

SERVED: February 26, 2003

NTSB Order No. EA-5021

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 19th day of February, 2003

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-16311
)	and SE-16312
)	
)	
CHRYSTAL LEWIS CAMPBELL and)	
JAMES RONALD JONES,)	
)	
Respondents.)	
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ORDER

Respondents have appealed from the oral initial decision of Administrative Law Judge William A. Pope, issued on January 30, 2002, following an evidentiary hearing.¹ The law judge affirmed the Administrator's order of suspension with waiver of penalty, on finding that respondents had violated Sections 91.13(a) and 91.123(b) of the Federal Aviation Regulations (FARs), 14 C.F.R. Part 91.²

¹The initial decision, an excerpt from the transcript, is attached.

²Section 91.123(b) prohibits non-emergency operation of an aircraft contrary to an air traffic control (ATC) instruction. Section 91.13(a) prohibits careless or reckless operations so as to endanger the life or property of another. Respondent Jones, as pilot-in-command (PIC), was also charged with violating 91.123(a), which prohibits PICs from deviating from clearances

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This case stems from an altitude deviation by respondents while operating as PIC (Jones) and first officer (Campbell) of Delta Flight Number 1476 from Miami International Airport to Atlanta Hartsfield International Airport. During that flight, ATC issued instructions to respondents to maintain flight level 310. Somewhat later, ATC issued instructions to U.S. Airways Flight Number 1246 to climb to and maintain flight level 330. Unfortunately, this clearance was intercepted and misunderstood by respondents as intended for Delta 1476.

Respondents responded to ATC by saying that Flight 1476 was leaving 310 for 330, and they received no immediate response correcting their error. One minute and eleven seconds later, Controller Jose Camaraza advised Delta 1476 that they had been told to maintain flight level 310, and noted area traffic. Respondents replied that they were in the course of climbing to flight level 330, but the controller responded that "it wasn't for you," and instructed them to turn right and descend to and maintain flight level 310.

On appeal, respondents advance a number of contentions. As a threshold matter, they claim that the law judge erred in denying their motion for dismissal at the close of the Administrator's case based on their argument that there was no proof that respondents deviated from the ATC instruction to maintain flight level 310.³

On consideration of the issues presented in the parties' briefs on the respondents' appeal from the law judge's decision, the Board finds itself unable to reach a majority decision.⁴ The

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absent an emergency or an advisory not applicable here. The law judge affirmed that allegation as well. Because respondents both filed qualifying Aviation Safety Reporting Program reports, the sanctions were waived.

³The denial of the motion to dismiss is not a ruling we would entertain on appeal in the circumstances of this case. See Administrator v. Lindsay, NTSB Order No. EA-4095 at 5 (1994) ("[s]ince respondent put on evidence in defense of the charges after the rejection of his motion to dismiss ... he effectively waived his right to object to the law judge's ruling, for once the case is appealed to us, the issue becomes not the correctness of the law judge's view that the burden of going forward with evidence had shifted to the respondent, but, rather, the sufficiency of the evidence in the record, viewed as a whole.").

⁴Acting Chairman Hammerschmidt and Member Goglia would grant the appeal, and Members Black and Carmody would deny it.

initial decision will thus become the law of the case, without binding effect on the Board in future proceedings. See Rule 43, 49 C.F.R. § 821.43.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeal is dismissed; and
2. The initial decision shall become final on service of this order.

HAMMERSCHMIDT, Acting Chairman, and GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above order.