

Sanction was waived pursuant to the Aviation Safety Reporting Program. We grant the appeal and dismiss the complaint.

Respondent was the non-flying, pilot-in-command (PIC) of US Air Flight 1009 on October 29, 1989. The Administrator's order alleged that the aircraft landed on Runway 24L (left) of Los Angeles International Airport, when it was cleared to land on Runway 24R (right). The only issue at the hearing was the extent of ATC's contribution to the error. Relevant portions of the tower tape contain the following conversations (with some emphasis added):

| <u>TIME</u> | <u>SPEAKER</u> | <u>COMMUNICATIONS</u> |
|---------------|-------------------|---|
| 5:45:42 | AR-1 ³ | US Air ten zero nine heavy Los Angeles Approach change your ILS frequency to one zero eight point five, turn |
| (..continued) | | |
| | | obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained. |

§ 91.9 (now 91.13(a)) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§ 91.87(h) (now 91.129) read:

Clearances required. No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

³Approach control.

right ten degrees intercept
maintain one zero thousand traffic
is twelve o'clock five miles a
heavy seven sixty seven for the
south complex.

| | | |
|----------|----------|--|
| 05:45:55 | USA 1009 | Okay US Air ten oh nine turn north and we're twenty four right we'll stop at ten. |
| 05:47:13 | AR-1 | US Air ten zero nine you're six miles from Denay cross Denay at or above eight thousand cleared for ILS runway two four right approach sidestep two four left. Caution wake turbulence there's a heavy airbus just west of Santa Monica that will turn in ahead of you for runway two four right. I'll point the traffic out when you get closer. |
| 05:47:30 | USA 1009 | Okay Denay at eight and we're cleared for ILS approach to twenty four right with a sidestep US ten oh nine. |
| 05:48:52 | AR-1 | US Air ten zero niner reduce speed to two one zero. |
| 05:48:52 | USA 1009 | Ten oh nine US Air we[']re slowin. |
| 05:50:12 | AR-1 | US Air ten zero nine the heavy airbus is at ah one o'clock seven miles four thousand on base leg. ⁴ |
| 05:50:21 | USA 1009 | Okay we got'em US Air ten zero nine. |
| 05:50:23 | AR-1 | US Air ten zero niner heavy follow that traffic to the airport that aircraft is on base for runway two four right cleared for visual approach runway two four left. |
| 05:50:32 | USA 1009 | Okay we're cleared for visual twenty four left US Air ten oh nine. |

⁴I.e., on base leg to 24R (see 05:47:13 communication).

05:50:53 AR-1 US Air ten zero niner contact Los Angeles tower one three point niner at Romen.

05:50:56 USA 1009 Thirty three nine at Romen good night.

05:50:58 AR-1 Good night.

05:52:05 USA 1009 And US Air ten oh nine's with you.

05:52:09 LC-2⁵ I'm sorry I missed the last call, I was off line.

05:52:12 USA 1009 US Air ten oh nine's with you.

05:52:14 LC-2 US Air ten zero nine heavy Los Angeles tower caution wake turbulence preceded by heavy DC-10 to the left heavy airbus short final for the right, winds zero five zero at four **runway two four right cleared to land.**

05:52:24 USA 1009 US Air ten oh nine.

In affirming all the claimed violations of the Federal Aviation Regulations (FARs), the law judge found that the conversation with AR-1 did not produce a clearance to land, but only an approach clearance, and that, when the clearance to land was given by LC-2, it was not heard correctly. The law judge recognized ATC involvement in this incident, but determined that it would affect sanction only, not excuse the violation. Tr. at 71.

In respondent's appeal, he continues to argue that the 05:52:14 transmission could not reasonably be understood as a changed clearance because the instruction to runway 24 right was "buried" in routine weather and traffic information and the

⁵Local control.

controller used non-standard phraseology. Respondent argues that ATC was required to state "cleared to land, runway two four right." With the prescribed runway identified at the end of the sentence (see Exhibit R-3), respondent allegedly would not have made the mistake he did.⁶ Moreover, respondent argues, the deviation would not have occurred absent the lack of communication between approach and local control.

The Administrator reiterates, in reply, that AR-1 did not give respondent a landing clearance, but only provided an approach clearance. The local controller's clearance to runway 24R was not so different from recommended language, the Administrator continues, and respondent simply did not listen carefully, expecting to hear 24L. The Administrator also argues that respondent assumed the risk when he failed to read back the last clearance.

We have long held that we are not compelled to affirm the Administrator's order when ATC is the initiating or principal cause of the violation of the regulations. See, e.g., Administrator v. Snead, 2 NTSB 262 (1973). We have an equally well-established policy of sanctioning deviations from arguably misunderstood clearances, where the pilot has not read the clearance back to the controller. See, e.g., Administrator v. Friesen and Ashcraft, NTSB Order EA-3203 (1990). The present case has elements of both these doctrines in conflict.

⁶Respondent also suggests that his failure to read back the information transmitted confirms that he did not understand the message as a clearance.

As the tape transcripts above indicate, approach control led respondent to believe that he would be landing on runway 24L. Indeed, respondent read back approach clearances to 24L twice. Respondent was, therefore, not unreasonable in expecting that he would be cleared to land on 24L, though it remained his duty to stay attentive to the actual receipt of a landing clearance (which he acknowledges he could not receive from the approach controller). Importantly, the likelihood of respondent's expectation and the probability that such expectations may precipitate later misunderstandings is implicitly acknowledged by ATC policy, at least as developed in this record. Specifically, the local controller acknowledged that, if he had been aware that approach had given 24L as the expected runway, he would have given the landing clearance differently, no doubt to highlight the change in plans. Tr. at 38.

The local controller did not, however, make any attempt to overcome what we may think of as the expectation-bred mental inertia of Flight 1009. There was a failure of communication between the AR-1 approach control station and the LC-2 station that was managing runways 24L and 24R. The local controller testified that "the assigned runway from approach control is supposed to be displayed" on the local control BRITE radar screen.⁷ Tr. at 29. However, that screen indicated that the assigned runway for Flight 1009 was 24R (id.), not 24L, as approach control had consistently told the aircraft. Thus, LC-2

⁷Bright Radar Indicator Tower Equipment.

had no reason to think that his clearance to the aircraft to land on 24R was anything other than what the aircraft expected, and the result was a "buried" clearance which did not call attention to the last minute change intended by the controller.

We agree with the implied sentiment in the local controller's statement that the clearance would have been given differently if the change in expected runway had been known: any change at that late point in the approach, assuming it can reasonably be made at all, should be clear. In view of the earlier, repeated directions to runway 24L, the change was not clear from the 05:52:14 transmission. Nevertheless, we are still confronted by respondent's failure to read the landing clearance back. Reading a landing clearance back is clearly the preferred practice. In the absence of ATC involvement, the failure to have read this clearance back would have led to the finding of a violation. But, on balance, and given the significant ATC involvement and the local controller's admissions, we decline to sanction respondent's mistake.⁸

⁸For the above reasons, we do not consider Administrator v. Friesen and Ashcraft, supra, cited by the Administrator, as dispositive. We note that issues of ATC involvement were not compelling in that case, nor was there the pattern of communication that existed here.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The Administrator's order is dismissed.

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