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NTSB Order No. EA-4653

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 9th day of April, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	Docket No. SE-14525
)	
JIM W. SCHNEIDER,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision issued by Administrative Law Judge William A. Pope, II, on January 9, 1997, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed one of three allegations of violations of the Federal Aviation Regulations (FAR), as a result of respondent's takeoff, when the official weather conditions were below IFR [Instrument Flight Rules] minimums, while operating as pilot in command (PIC) of a Wings West

¹An excerpt from the hearing transcript containing the

Airlines' flight from Fayetteville, Arkansas [Drake Field] to Dallas, Texas, on May 25, 1995. The Administrator's order alleged violations of FAR §§ 91.13(a), 91.175(f), and 121.651(a).² The law judge affirmed only the allegation of a

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initial decision is attached.

²FAR §§ 91.13(a), 91.175(f), and 121.651(a) provide 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.

§ 91.175 Takeoff and landing under IFR....

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no pilot operating an aircraft under parts 121, 125, 127, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimum for IFR takeoff prescribed for that airport under part 97 of this chapter. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts:

(1) For aircraft, other than helicopters, having two engines or less-1 statute mile visibility.

(2) For aircraft having more than two engines-1/2 statute mile visibility.

(3) For helicopters-1/2 statute mile visibility.

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

(a) Notwithstanding any clearance from ATC, no pilot may begin a takeoff in an airplane under IFR when the weather conditions reported by the U.S. National Weather Service, a source approved by that Service, or a source approved by the Administrator, are less than those specified in-

(1) The certificate holder's operations specifications;
or

(2) Parts 91 and 97 of this chapter, if the certificate

violation of FAR § 121.651(a), and he reduced sanction from a 30-day suspension to a 14-day suspension of respondent's airline transport pilot (ATP) certificate. The Administrator has not appealed the law judge's modifications. The only issue before the Board is whether the § 121.651(a) violation should be affirmed. Respondent asserts that he should not be held responsible for the violation, as it was reasonable for him to believe that weather advice provided to him by a Simmons Airlines'³ station agent was an official weather report.⁴ For the reasons that follow, respondent's appeal is granted.

This complaint arose when the captain of a Trans-World Express flight reported to air traffic control (ATC) that a Wings West flight had just taken off from Drake Field at 6:10 a.m., when every other flight (including his own) was on standby because the official weather reported on the Automatic Terminal Information System (ATIS) was below IFR minimums.⁵ A subsequent FAA investigation revealed that respondent had also operated a Wings West flight from Drake Field that morning, but that his flight had departed before 6:00 a.m.

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holder's operations specifications do not specify takeoff minimums for the airport.

³AMR Corporation is the parent corporation of Wings West Airlines (doing business as American Eagle) and Simmons Airlines (the actual employer of the station agent involved in this case).

⁴The Administrator has filed a brief in reply, urging the Board to affirm the initial decision.

⁵It is undisputed that in order to take off from Runway 34 at Drake Field at least a 500-foot ceiling and one mile of visibility is required.

Respondent and his copilot⁶ testified that on the day in question, they arrived at the airport approximately one-half hour before their scheduled 5:45 a.m. departure. ATIS is not available until the Fayetteville ATC tower commences operation at 6:00 a.m. Respondent testified that a weather report printed from the SABRE computer system had been included in the dispatch package that he had received from the company's operations office that morning.⁷ That report indicated that there was a 400-foot ceiling, which was below minimums for Runway 34.

Once they began their taxi, either respondent or his copilot called "operations" on the company radio frequency and asked for a current weather report, hoping that the weather had by that time changed. The station agent who took the call replied that he would get back to them. A few minutes later, the station agent advised respondent that there was now a 500-foot ceiling and one-mile visibility.⁸ This information comported with respondent's and his copilot's observations,⁹ and the flight

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⁶The law judge dismissed the complaint against respondent's copilot. The Administrator has not appealed that ruling.

⁷The SABRE computer system is operated by AMR Corporation. According to respondent, his company's operations manual requires him to use the SABRE computer system as his primary source of weather information.

⁸The station agent apparently then announced this information over the company frequency, where it was heard by the crew of the 6:10 flight. TR-182.

⁹Respondent and his copilot testified that they were able to estimate the ceiling because the hills surrounding Drake Field are approximately 250 feet high, and the clouds were twice that

departed shortly before 6:00 a.m.

According to the station agent, when respondent asked for the current weather, he first consulted his computer, but the weather had not been updated. The station agent testified that he then "informed them to standby, and that I would contact the weather observer on the field." TR-428. Ozark Weather Service is a certified National Weather Service contractor located on Drake Field. It provides, via computer, the official weather reports for Drake Field, to the Fayetteville ATC tower and to various regional ATC Centers.

The station agent testified that when he called Ozark Weather Service, he could hear over the telephone line that the weather observer had left the trailer. The station agent testified that the observer then returned to the phone and advised him that there was now a 500-foot ceiling and one-mile visibility. The observer said he would update the information in the computer once he had completed his observation. No computer entry reflecting this weather report was ever made, and both the weather observer on duty and his father, the owner of Ozark Weather Service, deny the entire conversation with the station agent.¹⁰

Respondent, his copilot, the captain of the Wings West flight that departed at 6:10, the Trans-World Express captain,

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height above the hills.

