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NTSB Order No. EA-4384

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 18th day of July, 1995

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13751
v.)	
)	
DOMINIK STROBEL,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge William R. Mullins at the conclusion of an evidentiary hearing held in this case on November 1, 1994.¹ In that decision, the law judge upheld a 30-day suspension of respondent's flight instructor certificate

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

based on his alleged violation of 14 C.F.R. 91.13(a).² As discussed below, respondent's appeal is granted and the initial decision is reversed.

This case arises from an incident which occurred on July 4, 1993, involving a Piper PA-38 Tomahawk which landed at Fairfield Municipal Airport, Fairfield, Iowa. Respondent and another pilot (Tim Lambon) were occupants of that aircraft when it ran off the end of the runway, then broke through a fence located some 100 feet past the end of the runway, and continued traveling an additional 300 feet until coming to rest in a corn field. Mr. Lambon, who was at the controls at the time of the incident, did not testify at the hearing.

In un rebutted testimony, accepted by the law judge, respondent described the events leading up to the incident. Respondent explained that he operates a flight school known as "Flight Training Adventure Camps," where students are taught to fly in the context of an extensive cross-country trip which presents them with a variety of different situations and challenges. The school is attended primarily by Europeans. Mr. Lambon, an instrument-rated commercial pilot with some 350 hours of flight experience, who was apparently trained and certificated

² Section 91.13(a) provides:

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

in England,³ was attending respondent's school for the purpose of filming a promotional video. However, he was apparently also planning to participate in the school's flying activities.

On the day in question, respondent had been giving flight instruction in connection with his school in Ottumwa, Iowa. At the end of the day, Mr. Lambon, having never flown a Tomahawk, indicated that he would like to fly it back to Fairfield, where respondent's flight school is apparently based. He asked respondent to accompany him on the flight, believing he needed a "check-out" ride in the aircraft before he could legally fly it solo during the upcoming cross-country trip. It is undisputed that Mr. Lambon did not need to be checked out in the Tomahawk, because he had recently been checked out (by respondent) in a Cessna 150, an aircraft of the same category and class.⁴ Respondent attempted to convince Mr. Lambon that no-check out was required, but Lambon insisted that it was, citing the asserted existence of such a requirement in England.

Ultimately, respondent agreed to accompany Mr. Lambon on the flight, but respondent maintained that he was not acting as a flight instructor. He admitted, however, that Lambon may have believed he was acting as his flight instructor. (Tr. 52.) Respondent acknowledged that Mr. Lambon performed certain maneuvers during the flight which would have been typical of a

³ According to respondent, Mr. Lambon had been issued a U.S. pilot certificate based on his foreign license.

⁴ See 14 C.F.R. 61.57.

check-out ride. He also admitted that he made a comment, during Mr. Lambon's final approach, indicating that his pitch and power configuration was dangerously low. Respondent denied, however, that he made this comment in the capacity of an instructor.

Possibly because of excess power added by Mr. Lambon in response to respondent's warning about inadequate pitch and power, Lambon touched down somewhat faster, and slightly farther down the runway than normal -- approximately 700 feet down the 2,420-foot runway. In any event, at some point during the flight,⁵ both respondent and Mr. Lambon had agreed that he would do a touch-and-go (another factor suggestive of a check-out ride). It is undisputed that -- despite the long landing -- more than enough runway remained after touchdown to execute a touch-and-go, and that Mr. Lambon applied full power and reached rotation speed (55-60 knots) in apparent preparation for takeoff.

According to respondent, he continued at rotation speed for several hundred feet.

However, Mr. Lambon did not lift off, as respondent expected. Instead, he inexplicably, and without prior warning,⁶

⁵ Respondent's testimony indicates that the decision was made before their final approach. (Tr. 54-55.) The law judge, however, seemed unclear as to when the decision was made ("[s]ometime along in there, and perhaps it was because he touched down [700 feet down the runway], whatever, Mr. Lambon decided to do a touch-and-go"). (Tr. 95.)

⁶ The law judge incorrectly stated in his initial decision that Mr. Lambon "announced that he was terminating this take-off." (Tr. 96.) However, respondent's testimony -- otherwise accepted by the law judge as an accurate description of the event -- was that Mr. Lambon "acted very quickly" and "without any consultation with me." (Tr. 59.)

reduced power and jammed on the brakes with only 300 feet of runway remaining.⁷ Not surprisingly, he was unable to stop the aircraft within 300 feet and, as noted above, broke through a fence and continued some 400 feet beyond the end of the runway before finally stopping in a corn field.

