

SERVED: June 28, 1979

NTSB Order No. EA-1300

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 25th day of June 1979.

LANGHORNE M. BOND, Administrator,
Federal Aviation Administration,

Complainant

vs.

GEORGE M. STRUVE,

Respondent.

Docket No. SE-4024

OPINION AND ORDER

The Administrator has appealed from the initial decision of Administrative Law Judge Jerrell R. Davis, issued orally on February 28, 1979, at the conclusion of the hearing held in this proceeding.^{1/} The law judge therein found that respondent had operated an aircraft in a careless manner so as to endanger persons or property;

^{1/} An excerpt from the hearing transcript containing the initial decision is attached.

in violation of section 91.9 of the Federal Aviation Regulations^{2/} (FAR), by making a landing with the landing gear in the retracted position. The law judge further found that, in consideration of Board precedent and certain enumerated mitigating or extenuating factors, a sanction was not required.^{3/}

In support of his appeal, the Administrator has filed an appeal brief wherein he argues that the factors relied on by the law judge do not individually or collectively warrant his imposition of no sanction; rather, under the facts of the case, the 7-day suspension ordered by the Administrator is a minimal sanction.

Respondent has filed a reply brief opposing the appeal and urging the Board to affirm the initial decision.

Upon consideration of the briefs of the parties, and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest do not require a suspension of respondent's certificate. We adopt as our own the findings of the law judge.

The evidence of record clearly establishes the violation of section 91.9 and, indeed, respondent has not appealed from the law judge's finding to that effect. Briefly, it appears that respondent, while making

^{2/} Section 91.9 reads as follows:

"§91.9 Careless or reckless operation.

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

^{3/} The Administrator's order provided for a 7-day suspension of respondent's private pilot certificate.

an approach to the dirt landing strip on his farm, became upset and distracted by the presence of a chemical applicator rig at the approach end of runway. While landing by flying to the right of the rig and under a power line, respondent forgot to lower the landing gear, observe the indicator light, or visually check to see if the gear were actually down.^{4/} The aircraft landed with the gear retracted resulting in approximately \$1000 to \$1500 damage.^{5/}

In concluding that no sanction was required, the law judge relied on several factors: (1) The professional embarrassment and mental anguish suffered by respondent, (2) pecuniary loss, (3) respondent's need for an aircraft in his farming operations, and (4) respondent's cooperative, positive, and remorseful attitude.^{6/} Although the above factors may validly be given some mitigating effect (depending on the circumstances of a particular case), they do not generally justify the imposition of no sanction whatsoever. From the standpoint of sanction, however, a gear-up landing is a unique occurrence. As the Administrator recognizes in his brief, the paramount purpose of suspensions is to deter similar future

^{4/} The law judge accepted as true respondent's testimony that he never heard the gear warning horn.

^{5/} Respondent paid the \$500.00 deductible from the insurance coverage.

^{6/} The law judge also cited two gear-up landing cases in which violations were found but no suspension was imposed. Administrator v. Jennings, 2 N.T.S.B. 715 (1974) and Administrator v. McCarthney, 2 N.T.S.B. 1531 (1975).

violations by the respondent and other pilots. As all pilots must be aware, the consequences of a gear-up landing are direct, immediate and certain: damage to the plane and the resulting cost of repair.^{7/} These consequences provide, in effect, an extremely practicable deterrent. We are not persuaded that the imposition of a suspension in this particular case would provide any meaningful additional deterrence against the recurrence of this type of violation.^{8/}

In view of the above, the Board has decided not to disturb the law judge's disposition of this matter. This should not be taken, however, to reflect the view that sanctions should never be imposed in cases based on a gear-up landing. Indeed, the Board has twice imposed sanctions in such cases, although in each instance the case involved factors, relevant to sanction, not present herein.^{9/}

The Board must deal with each gear-up landing case on an ad hoc basis, considering its individual circumstances in light of precedent, in order to determine whether a suspension is necessary. Such a process has led us herein to the conclusion that the 7-day suspension ordered by the Administrator is not required.

^{7/} Injury to persons on board is possible consequence.

^{8/} By contrast, other types of violations of section 91.9 do not result in consequences comparable to those produced by a gear-up landing. Consequently, pilots may still be inclined to commit those types of violations, and thus the deterrent of a certificate suspension is needed.

