance with 14 CFR Regulations.

### **SUMMARY PART 1**

During the four-year process which brings us to the investigation conclusion, there are other factors which need to be made public and were never addressed by anyone involved, including the highest levels of FAA Management. The following is an excerpt of findings I wish to include

in my comments which emphasize the safety issues not addressed. The evidence revealed little, or no actions were taken to ensure the FAA followed their own safety controls (FAA Guidance) and documented appropriately that the airline is or is not in compliance with Federal Regulations. This behavior represents a clear and present danger to the flying public.

### **SUMMARY OF US SENATE EXCERPT**

In testimony provided to the U.S. Senate Sub-Committee on Commerce, Science and Transportation, please see this excerpt from the Committee Investigative Report- December 2020, Aviation Safety Oversight, Section VII, Whistleblower Disclosures, Part C Atlas Airlines. Part C excerpt: In April 2020, Senate investigative staff spoke with whistleblower [REDACTED] an FAA Aviation Safety Inspector (ASI) with eighteen+ years of experience in the FAA, including four years as a team leader for the Certification Evaluation Program Office (CEPO) AFS 900. Inspector Clemmons previously worked for several Part 121, 135, and 125 air carriers, including positions as Captain, Instructor Pilot, Check Airman, Chief Pilot and Director of Operations. He is considered by the FAA to be a Subject Matter Expert (SME) in the training of flight crew members and in line station operations. He has approximately 12,000+ total combined flight hours, and 10,000+ as Pilot in Command (PIC). Inspector [REDACTED] shared numerous disclosures with Committee staff alleging violations of regulations, undermining aviation safety and retaliation and misconduct by FAA managers. Inspector [REDACTED] worked on the FAA's National Certificate Holder Evaluation Process (CHEP) Team for both Atlas Airlines and Polar Air Cargo in 2019. According to the FAA a "national CHEP evaluates part 121 air carriers, part 145 repair stations, and part 135 certificate holders for regulatory compliance on a five-year schedule". Inspector [REDACTED] has participated in over twenty-five+ previous CHEP Inspections and as Team Leader for approximately half of them. Inspector [REDACTED] stated the findings for each evaluation of Atlas and Polar were "the worst he had ever seen for any certificate holders". During the Atlas Air inspection, Inspector [REDACTED] discovered the Principal Operations Inspector (POI) for the local Certificate Management Office (NYFSDO15) had authorized Polar Air Cargo to transfer its pilots to the Atlas Airline's training program to satisfy requirements for pilot training in 2011. The CHEP team that Inspector [REDACTED] was working with was unable to find any regulation or FAA guidance that provided such authority to the POI. According to 14 CFR Part 121.401(a)(1) Training Program, each operator must provide enough flight instructors and approved check airmen to conduct the flight training and checks required under this part. Currently, CMO and Flight Standards management assert Atlas and Polar Air are in compliance with following the FAA's rules and regulations and maintaining all documentation required by the FAA due to a memo granted by the POI in 2011. This memo appears to be in direct conflict with 14 CFR 121.401(a). This deviation also appears to perpetuate findings related to insufficient training and oversight of check airmen and related activities cited in a 2017 DOT OIG report. In a memo on October 16th, 2019, the Assistant Manager for the FAA's Certification and Evaluation Program Office stated that federal regulations require that each certificate holder shall provide its own flight instructors, simulator

instructors, and approved check airmen to conduct the required training and checking. Inspector [REDACTED] has continued to inquire about the status of this finding and non-compliance while escalating the issue to FAA Senior Management. He has not received a conclusive response to date. While elevating concerns, a Senior FAA Manager at the DFW CMO made two calls to Inspector [REDACTED] CHEP supervisor. In the first call the message to Inspector [REDACTED] was "the CHEP is over, and his part is done, and he should just move on". The message in the second call was, "[REDACTED] apparently has taken this on as his cause now". Inspector [REDACTED] perceived this communication as a threat of retaliation for doing his job correctly and upholding his Oath to his country and the flying public. According to emails reviewed by the Committee, an official from AFS 280 stated in a meeting, "we have been letting them operate outside the regulations since 2011, how are we going to tell them they have to stop". AFS 280 is the Air Transportation Division, Air Carrier Training Systems and Voluntary Safety Reporting Programs (VSRP) Branch. Another FAA official stated to Committee staff that this issue was appealed to the Office of Safety Standards (AFS) 200 in October 2019. AFS 200 is responsible for managing, developing, evaluating, operational policies and guidance for air carrier operations aspects of 14 CFR Part 121, 63, and 65; while providing consistent and timely information to internal and external stakeholders. After eight months, the matter was finally elevated to the Director level of the FAA and no decision was received. Finally, in July 2020, the matter was referred to the FAA Office of General Counsel where it remains under consideration. During staff interviews conducted by the Committee in July 2020, Committee staff asked why an opinion had not been provided by FAA counsel over a year later. A senior flight standards leader acknowledged the issue and advised it was being considered by AGC. Committee staff reiterated this question again on August 25, 2020, to DOT general counsel and have yet to receive a response. Inspector [REDACTED] indicated he has filed a complaint with the OSC which was accepted and referred to the DOT OIG for investigation.

