

1 UNITED STATES OF AMERICA
2 NATIONAL TRANSPORTATION SAFETY BOARD



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4 -----
5 Langhorne M. Bond, Administrator,
6 Federal Aviation Administration,

7 Complainant,

8 v.

: Docket SE-3997

9 Emery J. Ingham,

10 Respondent.
11 -----

12 Portland, Oregon
13 February 8, 1979

14 Jeff D. Dorroh for complainant.

15 James A. Luebke for respondent.

16
17 INITIAL DECISION AND ORDER

18 Jerrell R. Davis, Administrative Law Judge:

19
20 On September 8, 1978, complainant, pursuant to
21 Section 609 of the Federal Aviation Act of 1958, as amended,
22 issued an order suspending respondent's private pilot cer-
23 tificate for 60 days.

24 Respondent was charged with operating on August 7,
25 1977, as pilot-in-command, civil aircraft /N\ 9499J, a Piper

1 PA-28-180 (also referred to in aviation jargon as a
2 Cherokee), on a flight in the vicinity of Aero Acres Airport,
3 Oregon City, Oregon, during which flight respondent operated
4 the aircraft closer than 500 feet to persons and property
5 on the ground.

6 Complainant asserted that such operation was in
7 violation of the following sections of the Federal Aviation
8 Regulations (FAR):

9 (a) Section 91.9, in that respondent operated
10 an aircraft in a careless or reckless manner so as to
11 endanger the ^{life} ~~life~~ or property of another; and

12 (b) Section 91.79(c), in that respondent operated
13 an aircraft over other than a congested area closer than
14 500 feet to persons and property, when not necessary for
15 takeoff or landing.

16 Respondent appealed the order of suspension and
17 such order was subsequently filed and served as the complaint
18 herein, pursuant to Section 821.31 of the Rules of Practice.

19 In his filed answer, respondent admitted Paragraph 1 of the
20 complaint and denied, "each and every other allegation and
21 thing contained therein."

22 An evidentiary hearing on the appeal was held
23 today in Portland, Oregon. Section 821.32 of the Rules of
24 Practice provides that, in proceedings under Section 609 of
25 the Act, the burden shall be upon the complainant.

The Evidence

1
2 The relevant testimony and proffered exhibits
3 may be summarized as follows:

4 Richard C. Karlik is a draftsman for Pacific
5 Power and Light Company and resides just outside the city
6 limits of Oregon City, Oregon. On Sunday, August, 7, 1977
7 in the early evening around seven p.m., he was in the
8 bedroom area of his house, at which time his wife, ~~she was~~
9 ~~on the patio~~ who was on the outside patio of the house,
10 called to him to come outside quickly. He went to the
11 back door and looked out and saw an aircraft flying off
12 towards the south. The aircraft was flying in a southeasterly
13 direction at a horizontal distance of some 300 to 400 feet
14 from his point of view at an estimated altitude of 100
15 feet.

16 Karlik further testified that the aircraft made
17 a 180-degree turn and headed back toward his house at an
18 altitude of 100 feet descending, and that the aircraft
19 passed over the powerlines in front of him and passed ten
20 to twenty feet east of his backyard fence at an altitude
21 of fifty feet. He based his altitude estimates upon trees
22 in the near vicinity measuring some fifty to sixty feet in
23 height, some powerlines measuring twenty to twenty-five
24 feet in height, and some transmission lines further away
25 measuring some sixty feet in height. As the aircraft passed

1 the rear of his lot at an estimated altitude of fifty feet,
2 he called out the "N" number observed on the side of the
3 aircraft and his wife recorded it as N 9499 J. He stated
4 that he focused his attention entirely on the "N" number
5 and did not pay too much attention to the other identifying
6 marks or color on the aircraft.

7 This witness offered Exhibit C-1, which is a
8 sketch showing the location of his house and that portion
9 of the flight path of the aircraft observed by him. He
10 described visibility at the time of the incident as "very
11 light". He described the color of the aircraft as brown
12 and cream in color -- primarily cream. He had no recollec-
13 tion of the position of the wheels of the aircraft.

14 Karlik's wife, Glenda, was standing on the patio
15 of her house underneath the cover on Sunday, August 7, 1977,
16 at a time estimated to be between seven p.m. and eight p.m.
17 Her five-year-old daughter was in the yard at that time and
18 called to her attention an aircraft flying in from the north
19 She first observed the aircraft as it flew over a fence
20 separating her house and her next-door neighbor's house.
21 These two houses are approximately sixty feet apart. She
22 observed the wings dipping between the houses and estimated
23 the altitude of the aircraft to be 100 feet. She stated
24 that the aircraft was light-colored. After the aircraft
25 made a 180-degree turn and flew back behind her house, at

1 an altitude estimated to be thirty feet, she wrote down the
2 "N" number of the aircraft as it was called out to her by
3 her husband, and shortly thereafter she called the FAA
4 office and made a report of the incident. She remembered
5 observing a distinct outline of two persons in the aircraft.
6 The low flight of the aircraft caused her to feel fearful
7 and threatened. She depicted on Exhibit C-1 in black ink
8 that portion of the flight path of the aircraft that she
9 observed and indicated that the remaining portion of the
10 flight path of the aircraft was similar to that shown by
11 her husband on this exhibit.