^{9/} In Administrator v. Golub, 2 N.T.S.B. 1375(1975), the incident occurred on an air taxi flight carrying passengers for hire. In addition, the respondent had a prior violation. In Administrator v. Brown, 2 N.T.S.B. 1120 (1974), the respondent was a flight instructor involved in giving instruction to a student.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal be and it hereby is denied; and

2. The initial decision, affirming the violation of section 91.9

and reversing the 7-day suspension of respondent's certificate, be and it hereby is affirmed.

KING, Chairman, DRIVER, Vice Chairman, McADAMS and GOLDMAN,

Members of the Board, concurred in the above opinion and order.

UNITED STATE OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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LONGHORNE M. BOND, Administrator, :
FEDERAL AVIATION ADMINISTRATION, :
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Complainant, :
:
v. :
versus : Docket SE-4024
:
GEORGE M. STRUVE, :
:
Respondent. :
:
-----X
    
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Courtroom B-2,
 County Courthouse,
 1100 Van Ness Avenue,
 San Francisco, California;

Wednesday, February 28, 1979

FREDERICK C. WOODRUFF, For the Complainant.
 Esq.,

JAMES M. BELL, Esq., For the Respondent.

INITIAL DECISION AND ORDER

JERRILL P. DAVIS, ADMINISTRATIVE LAW JUDGE:

On October 24, 1978, Complainant, pursuant to Section 609 of the Federal Aviation Act of 1958, as amended, issued an Order suspending Respondent's pilot certificate for seven days. Respondent was charged with operating on June 3, 1978 as pilot-in-command of Civil aircraft N-2022Q, a Cessna Model 177 RG, the property of another, and making a gear-up landing on a farm strip about 17 miles southwest of Mendota, California.

1 Complainant asserted that the gear-up landing was in
 2 violation of Section 91.9 of the Federal Aviation Regulations
 3 (FAR), in that he operated an aircraft in a careless manner so
 4 as to endanger the life and property of another.

5 In appealing the Order of suspension, Respondent conceded
 6 the gear-up landing, but denied any carelessness on his part,
 7 on the grounds that his attention was distracted by a rig
 8 obstruction on the approach end of the farm strip.

9 The Order of suspension was subsequently filed and served
 10 as the Complaint herein, pursuant to Section 821.31 of the
 1 Rules of Practice.

2 An evidenciary hearing on the appeal was held today in
 3 Fresno, California. Section 821.32 of the Rules of Practice
 4 provides that, in proceedings under Section 609 of the Act,
 5 the burden of proof shall be upon the Complainant.

6 THE EVIDENCE

The essential facts are not in dispute and may be
 summarized as follows:

The involved aircraft, known in aviation ^{parlance} as a "Cardinal",
 has retractable tricycle landing gear, which is extended and
 retracted by hydraulic actuators powered by an electrically-
 driven hydraulic power packing. The landing gear system has two
 position-indicator lights mounted to the left of the stabilator
 trim control wheel. A green light indicates that the gear is
 down and locked, an amber light indicates that the gear is up

and locked.

As an additional reminder that the gear is retracted, a warning horn sounds intermittantly whenever the throttle is retarded below approximately 12" manifold pressure with the gear up ^o or not down and locked. The checklist provides that, before landing, the gear should be extended ~~to~~ below 140 MPH. Additionally, except for the nose wheel, the extended landing gear can be seen from the cockpit.

Prior to taking off from the strip on the morning of June 8, 1978, to attend the funeral of his uncle in Watsonville, California, Respondent directed a commercial sulfuric acid applicator ~~to park his rig in a pipeyard~~ adjacent to the south end of the strip. The strip is located in the approximate center of Respondent's farm ranch.

Returning from Watsonville around 7:00 p.m. that evening, Respondent flew a traffic pattern over his ranch as depicted on Exhibit R-1. As he flew abreast of the north end of the strip, he observed that the rig was parked on ^{the} south end (landing approach) of the strip. He became ^d "disgustingly annoyed" in finding the rig parked on the approach end of the strip, rather than in the pipeyard as directed.

On final approach, Respondent determined that he would be able to make a safe landing by flying to the right of the rig and under a power line crossing the threshold of the strip, at an approximate 45° angle. He did not observe the checklist,

1 did not observe the indicator lights, and did not make a
2 visual check from the cockpit. In fact, he did not actuate the
3 landing gear. A combination of the rig obstruction and the
4 traumatic effect of the funeral simply distracted his
5 attention with respect to actuation of the landing gear.

