

SERVED: February 5, 1993

NTSB Order No. EA-3779

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 January, 1993

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| THOMAS C. RICHARDS,              | ) |                 |
| Administrator,                   | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) | Docket SE-11335 |
| v.                               | ) |                 |
|                                  | ) |                 |
| SUZETTE COWLEY,                  | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
|                                  | ) |                 |

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**OPINION AND ORDER**

Respondent has appealed from an initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued orally at the conclusion of an evidentiary hearing held on March 27, 1991.<sup>1</sup>

By that decision, the law judge affirmed the Administrator's determination that respondent had violated sections 121.315(c) and 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R.)

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<sup>1</sup>An excerpt from the transcript containing the initial decision is attached.

in connection with an incident occurring on April 10, 1988.<sup>2</sup>

In addition, the law judge sustained a 30-day suspension of respondent's airline transport pilot (ATP) certificate which had been ordered by the Administrator for such alleged FAR violations.

In the order of suspension (which served as the complaint), the Administrator alleged the following:

- "1. You are the holder of Airline Transport Pilot Certificate No. 047386540.
2. On or about April 10, 1988, you were pilot-in-command of a Fokker F-27-100 aircraft, registration [N]o. N141PM on a flight originating from Atlantic City International Airport, Atlantic City, New Jersey.
3. Before starting the engines, you failed to set the parking brake.
4. You failed to follow the F-27 checklist in force, which requires the pilot-in-command to set the parking brake for starting of engine.
5. After starting the engines, you were unable to stop the aircraft, which was moving.

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<sup>2</sup>FAR § 121.315 provides:

"§ 121.315 Cockpit check procedure.

(a) Each certificate holder shall provide an approved cockpit check procedure for each type of aircraft.

(b) The approved procedures must include each item necessary for flight crewmembers to check for safety before starting engines, taking off, or landing, and in engine and systems emergencies. The procedures must be designed so that a flight crewmember will not need to rely upon his memory for items to be checked.

(c) The approved procedures must be readily usable in the cockpit of each aircraft and the flight crew shall follow them when operating the aircraft."

FAR § 91.9, which has since been amended and recodified as § 91.13(a), read 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."

6. Because you were unable to stop the aircraft, the right engine propeller struc[k] and destroyed a power cart.

By reason of the foregoing, you violated the following sections of the Federal Aviation Regulations:

1. Section 121.315(c), in that you failed to adequately perform and follow the cockpit check procedures relative to start-up procedures.
2. Section 91.9, in that you operated an aircraft in a careless or reckless manner so as to endanger the life or property of another."

Respondent advances several arguments in support of her appeal. First, she asserts that the Administrator did not establish that she failed to comply with the checklist which was "in force" at the time of the incident because the checklist relied upon to demonstrate this (Ex. A-1) had been superseded prior to April 1988. Respondent also maintains that she twice attempted to set the parking brake before starting the engines and contends that, even if the checklist requirement cited by the Administrator had been applicable at the time the incident occurred, she should be deemed to have complied therewith by virtue of those attempts. Additionally, respondent claims that she did not violate section 121.315(c) because she followed manual procedures by running the engines in order to build up pneumatic pressure in the aircraft's brake system, which had been reduced by her unsuccessful attempts to set the parking brake. Respondent further avers that she should not have been found in violation of section 91.9 in connection with her aircraft's

collision with the ground power unit (GPU) because the accident would not have occurred had the aircraft been properly chocked by ground personnel.<sup>3</sup>

The Administrator has filed a reply brief, in which he urges the Board to affirm the law judge's initial decision.<sup>4</sup>

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 require that the Administrator's order be affirmed in its entirety. We adopt the law judge's findings as our own.

At the outset, we note that respondent has conceded that she

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<sup>3</sup>Respondent has also suggested that she was prejudiced in the presentation of her defense because the Administrator did not comply with a prehearing discovery request that he further explain the factual bases for the FAR violations alleged in the complaint. Respondent's Br. 13. The Board, however, agrees with the law judge (see Tr. 9) that the complaint adequately informed respondent of the nature of the charges against her and that the Administrator was, thus, not obliged to furnish such information. We further note that respondent has maintained that the law judge erroneously "restricted" her counsel's cross examination of the FAA inspector who investigated the incident. Respondent's Br. 11-12. A review of the record discloses that the impediment complained of was a ruling that the inspector--who had not been offered as an expert in the operation of F-27 aircraft--was unqualified to answer questions pertaining to a mechanic's statement on F-27 performance characteristics. See Tr. 153-54. As such a determination was well within the law judge's discretion, the Board finds no merit in this contention.