12 This witness further testified that, in view of a
13 similar problem with a low-flying aircraft about three years
14 prior thereto, she had been cautioned by FAA officials that
15 in any future incident of that type she should concentrate
16 on obtaining the "N" number of the aircraft and she stated
17 that she focused her attention on the "N" number and had no
18 recollection of whether the wheels were down or up and did
19 not pay too much attention to the other markings on the
20 aircraft.

21 The Karliks reported the incident the same day,
22 as reflected in Exhibit C-2. In this letter they identified
23 the aircraft by "N" number, and stated that the first pass
24 was over their carport, flying in a southeasterly direction,
25 and that the first pass was about 200 feet altitude and the

1 second pass, as it made the 180-degree turn, was at an
2 altitude of about 100 feet. Exhibit A-3 is a sketch pre-
3 pared by Richard Karlik which was attached to the letter
4 dated August 7, 1977. The flight path of the aircraft is
5 depicted on this sketch and shows the aircraft coming
6 directly over the Karliks' house, rather than between their
7 house and the house next door.

8 Wesley S. Greene, General Aviation Operations
9 Inspector of the Portland GADO, conducted an investigation
10 of the reported incident. He offered Exhibit C-10, a
11 sectional map, showing the location of the Karlik residence
12 and two neighboring airports, namely, Aero Acres Airport and
13 Troh's Airport.

14 On August 23, 1977, the Inspector talked to Robert
15 Thieman, the flight instructor and general manager of the
16 Troh's Airport. Thieman informed him that respondent was
17 the pilot-in-command of /N\ 9499 J on August 7, 1977.

18 This witness, ^{sponsored} ~~referred~~ Exhibit C-13, which is a
19 letter he wrote to respondent on August 30, 1977. In that
20 letter the inspector advised the respondent that he
21 (respondent) has been identified as the pilot-in-command
22 of the Cherokee on August 7, 1977 approximately two miles
23 southeast of Oregon City. He also advised respondent in
24 that letter that the aircraft alleged to have been operated
25 by respondent was observed on two different passes at an

1 altitude of approximately 200 feet and 100 feet from a
2 person, and structures on the ground, and that the inspector
3 believed that respondent was in violation of Sections 91.9
4 and 91.79(c) of the FAR.

5 Exhibit C-14 is a handwritten letter by respondent
6 dated September 9, 1977. In that letter respondent acknow-
7 ledged receipt of the inspector's letter dated August 30
8 and conceded that he was flying the Cherokee on August 7th
9 in the Oregon City area around Ferguson Road, but he stoutly
10 denied that he ever flew closer than 500 feet to persons and
11 property on the ground.

12 The inspector never inquired whether the aircraft
13 may have been rented to anyone other than respondent, nor
14 did he inquire about the color of the aircraft.

15 During the month of August 1977, Robert Thieman
16 kept records of aircraft dispatched at ~~the~~ Troh's Airport.
17 In commenting on the Exhibit R-4, a typed sheet of aircraft
18 ~~usage at Troh's Airport with respect to the Cherokee here~~
19 ~~involved between August 1 and August 27, 1977,~~ Thieman
20 stated that this document indicated that respondent was the
21 only person who operated the Cherokee between August 6th
22 and August 10th. He stated that he checked the records on
23 August 23, 1977, the date that Inspector Greene called him
24 inquiring with respect to the ownership of the aircraft and
25 the pilot-in-command on August 7th.

1 This witness described the color of the Cherokee
2 as basically white with light green accent. He described
3 the "N" numbers as being dark green and he also stated that
4 the aircraft contained considerable other lettering and
5 numbering with respect to advertisements and telephone
6 numbers pertaining to Land Development and Automation
7 Enterprises. This witness further testified that his color
8 description of the aircraft was the same today as it was
9 during August, 1977. Also, in this respect, he recalled
10 another Cherokee that operated in the same general area at
11 the time in question which he described as being cream and
12 brown colored. Further, he made the observation that it
13 is not unusual for the "N" numbers of Cherokees to be
14 identical with the exception of only one digit.

15 Respondent conceded receipt of Inspector Greene's
16 letter dated August 30, 1977 (Exhibit C-13), and he authen-
17 ticated his letter of September 6, 1977 to Inspector Greene
18 (Exhibit C-14). Respondent stated that at that time he
19 assumed that he had flown the Cherokee on August 7th, but
20 later ascertained that he flew the aircraft during the month
21 of August only on August 10 and August 15. He stated that
22 the August 10th flight was made to Coos Bay, Oregon, and
23 that his pilot log book was left at that point when he
24 returned to ~~the~~ Troh's Airport. He retrieved the log book
25 some 30 days later, at which time, he said, he reconstructed

1 his utilization of the Cherokee during the month of August
2 and entered the dates of August 10 and August 15 in his log
3 book by reliance on his memory and his personal records of
4 tach time.