## **SUMMARY PART 2**

The preceding excerpt from testimony provided to U.S. Senate Investigators addresses the tip of the iceberg in regard to Atlas and Polar Airlines. FAA Management at local oversight levels, including the operators Certificate Management Team (CMT) and upper-level management at the Dallas Ft. Worth Certificate Management Office (DFW CMO), acted to protect Atlas and Polar Airlines from all investigations which might have negative public connotations. Inspectors were reassigned to other carriers for attempting to bring Atlas and Polar into compliance with Federal Regulations, which is still occurring today. During all my communications with my Atlas Point of Contact (POC), attempting to gather information for the CHEP, I found it interesting our correspondence included local Atlas and Polar CMT upper management and on a higher level, upper management at the DFW CMO, including a Division Manager were copied on our emails. This was extremely unusual and showed a personal interest in what was taking place in the CHEP Evaluation. This could be interpreted as a "cozy relationship" between FAA Managers and the airlines, which is still ongoing.

Testimony was also provided to the DOT Office of the Inspector General, of which no report or conclusions of their investigation have been provided, or to my knowledge, made public.

## **CONCLUSION**

In this case and others, the FAA has failed to support their Inspectors work and have used intimidation to cover up past mistakes made by Inspectors in 2011. I find it unsettling that this problem may have been resolved with request for deviations and/or exemptions to OPS SPECS, training programs, training manuals, etc. by the operators.

Today, Polar Airlines still does not have the SAS DCTs for Check Airman and Instructors, or Simulators/Training Devices and continue to operate outside of the Federal Aviation Regulations, while Management at all levels are still looking the other way and continue to intimidate the Principal Inspectors trying to uphold their Oaths to their country and the flying public's safety. What happened to the FAA's favorite policy speak? "If you see something, say something".

Thank you,

[REDACTED]

[REDACTED]

Aviation Safety Inspector-Air Carrier Operations



# Federal Aviation Administration

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## Memorandum

Date: **October 16th, 2019**

To: [REDACTED], Manager, Air Transportation Division, AFS-200

From: [REDACTED], Assistant Manager, Certification and Evaluation  
Program Office (CEPO), AFS-910

Prepared by: [REDACTED], Aviation Safety Inspector – Operations, 703-  
334-1183, Subject:

Request for Clarification – No evidence of Regulatory Authority for current certificate holders practice to consolidate Atlas Airlines (UIEA) and Polar Air Cargo (P5CA), to conduct Pilot Training and Checking using the Atlas Airlines Training Program and assigning pilots to crew both certificates' flight operations from a combined pilot seniority list. In our investigations to this point, during the National Certificate Holder Evaluation Process (CHEP), we have not located any regulatory guidance, exemptions, deviations, previous approvals, or any historical precedent, which would allow Atlas Airlines (UIEA) and Polar Air Cargo (P5CA), to operate in this manner.

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### Supplemental Information to Original Memorandum:

1. Atlas Airlines and Polar Air Cargo are not authorized Aircraft Wet Lease Arrangements, in accordance with (IAW) Operations Specifications (OpSpec) A004, Section B, and neither have OpSpec A028, Aircraft Wet Lease Arrangements. In addition, Polar and Atlas do not have any regulatory authority to operate under a name different than what is listed in OpSpec A001. (Attachment 1 & 2) So, the operation of using the Qantas call sign is contrary to the Atlas OpSpec A001.
2. Title 14, Part 121, Subpart N, Paragraph 121.401(a), states; each certificate holder shall... and then continues to list the requirements of the training program. Paragraph 121.401(a)(4), states; they shall provide enough flight instructors, simulator instructors and approved check airmen to conduct the required flight training and flight checks, and simulator training courses permitted under this part. This requirement falls to the certificate holder, not another or additional certificate holder.
3. "Shall" denotes a mandatory requirement and the NYFSDO 15 did not have the authority to grant an exemption to this regulation. If Atlas and Polar wanted to proceed as requested, they would need an exemption from the regulation showing an equivalent level of safety and demonstrate it would be in the public interest to be granted this exemption. No exemptions

were located, which list a request for, or an exemption granted, for Atlas or Polar regarding the regulations in OpSpec A005.

4. In the NYFSDO 15 letter authorizing the transfer of checking and training to Atlas from Polar states; “after review of the pertinent Federal Aviation Regulations and Guidance,” but does not provide specific references, to which regulations and guidance were reviewed. The CHEP Team cannot locate any regulations, or guidance, which would authorize this approval.
5. For economic reasons, Atlas and Polar are managed by one legal entity, but have two separate certificates. The FAA requires each certificate holder to maintain operations in compliance with the regulations and the certificate holders OpSpecs, or to surrender the certificate. If Atlas and Polar wish to operate outside of the published regulations, they must apply for an exemption from each rule they wish to deviate. The certificate holder petitions the FAA under Title 14, Part 11, Section 11.15. Notwithstanding this process, the certificate holder becomes obligated to comply with the requirements of the regulations and their OpSpecs.
6. The 8900.1, Volume 3, Chapter 20, Section 2, Paragraph 3-1430, provides a standard method for approving a check pilot to serve multiple operators, as long as they are compatible. The FAA does not have regulations, or handbook guidance, which would allow Atlas and Polar to operate in their current form. Headquarters may grant authority to allow one check ride to suffice for both Atlas and Polar, but no request, or approval of such request, can be located.

The AFS-910 CHEP Team would like to thank the AFS-280 SMEs in advance for any assistance they are able to provide, in consideration of this new information.

Sincerely,

[REDACTED]

## Redacted Names

### Original Memorandum

- 1) [REDACTED] Manager AFS 200
- 2) [REDACTED] Asst. Manager AFS 900 CEPO
- 3) [REDACTED] Operations Inspector (ASI) AFS 900 CEPO
- 4) [REDACTED] Asst. Manager AFS 900