6 DISCUSSION AND CONCLUSIONS

7 Respondent not only failed to lower the gear, but also
8 failed to utilize the gear indication light system to ascertain
9 the position of the gear. In similar situations, the Board has
10 found that such omissions constitute careless operation of the
11 aircraft under Section 91.9.

12 With respect to sanction, the Board in the Whitaker
13 case, listed ~~the~~ ten factors which may be considered as
14 extenuating or mitigating factors, four of these are as
15 follows:

- 16 (1) Whether the violation was inadvertently or
17 deliberate;
- 18 (2) Attitude of the violator;
- 19 (3) The certificate holder's use of the certificate; and
- 20 (4) The need for special deterrent action.

21 In the Jennings case, EA-450, the Board found that the
22 Respondent made a gear-up landing in violation of Section 91.9
23 and said, at page (6):

24 "Finally, with respect to sanction, we share the
25 concern of the Law Judge as to whether a suspension

of Respondent's certificate is necessary in this instance. The gear-up landing which gave rise to this proceeding is apparently an isolated incident in Respondent's otherwise long and violation-free pilot record. Moreover, the substantial expense incurred by Respondent in repairing the plane, plus the professional embarrassment suffered by a pilot who makes a gear-up landing, should serve as a sufficient disciplinary and deterrent sanction. Under these circumstances, we find that safety and the public interest do not require a suspension of Respondent's airman certificate."

In a somewhat similar case, Administrator v. McCarthney, EA-730, no sanction was imposed. In that case, the Respondent had a violation-free record, and it was also found that, although he had not suffered any pecuniary loss as a result of the incident, he had suffered professional embarrassment and mental anguish.

In the instant matter, Respondent has undoubtedly suffered a professional embarrassment and a mental anguish. He has incurred a pecuniary loss of \$500. His need for an aircraft in farming operations is frequent (less than a week). Throughout this hearing today and in his prior contact with the FAA following the incident, Respondent has exhibited a cooperative, positive, and remorseful attitude. Having

1 observed his demeanor on the stand, I am impressed with his
2 truthfulness. I accept as true the statement made in his
3 letter of July 24, 1978 (Exhibit C-2), wherein he stated that
4 he never heard the warning horn and only heard the staff-
5 warning sound just before touchdown. While it is true that
6 the Board has apparently, by implication, discarded a violat
7 -free record as a mitigating factor, the Board has not
8 repudiated any of the ten factors enumerated in the Whitake
9 case.

10 In consideration of the Board's findings in the
11 above-cited cases, and in light of the circumstances here
12 involved, it is concluded that safety and the public interest
13 do not require suspension of Respondent's certificate.

14 FINDINGS AND ORDER

15 Upon consideration of all evidence in the record, it is
16 found that (1) a preponderance of the substantial, reliable
17 and probative evidence establishes the facts alleged in the
18 ^ccomplaint and shows that Respondent violated Section 91.9 of
19 the FAR, and (2) safety in air commerce or air transportation
20 and the public interest require affirmation of the order of
21 suspension as modified herein.

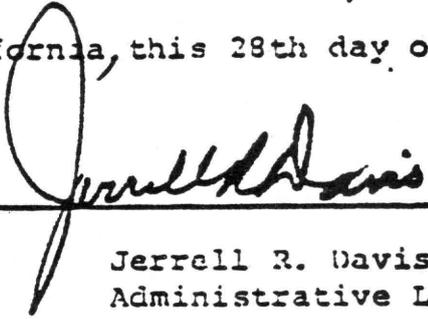
22 It is ordered, That the order of suspension, in ~~and~~ ^{as}
23 Respondent is charged with violating Section 91.9 of the FAR,
24 be, and it is hereby, affirmed.

25 It is further ordered, That the order of suspension, if

so far as the seven-day suspension of Respondent's airman certificate is imposed, be, and it is hereby, reversed.

Dated at Fresno, California, this 28th day of February 1979.

*Edited
3/27/79
JAD*



Jerrell R. Davis
Administrative Law Judge

APPEAL*decision and*

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2 An appeal from the initial order herein may be made by
3 filing with the National Transportation Safety Board, Docket
4 Section, 800 Independence Avenue, Southwest, Washington, D.C.
5 20594, and serving upon the other party a notice of appeal
6 within 10 days from today, perfected by the filing and service
7 of a brief in support thereof within 40 days from today. The
8 procedure on appeal is set forth in detail in Sections 821.43
9 821.47, and 821.48 of the Rules of Practice.

SERVICE:

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