<sup>4</sup>Thereafter, respondent submitted a motion for leave to file a supplemental brief in response to the Administrator's reply brief. We will deny that motion, as we do not believe that good cause has been shown, as is required by our Rules of Practice (49 C.F.R. § 821.48(e)). While respondent has noted concerns as to alleged misstatements of fact appearing in the reply brief, the Board has carefully and independently reviewed the record. Thus, it is aware of any misstatements made by the parties, and is not influenced thereby.

did not set the parking brake prior to starting the engines, as the checklist proffered by the Administrator (Ex. A-1, dated May 1983) requires.<sup>5</sup> While the former Director of Operations for respondent's company testified that this checklist had been revised before the date of the incident in question, no updated checklist was presented at the hearing and no evidence was offered to show that the checklist item at issue was vitiated or amended in any way prior to that time.<sup>6</sup> As a result, the Board finds no merit in respondent's assertion that the Administrator failed to establish that the checklist in force at the time of the incident required her to set the parking before she started the engines.<sup>7</sup>

We are also unpersuaded by respondent's argument that she should not be held in violation of section 121.315(c) because a manual procedure authorized her to start the engines in order to build up pneumatic pressure in the brake system after such pressure had been reduced by her failed attempts to set the parking brake. Although the company's former Director of

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<sup>5</sup>That checklist mandates that the parking brake be set before either engine is started.

<sup>6</sup>Moreover, the former Director of Operations' testimony on this point appears to be controverted by the company's current Vice President of Operations who, on questioning by the law judge, indicated that, to the best of his knowledge, the May 1983 checklist remained in effect on April 10, 1988. See Tr. 69-70.

<sup>7</sup>In view of the fact that the proffered checklist mandated that the parking brake be set prior to the start-up of either engine, we must further reject respondent's contention that she could be found in compliance with the checklist by virtue of her attempts to set the brake.

Operations and respondent alluded to such a procedure at the hearing, no manual provision setting forth the claimed procedure appears in the record. Moreover, as respondent has indicated that the procedure in question applies where there is "no pneumatic pressure,"<sup>8</sup> it does not appear that such a procedure would have pertained to the situation at hand, since there is evidence indicating both that the aircraft's brake system pressure was 1,900 PSI following respondent's second attempt to set the parking brake<sup>9</sup> and that reserVICing of the system is not necessary until the pressure drops below 800 PSI.<sup>10</sup>

Respondent's contention that she should not be deemed culpable for the collision of her aircraft with the GPU because ground personnel failed to properly chock the aircraft is also untenable. Assuming, arguendo, that respondent is correct in her assertion that the ramp crew did not rechock the aircraft per her instructions before she started the engines,<sup>11</sup> this does not exculpate her from the consequences of her actions in starting the engines without first setting the parking brake. Had

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<sup>8</sup>Tr. 205, 213.

<sup>9</sup>Ex. A-4.

<sup>10</sup>Tr. 186-87. According to the company's former Director of Operations, brake system pressure of 1,900 PSI is well within the normal range for an F-27 aircraft. Id. 186.

<sup>11</sup>See Respondent's Br 9. Such a view of events occurring on the ramp has been contradicted by a line serviceman who attended respondent's aircraft and testified that, after removing all three chocks and being directed by respondent to put them back, he replaced two--one in front of the nose gear and one in front of the left main gear. Tr. 21, 57.

respondent, instead, followed relevant checklist procedures, the accident would not have occurred, regardless of whether or not the aircraft was properly chocked at the time.<sup>12</sup>

In view of the above, the Board is of the opinion that the law judge did not err in affirming the Administrator's determination that respondent operated her aircraft in violation of FAR sections 121.315(c) and 91.9 in connection with the incident in question.

Turning to the matter of sanction, the Board believes that the 30-day suspension of respondent's ATP certificate ordered by the Administrator and sustained by the law judge is wholly appropriate for the FAR violations established in this case. Consequently, we will affirm that sanction.

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<sup>12</sup>Assuming that respondent is correct in maintaining that the ramp crew did not rechock the aircraft, it appears that she was also remiss in failing to seek confirmation that the chocks had been replaced prior to starting the engines.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's order and the law judge's initial decision are affirmed; and
3. The 30-day suspension of respondent's ATP certificate shall begin 30 days from the date of service of this order.<sup>13</sup>

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

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<sup>13</sup>For the purposes of this order, respondent must physically surrender her certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).