¹⁰The law judge made credibility findings in favor of the weather observers.

and the station agent, all testified that, at the time of respondent's departure, the actual weather exceeded IFR minimums. Notwithstanding this testimony, however, the official weather reports issued closest to the approximate time of respondent's takeoff establish that there was a measured ceiling of 400 feet at 4:54 a.m., and an estimated ceiling of 300 feet at 5:52 a.m.¹¹

Respondent asserts that it was reasonable for him to rely on the weather information provided by the station agent. Respondent, his copilot, and the Wings West Vice President of Flight Operations, all testified that it is an accepted practice to obtain current official weather from a station agent, particularly when the tower is not in operation. Respondent also testified that he knew the station agent had access to a SABRE computer terminal, and he knew that the station agent could reach the field weather observers by telephone line. TR-475. Respondent could do neither, once he boarded the aircraft. Furthermore, respondent testified, he had no reason to doubt the source of the information provided by the station agent. TR-478. Respondent believed the station agent gave him an updated, official weather report. TR-460.

The law judge found that the actual weather was at or above IFR minimums at the time of respondent's takeoff. He ruled, therefore, that respondent did not violate FAR § 91.175(f), since

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¹¹The FAA's reply brief at page 15, n.11 is somewhat misleading. The complaining witness observed a different American Eagle flight that departed after 6:00 a.m. By that

that regulation does not require the exclusive use of "official" weather reports. However, the law judge further ruled that under FAR Part 121 the "official" weather report controls, and respondent was therefore in violation of FAR § 121.651(a). While we concur with the law judge's regulatory interpretation, we do not agree that respondent should be held strictly liable under FAR § 121.651(a).

The law judge found that respondent could not reasonably rely on the information provided by the station agent, citing Administrator v. Buboltz, NTSB Order No. EA-3907, recon. denied, NTSB Order No. EA-3981 (1993). The law judge reasoned that respondent already had in his possession the "official" weather report that had been included in the dispatch package, and that he was not free to seek another report from a source "of his choosing." The law judge noted that the station agent did not have an independent duty to obtain updated official weather reports and relay them to respondent, and that in order to rely on his report, respondent had to take additional steps to insure that he was receiving official weather, by directing the station agent to obtain the current weather from a particular source, or by at least inquiring as to where the station agent had gotten the information. We agree that it would have been preferable for respondent to take such steps before proceeding. However, we do not think that his reliance on the station agent's report was so unreasonable that it may not excuse his actions.

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time, the tower and ATIS were in operation.

The FAA's investigating inspector testified that based on his monitoring of commercial operations for the FAA and his own experience as a commercial pilot, he believes it is customary for a crew to be given a computer printout containing weather information when they arrive at the gate, just prior to their boarding the aircraft, particularly when a flight is the first flight of the morning. In response to the law judge's question as to who gives the crew the dispatch "package," the inspector further testified that, "Generally, I've observed that the gate agents provide that information off the computer. They print it out at the local station, and he [a PIC] has that information provided to him." TR-332. In our view, if it is customary and acceptable to the Administrator for a gate agent to provide the weather report that is included in the dispatch package, and if it is customary and acceptable to the Administrator for the gate agent to hand weather reports to the crew before they board the aircraft, it is not clear to us why the Administrator would demand or expect the respondent to question the source of the same type of information, when it was provided to him by the same or another gate agent after he has boarded the aircraft, absent some particular reason to doubt the accuracy of the report or its source. Moreover, neither the tower or ATIS were available to respondent for confirmation, and the station agent's weather report was consistent with respondent's own observations.¹²

¹²We recognize that respondent could have called the Memphis or Fort Smith ATC Centers for weather, but the Administrator did not rebut respondent's testimony that his operations manual

Finally, and notwithstanding the law judge's credibility findings against the station agent based on his evaluation of the witnesses' courtroom demeanor, there is no evidence in this record that should have alerted respondent or caused him to question the veracity of the station agent.¹³ Cf. Administrator v. Sparks, 5 NTSB 490 (1985)(pilot could rely on weather information relayed to him by the station manager, because he had no reason to suspect that it was not obtained from a certified weather observer and that it was not official). In sum, we think it was reasonable, under the circumstances presented here, for respondent to believe that he had received an official weather report through the station agent, and it was not unreasonable for him to take off, based on that information. Administrator v. Leenerts, 6 NTSB 725, 728 (1988).

ACCORDINGLY IT IS ORDERED THAT:

1. The respondent's appeal is granted; and
2. The Administrator's order is dismissed.

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

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required him to first seek current weather from the SABRE computer, and this is exactly what he did by calling the station agent.

¹³We also find it significant that the station agent testified that he told respondent he would get the report from the field observers, and when he reported back to respondent he specified that there was now a 500-foot ceiling.