

Served: May 13, 1992

NTSB Order No. EA-3549

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of April, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

TIMOTHY J. HAGERTY,

Respondent.

OPINION AND ORDER

Respondent has appealed from an initial decision that Administrative Law Judge William R. Mullins rendered at the conclusion of an evidentiary hearing held May 9, 1989.¹ By that decision, the law judge affirmed an order the Administrator issued suspending respondent's commercial pilot certificate for 90 days charging that he had conducted a charter flight carrying passengers for compensation when he had not completed all of the flight time, oral and written checks, flight checks, and proficiency checks, as well as the

¹A copy of the oral initial decision, an excerpt from the transcript, is attached.

initial and recurrent training, required of any pilot who conducts a commercial (revenue) flight under Part 135 of the Federal Aviation Regulations (FAR).² The law judge found, however, that a charge under FAR section 91.9 could not be sustained, concluding that the flight respondent conducted was not careless or reckless. Based upon the circumstances, the law judge reduced the sanction to a 30-day suspension and the Administrator did not appeal from either the dismissal of the charge of careless or reckless operation or from the sanction reduction.

We have reviewed all of the matters respondent raises on appeal from the initial decision. However, we determine that the initial decision requires affirmance. We address each of respondent's contentions in support of the elimination of sanction.

Respondent first argues that he cannot be held to a strict liability standard but that his actions must be evaluated in terms of the information his employer provided him as to the nature of the flight. Respondent contends that his employer, the owner of Mid-Plains Aviation, a fixed-base operator for which respondent was employed as a flight instructor, directed him to transport a gentleman, the local Chief of Police, from Norfolk, Nebraska, to Norman, Oklahoma,

²The Administrator charged respondent with violations of FAR sections 135.243(b)(2), 135.293(a) and (b), 135.299(a), 135.343, and 91.9. The text of these regulations is included in an Appendix to this opinion.

for a two-fold purpose, i.e., to permit the passenger to visit his wife who had been injured in an automobile accident, and, with the possibility of encouraging his passenger to take flight instruction. Respondent contends that he did not discuss compensation with his employer before the flight and indicates that he was not compensated for it.

The Board does not find merit in these arguments. In the first place, the flight was a lengthy one, there were two passengers on board on departure and four passengers on the return trip, and respondent should have known that the passengers were paying for the flight. Respondent cites Administrator v. Garnto, 3 NTSB 4119 (1981), a case that involved the transporting of a package from Georgia to Tennessee by a pilot who did not know the operation was for compensation because he did not know that his employer did not own the package. The Board found that the pilot did not know the commercial nature of the flight and that his lack of knowledge, under the particular circumstances of the case, was exculpatory. We think that the circumstances of respondent's flight are distinguishable from those in Garnto.

The invoice placed in evidence (Exh. A-1) reveals that, two days after the flight, the passenger who made the arrangements was billed \$600 for a charter. Respondent logged 6.5 hours of flight time, merely noting the name of the passenger, without further information (Exh. A-2). Other relevant facts are that respondent's employer employed two

other pilots who conducted the fixed base operator's charter flights while respondent had been employed as a flight instructor. When respondent was given an assignment clearly outside the scope of his job description and, more importantly, his certificate, we agree with the law judge that the respondent should have known that the flight was a revenue flight, hence regulated under FAR Part 135. If he didn't, the circumstances should have prompted him to inquire.

Similarly, the Board finds no merit in respondent's contention that he was following the instructions of his employer. A certificate holder is fairly expected to have a working knowledge of the regulations applicable to any operation he undertakes, and it is incumbent upon the pilot in command to ensure that any flight he conducts meets applicable regulations. To the extent that respondent may have been under the impression that the flight was for a "humanitarian" purpose, and that no charge would be made, it was incumbent upon him to ask his employer to verify that fact.³

Finally, respondent contends that he was a new trainee,

³Moreover, the suggestion that he believed that this lengthy cross country flight was a demonstration flight to attract a new student to flight instruction is difficult to credit. Again, we agree with the law judge that respondent either knew or should have known the revenue nature of the flight he undertook, or, if he did not know, he was obliged to ask his employer.

that he has learned his lesson, that he subsequently refused to undertake non-instructional flights, and that he has since resigned from Mid-Plains' employ. He also points to his remorseful attitude in that he learned too late the requirements of FAR Part 135. We find, however, as did the law judge, that he undertook a flight, carrying passengers, for compensation, when the passengers did not know that he was not qualified to do so. The Administrator has seen fit to promulgate regulations to require that pilots who undertake such flights receive additional training, experience, and evaluation to ensure that such flights are conducted with the highest degree of safety. We think that whatever mitigation respondent's youth and inexperience warrant has already been adequately recognized by the law judge reduction in sanction.⁴

⁴We note, for the record, that we do not here decide the correctness of the law judge's determination to dismiss the FAR section 91.9 charge. We note, nevertheless, that the Administrator, for safety reasons, has chosen to impose a higher standard of care on operators who carry passengers for compensation. While, in this instance, respondent's passengers had no complaints and the flight was apparently conducted with skill and care, the fact that respondent may have conducted the flight safely or without incident does not necessarily mean that his operation of a flight for which he was not qualified did not endanger his passengers within the meaning of section 91.9.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, and the initial decision are affirmed; and
3. The 30-day suspension of respondent's commercial pilot certificate shall begin 30 days after service of this order.⁵

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁵For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR Section 61.19(f).