

SERVED : September 3, 1992

NTSB Order No. EA-3663

**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 1st day of August, 1992

THOMAS C. RICHARDS,
Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-10709

v.

DAVID J. MUNSON,

Respondent.

OPINION AND ORDER

Respondent appeals from the oral initial decision of Administrative Law Judge William R. Mullins, issued in this proceeding on April 24, 1990 at the conclusion of an evidentiary hearing.¹ The law judge affirmed an order of the Administrator issued on November 15, 1989, suspending respondent's airline transport pilot (ATP) certificate for 7 days for an alleged

¹A copy of the oral initial decision, an excerpt from the transcript, is attached.

violation of sections 61.3(a) and 61.3(c) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61.²

The incident giving rise to this proceeding occurred on January 31, 1989 when respondent acted as pilot-in-command of a McDonnell Douglas DC-9, TWA Flight 419, from St. Louis, Missouri to Las Vegas, Nevada without a current pilot certificate or medical certificate in his personal possession. The fact of the missing certificates was revealed' during a ramp inspection at Las Vegas performed by two FAA inspectors. Upon the discovery that he did not have his certificates in his possession, respondent contacted TWA and subsequently received authorization by telegram that he could fly the return trip. Because this TWA authorization was not deemed to be sufficient by the two FAA inspectors, one of them undertook to obtain proper temporary authorization for respondent from the Las Vegas Flight Standards District Office (FSDO). When the FAA inspector returned with

²FAR section 61.3 states, in relevant part:

"§ 61.3 Requirement for certificates, rating, and authorizations.

(a) Pilot certificate. No person may act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of United States registry unless he has in his personal possession a current pilot certificate issued to him under this part. . .

* * * * *

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter. . ."

such authorizations, Flight 419 was already pushed back from the gate, and the engines had been started. Respondent was ready to leave because he believed that the go ahead from TWA was sufficient despite advice he had been given to the contrary. The authorizations obtained by the inspector were nevertheless handed up to the respondent before he left.

We find it unnecessary to determine whether this post-violation dispute concerning the validity of respondent's authority to make the return flight indicated that respondent has a deficient compliance attitude that should be considered in determining the proper sanction in this case. The sanction sought by the Administrator and affirmed by the law judge falls within the range of sanction guidelines in the FAA's Order 2150.3A, for unaggravated violations of sections 61.3(a) and (c). The law judge found no factors warranting a reduction, and the respondent has not shown that a minimal sanction is not consistent with precedent.³

³We do not agree with respondent that Administrator v. Miller, 5 NTSB 407 (1985), compels a conclusion that no sanction should be imposed. Apart from the fact that the determination not to impose a sanction for a violation of section 61.3 in Miller was expressly limited to the "unique" facts of that case, whose facts differ substantially from those here, it is far from clear from the initial decision in this case that the law judge believed that respondent's violation was inadvertent, whereas respondent Miller's was found not to warrant a disciplinary or deterrent sanction.

ACCORDINGLY , IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 7-day suspension of respondent's ATP certificate shall begin 30 days from the date of service of this order.⁴

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

⁴For the purposes of this order, respondent must physically surrender his ATP certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).