5 Pat Chaney, co-owner of the involved Cherokee,
6 sponsored Exhibit R-5, a color photograph of that aircraft.
7 This photograph indicates that the aircraft is predominantly
8 white in color with light green accent and dark green let-
9 tering and striping down the center of the fuselage. It
10 also indicates that the side of the aircraft has numerous
11 lettering pertaining to advertisements thereon.

12 This witness also sponsored Exhibits R-6 and R-7.
13 Exhibit R-6 is a statement of account with respondent
14 between May 13, 1977 and December 27, 1977. This exhibit
15 shows that respondent rented the Cherokee on August 10 and
16 15, 1977 and at no other time during that month. Exhibit
17 R-7, invoices covering the rental of "N" 9499 J between June
18 1977 and January 26, 1978, fully supports the date shown
19 in Exhibit R-6. In this regard, Chaney testified that
20 other personnel at Troh's Airport could have had access to
21 and flown the Cherokee on August 7th, as well as other
22 people paying cash and where no invoice was prepared for
23 such cash payments.

24 On rebuttal, Richard Karlik examined Exhibit R-5,
25 the color photograph of N 9499 J, and when inquired by the

1 Bench whether this was the same aircraft that he saw on
2 August 7, 1977, replied, "Doesn't look like aircraft I
3 saw." Also, in this respect, he did not remember the droop
4 wings of the aircraft nor the fixed landing gear.

5 Karlik's wife, Glenda, also testified on rebuttal,
6 and when shown Exhibit R-5 and asked whether that exhibit
7 reflected the same aircraft she saw on August 7, 1977,
8 replied, "I don't think it is."

9 Discussion and Conclusions

10 The above summary of the testimony and exhibits
11 indicates several discrepancies in the Karliks' testimony
12 in regard to both the altitude and the flight path of the
13 Cherokee. For example, Exhibit C-1 shows the aircraft
14 flying between their house and the house next door, whereas
15 Exhibit R-3 shows the aircraft flying directly over their
16 house rather than between their house and the house next
17 door. The letter written on the day of the incident refers
18 to altitudes of 200 and 100 feet, whereas in ^{their} ~~the~~ testimony
19 the aircraft flew as low as 30 feet. ~~In my judgment, these~~
20 ~~two witnesses related what they observed on August 7th to~~
21 the best of their recollection. Their testimony, however,
22 concerning the flight path of the Cherokee and the altitudes
23 is conflicting, to say the least.

24 One puzzling aspect about this case is respondent's
25 admission that he flew the involved Cherokee on August 7th

1 as alleged in the complaint. Faced with certificate action
2 against himself for low flying, it would appear that he
3 would have made a more diligent review of his flying
4 activities during the month of August 1977, before making
5 a flatout admission as he did in his letter dated September
6 6, 1977. That notwithstanding, the records simply will
7 not support a finding that respondent flew this aircraft
8 on any date in August other than August 10 and August 15.
9 In this respect it should be noted that Cherokees have a
10 recognized similarity in "N" numbers and, indeed, a Cherokee
11 of the color described by the Karliks was reported to be
12 operating in the general area.

13 Viewing the evidence in its totality, I feel
14 compelled to conclude that this matter is either a case of
15 mistaken identity of the aircraft or that someone other
16 than respondent was operating the aircraft on August 7,
17 1977. I am inclined to lean toward the mistaken identity
18 explanation on the basis of the Karliks' statement on
19 rebuttal that Exhibit R-5 was not the aircraft they saw on
20 August 7. In short, it is my conclusion that there is not
21 a sufficient evidentiary basis in the record to support a
22 finding of any violation of the FAR.

23 -----Contentions of the parties as to facts or law
24 which have not been discussed herein above have been given
25 due consideration and are found to be either not materially

1 significant or not justified.

2 Findings and Order

3 Upon consideration of all evidence of record, it
4 is found that (1) complainant has failed to meet his burden
5 by a clear preponderance of the evidence showing that
6 respondent violated the sections of the FAR cited in the
7 complaint, and (2) safety in air commerce or air transporta-
8 tion and the public interest do not require affirmation of
9 the order of suspension.

10 It is Ordered, That the order of suspension be,
11 and it is hereby, reversed.

12 Dated at Portland, Oregon this 8th day of February
13 1979.

14 *Edited*
15 *3/5/79*



16 Terrell R. Davis
17 Administrative Law Judge

18 Appeal

19 ~~An appeal from the decision and order herein may~~
20 ~~be made by filing with the National Transportation Safety~~
21 ~~Board, Docket Section, 800 Independence Avenue S.W., Wash-~~
22 ~~ington, D. C. 20594, and serving upon the other party a~~
23 ~~notice of appeal within ten days from today, perfected by~~
24 ~~the filing and serving of a brief in support thereof within~~
25 ~~40 days from today.~~

The procedure on appeal is set forth in detail

1 in Sections 821.43, 821.47 and 821.48 of the rules of
2 practice.

3 Off the record.

4 (Discussion off the record.)

5 JUDGE DAVIS: Back on the record.

6 There being no further matters to come before the
7 Bench in connection with this matter, I declare this hearing
8 closed.

9 (Hearing adjourned at 5:00 p.m.)

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