

SERVED: January 9, 1998

NTSB Order No. EA-4613

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 5th day of January, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14082
v.)	
)	
FRED CORNELIUS SLIKKER)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered in this proceeding on October 12, 1995, at the conclusion of a two-day evidentiary hearing.¹ The law judge affirmed an order of the Administrator, finding that respondent had violated section

¹An excerpt from the hearing transcript containing the initial decision is attached. Respondent filed an appeal brief. The Administrator filed a reply.

91.13(a) of the Federal Aviation Regulations (FARs).² As discussed below, we grant the appeal.

The Administrator alleged in her May 10, 1995 suspension order (complaint) as follows:

1. You are now, and at all times mentioned herein were, the holder of Airline Transport Pilot Certificate No. 1650125.
2. On or about March 21, 1994, at approximately 1913 UTC, you operated, as pilot-in-[command], Civil Aircraft N382AN, a Boeing 767, identified as American [Airlines] Flight 682, in the runway 27 runup area at San Diego International Airport, Lindbergh Field, San Diego, California.
3. While in the runway 27 runup area you initiated and completed a turn around maneuver which caused jet blast damage to a sign and vehicles parked adjacent to the runway 27 runup area.
4. Based upon the above, you operated Civil Aircraft N382AN in a careless or reckless manner endangering the lives and property of others.

Following the hearing, the law judge sustained the Administrator's allegations. He concluded, in effect, that respondent, who needed to return to the gate to have a mechanical problem checked, had carelessly operated his aircraft because,

²The Administrator sought a 30-day suspension of respondent's Airline Transport Pilot Certificate. Sanction was waived under the provisions of the Aviation Safety Reporting Program (ASRP).

Section 91.13(a) states, as follows:

§ 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.

during the turn, the jet blast from its engines knocked down an airport sign and blew sand and pebbles that damaged cars in a parking lot just outside the airport perimeter. We think the law judge's conclusion holds respondent to a standard of care the evidence of record will not support.³

The law judge found respondent liable because he was aware, before making the turn to taxi back to the gate, of the parking lot to the right of, adjacent, and more or less parallel to, the runup area into which he had been directed by Air Traffic Control so that other traffic moving along the same taxiway on its way to the runway could pass to his left. The law judge reasoned that even though the cars in the parking lot were beyond a point at which they would likely be directly damaged by the aircraft's jet blast during a turn at the power setting selected by respondent, that is, outside the blast footprint for the engines at idle thrust, they were close enough to be damaged by loose matter, such as ground debris, propelled toward them from within the footprint. In these circumstances, it seems to us that respondent's mere knowledge of the existence of the parking lot did not provide an adequate factual predicate for concluding that he had carelessly endangered the cars parked there.⁴ What the

³The law judge noted that respondent, according to his testimony, was familiar with the airport, knew there was a parking lot adjacent to the airport fence, and had estimated at the time that the cars were parked 150-200 feet beyond the airport fence.

⁴While the record supports a conclusion that the sign was blown down by jet blast, it is far from clear that the sign actually incurred any damage. We do not believe that the

Administrator needed to show, given the actual cause of damage to the cars, was not simply that respondent knew of the presence of the parking lot, but that he also knew or should have known that the composition of the surface between his aircraft and the cars posed a risk of damage to them that the jet blast by itself did not. The record before us does not reflect such development, and we are, therefore, unable to agree that respondent in performing the turn was careless as charged in the complaint.⁵

ACCORDINGLY, IT IS ORDERED THAT:

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

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. FRANCIS, Vice Chairman, did not concur.

(..continued)

dislocation of the sign from its mooring is sufficient, without more, to establish careless operation.

⁵In light of our disposition, it is not relevant that respondent could have pursued other options, such as moving forward and turning in the area of a blast fence that did not extend alongside of the runup area, obtaining clearance from the tower to taxi down the runway back toward the terminal or across the runway to a different taxiway, or requesting a tow, that likely would have posed no risk of damage to the cars. It is also unnecessary for us to consider respondent's arguments to the effect that he reasonably relied on his first officer to alert him to the existence of a condition off the right side of the aircraft that would have prevented the safe execution of a turn in the runup area and that the law judge erred by refusing to allow him to present evidence that would have shown that the damage resulted from carelessness by the airport operator and faulty airport oversight by the FAA.