Respondent testified that he recognized Mr. Lambon was about to exceed the "safety limit" for executing a touch-and-go, and that he was just about to take control of the aircraft and complete the take-off when Mr. Lambon unexpectedly applied the brakes. The Administrator did not dispute respondent's position that enough runway remained at that point, before Mr. Lambon applied the brakes, to safely achieve lift-off. But he appeared to misunderstand respondent's testimony as indicating that he could still have rescued the situation **even after** Mr. Lambon applied the brakes. Respondent's testimony was clearly to the contrary. (Tr. 58.)⁸

⁷ There is a suggestion in the record that Mr. Lambon may have been somehow confused by a change in the aircraft's performance shortly after touchdown, which was caused by a damaged or irregular portion of the runway. However, he reached rotation speed well after passing over this area, and therefore it should not have affected his judgment as to whether the aircraft was ready to lift off. (Although respondent was familiar with the runway, he was apparently unaware of this irregular area since it was off to one side and respondent had only operated on the center of the runway.)

⁸ "Now with this sudden and rapid deceleration thus initiated, it would have been absolutely against the laws of physics to attempt to rescue the situation. If I had added power it would have only aggravated the situation. At best, it would have extended the roll-out distance. At worst, it could have helped the aircraft maybe getting ground effect if Mr. Lambon would have left off the brakes and caused a crash with a likely

This case presents two issues: 1) was respondent serving as a flight instructor, thereby making him the pilot in command of the flight; and 2) if so, was respondent careless in any way which contributed to this incident. The law judge answered both questions in the affirmative. Although he recognized that the incident was due primarily to bad decisions made by Mr. Lambon, he concluded that respondent was also partly to blame in that, as the flight instructor, he "should have gotten control of this situation" sooner. (Tr. 100.) As discussed below, we agree with the law judge that respondent was serving as a flight instructor, and therefore was pilot in command of the flight. We disagree, however, with his conclusion that respondent was careless by not acting sooner to prevent the incident.

Respondent was acting as a flight instructor.

It seems clear from the facts in this case, even as related by respondent, that Mr. Lambon viewed the flight in question as a check-out flight during which respondent would be acting in the capacity of a flight instructor. Notwithstanding that no such check-out was required under the regulations, and that respondent apparently did not want to serve as an instructor on the flight,⁹

(..continued)
fatal outcome." (Tr. 58.)

⁹ Respondent testified that, during an earlier check-out ride with Mr. Lambon in a Cessna 150, he had found Lambon's aeronautical skills to be very precise and professional, but he had also noted that Lambon displayed an "attitude of superiority" and a non-receptiveness to instruction. Accordingly, respondent asserts that he told Mr. Lambon, after the check-out ride in the Cessna, that he couldn't teach him anything else. (Tr. 51-53.)

respondent ultimately relented and acceded to Lambon's request and accompanied him on the flight. Respondent concedes that this probably caused Mr. Lambon to believe that he was on board as an instructor, and acknowledges that Mr. Lambon demonstrated several maneuvers typical of a check-out ride.

Thus, despite respondent's reluctance, the preponderance of the evidence indicates that respondent was indeed serving as Mr. Lambon's flight instructor during the flight in question. Accordingly, he must be deemed the pilot in command.¹⁰ As such, he was responsible for the overall operation and safety of the flight.¹¹

Respondent was not careless.

Despite respondent's status as flight instructor and pilot in command, we will not impose strict liability on him for all of his student's mistakes. Although flight instructors are expected to "do all things possible for the safety of the flight," they are not held strictly liable for its safe outcome.¹² In this case, respondent recognized -- after Mr. Lambon reached rotation

¹⁰ Our precedent makes clear that, "[r]egardless of who is manipulating the controls of the aircraft during an instructional flight, or what degree of proficiency the student has attained, the flight instructor is always deemed to be the pilot-in-command." Administrator v. Hamre, 3 NTSB 28, 31 (1977). This principle was reaffirmed in Administrator v. Walkup, 6 NTSB 36 (1988).

¹¹ See 14 C.F.R. 1.1, which defines "pilot in command," as "the pilot responsible for the operation and safety of an aircraft during flight time."

¹² Administrator v. Hamre, 3 NTSB 28, 31 (1977).

speed but failed to lift off -- that he needed to intervene in order to rescue the touch-and-go while there was still time to safely lift off. It is undisputed that there was no reason why lift-off could not have been accomplished, and that enough time and runway remained for respondent to save the situation. However, as he was about to take control of the aircraft, Mr. Lambon unexpectedly cut power and put on the brakes.

We have no reason to second-guess respondent's belief that he could not reasonably be expected to anticipate that Mr. Lambon, an apparently confident and experienced commercial pilot, would abort the takeoff at the point when he did. Accordingly, although respondent could have intervened sooner, he had no reason to. In sum, we hold that, under the circumstances of this case, respondent's failure to intervene sooner was not careless.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The initial decision is reversed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.