

SERVED: August 19, 1992

NTSB Order No. EA-3664

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 13th day of August, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	
)	
ROBERT M. SCOTT and)	
FLOYD A. SUTTER,)	
Respondents.)	
)	
)	

Dockets SE-12599 and
SE-12600

OPINION AND ORDER

The respondents, representing themselves, have appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman rendered in this proceeding on July 8, 1992, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed emergency orders issued by the Administrator that revoked the respondents' student pilot certificates for their

¹An excerpt from the hearing transcript containing the initial decision is attached.

alleged violations of sections 61.89(a)(1) and 91.13(a) of the Federal Aviation Regulations (FAR), 14 CFR Parts 61 and 91.² For the reasons discussed below, we will deny the appeals.³

The emergency orders, which served as the complaints in this consolidated proceeding, alleged that each of the respondents, despite the section 61.89(a)(1) prohibition on passenger-carrying applicable to them as student pilots, had twice operated a Cessna 172 aircraft with another individual aboard in the vicinity of Cambridge, Minnesota.⁴ The Administrator's case included eyewitness testimony placing the respondents in the aircraft together while taxiing, taking off and landing numerous times at the Cambridge Municipal Airport on the two dates in issue. The respondents' defense included their vehement denials of having

²FAR sections 61.89(a)(1) and 91.13(a) provide as follows:

"§61.89 General limitations.

(a) A student pilot may not act as pilot in command of an aircraft--

(1) That is carrying a passenger....

§91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator has filed a reply brief opposing the appeals.

⁴The record establishes that the aircraft, N2852U, was jointly owned by the respondents. The Administrator's evidence, credited by the law judge, supports a finding that the passenger each respondent carried during some portion of the two flights was the other respondent; that is, they flew together on the April 4 and 5, 1992 flights, with stops during touch and go practice so that they could change position and take turns operating the controls from the left seat.

flown with each other. The law judge resolved these contradictory showings by making a credibility assessment in favor of the witnesses testifying for the Administrator.

We agree with the Administrator that the respondents in their challenge to the initial decision have not presented any substantial questions or identified any prejudicial error. Rather, for the most part, they have merely asserted their disagreement with the law judge's acceptance of the testimony of the Administrator's witnesses despite their efforts to discredit both it and the adequacy of the FAA's investigation of the matter. Respondents have not shown that any of the law judge's findings, conclusions, or rulings during the hearing were contrary to law or an abuse of discretion, or otherwise established a basis either for overturning his judgment that they violated the regulations cited in the emergency orders or for concluding that they did not receive a fair and impartial hearing.

For the foregoing reasons, we find that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's orders.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appeals of the respondents are denied, and
2. The initial decision and the emergency orders of revocation are affirmed.

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