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NTSB Order No. EA-3573

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 May, 1992

_____)	
BARRY LAMBERT HARRIS,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10127
v.)	
)	
HOWARD DALE CAMPBELL,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Joyce Capps, rendered at the conclusion of an evidentiary hearing on November 2, 1989.¹ The law judge reversed an order of the Administrator suspending respondent's airline transport pilot certificate for 90 days for his alleged violations of sections 91.29(a),

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

(b), and 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).²

The Administrator alleges that the law judge erred when she determined that respondent, as pilot-in-command, acted reasonably in assuming that his aircraft had not struck a deer before takeoff. She further found that after he learned the strike did occur, respondent acted reasonably by deciding to continue on to his scheduled destination.

After consideration of the briefs, the testimony, and the other evidence of record, the Board concludes that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order in its entirety.

The incident occurred on October 27, 1987, when respondent was pilot-in-command of a Trans World Airlines (TWA) Boeing 727-31 aircraft en route from Pittsburgh to St.

²FAR sections 91.29 and 91.9 state:

"§ 91.29 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur."

"§ 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."

Louis. The aircraft struck a deer on the runway immediately preceding takeoff.³ As the aircraft was traveling down the runway at approximately 100 knots, the crew saw the deer standing on the center line. The co-pilot testified that, to avoid damage to the nose gear, he steered the aircraft to the right but was careful not to swerve too far for fear that the aircraft would fall into a ditch alongside the runway. He stated that he then felt a "very mild bump." Seconds later, the aircraft took off. Respondent explained that he tried to ascertain whether damage had been sustained by checking to see if any warning lights were illuminated in the cockpit. He noted nothing unusual.

Respondent radioed the Pittsburgh control tower, indicating that "we hit a deer I think on takeoff...." It was not until 30-35 minutes into the flight that the crew received confirmation of the deer strike. They were also informed that the aircraft's left main gear door had been sheared off and left on the runway in Pittsburgh. Respondent decided to proceed to St. Louis after speaking with personnel at the TWA maintenance facility in Kansas City who told him that the aircraft could function adequately without the door.

As a precaution, air traffic control (ATC) in St. Louis suggested that emergency equipment be standing by when the aircraft landed. Respondent thought that was a good idea.

³The first officer was actually flying the aircraft at the time of the incident.

The landing took place without incident.

The law judge specifically found that the aircraft was not airworthy due to the damage sustained from the impact, yet she concluded that no violation of §§ 91.29(a) or (b) occurred because respondent "could not have reasonably known what happened." In his appeal, the Administrator asserts that respondent was unreasonable in continuing the flight without first ascertaining, given the strong possibility that the deer had been struck, whether the aircraft had been damaged and rendered unairworthy. He also contends that continuing the flight under these circumstances jeopardized the safety of others. We agree.

Both respondent and the first officer saw the deer standing on the center line directly before them. When the aircraft swerved to avoid hitting the animal, they immediately felt a slight bump. Respondent testified that he thought they may have missed the animal and that, in any event, "a deer could not be that damaging to an airplane...."⁴ Transcript at 197. The co-pilot stated that he was not sure whether they had hit the deer or merely "brushed it aside." This implies that he knew there had been some sort of contact with the animal. The safest plan would have been to err on the side of caution and bring the

⁴The damage sustained from the deer strike included the removal of the left main landing gear door, a dent in the leading edge of the inboard fore flap, and cuts in the #1 main tire sidewall.

aircraft down in order to assess the extent of any damage.

Both respondent and the co-pilot stated that if they had known immediately that the aircraft struck the deer, they would not have continued on to St. Louis.⁵ Since it was very likely that the 727 had struck the deer, respondent should have pressed ATC for an immediate determination of whether a strike occurred before continuing to St. Louis. Respondent instead assumed that any damage that had been sustained could be discerned from the flight instruments. The evidence of record shows that this assumption was incorrect. In fact, more serious damage could have resulted from the impact, yet not have been evident from merely looking at the instrument panel.⁶

An FAA inspector opined that "having seen a deer, swerved to miss the deer, and having enough suspicion that he might have struck the deer to report the incident to the tower, Respondent had sufficient reason to suspect that he had hit the deer and he therefore should have brought his aircraft around and landed it in Pittsburgh for inspection."⁷

⁵Respondent said he would have sought clearance to land in Columbus, while the co-pilot stated he would have brought the aircraft back to Pittsburgh.

⁶Under section 91.29(b), the pilot-in-command is responsible for determining whether the aircraft is safe for flight. Since respondent could not adequately determine this by looking only at the instrument panel, he should have returned to the airport for an inspection so that his decision on whether to continue the flight would have been an informed one.

⁷In his brief, the Administrator discusses the FAA

Administrator's brief at 13. The inspector testified that the gear door, instead of being left on the runway, could have become lodged in the landing gear, causing extensive damage completely undetectable by instrument readings.

Under Administrator v. Parker, 3 NTSB 2997 (1980), reconsideration denied, 3 NTSB 3005 (1981), to prove a violation of section 91.29(a), the Administrator must show that the respondent operated an aircraft that he knew or reasonably should have known did not conform to its type certificate. There is no requirement that he know for a fact that the aircraft is unairworthy. Id. at 2998 n.6 and accompanying text. See also Administrator v. Gasper, NTSB Order No. EA-3242 (1991). It is well-settled that airline pilots are held to the highest degree of care. A pilot's actions should be judged against what a prudent pilot would have done in the same instance, "based upon conditions ... of which the pilot was aware or which he could have reasonably anticipated." Administrator v. Baxter, 1 NTSB 1391, 1394 (1972). Given the facts of the instant case, respondent should have confirmed whether the aircraft had sustained any

(..continued)

inspector's testimony: "In [the inspector's] opinion, having heard the testimony and having viewed the evidence, Respondent did not act prudently at the time of the incident, inasmuch as he did not know whether the aircraft was airworthy or whether the flaps or gear would work properly following a post-takeoff configuration change. Tr. 91. He also testified that the pilot would not have needed to change flap configuration to return and land safely at Pittsburgh...." Administrator's brief at 10.

This testimony supports the view that respondent acted carelessly, in violation of FAR section 91.9.

damage and, once he learned that it had, should have landed the aircraft as soon as practicable.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is reversed and the Administrator's order is affirmed in its entirety; and
3. The 90-day suspension of respondent's airman certificate shall begin 30 days after service of this order.⁸

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

⁸For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).