

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

JOHN L. McLUCAS, Administrator
Federal Aviation Administration

Complainant

vs.

DONALD N. KRONER

Respondent

4 - MAR - 1
COPY 1977

Docket SE-3458

Roy P. Smith, Esq., for Administrator
Malcolm Houston, Esq., for Respondent

BENCH DECISION

William E. Fowler, Jr., Administrative Law Judge

Thank you very much, Mr. Smith and Mr. Houston for your learned arguments on behalf of your respective clients.

As both of you, I am sure, are well aware, under the Rules of Practice in Air Safety Enforcement Proceedings as they have been promulgated by the National Transportation Safety Board, a United States Administrative Law Judge in an emergency revocation, which is the type of proceeding we have here, under Section 821.56 of those Rules, must issue an oral decision on the record following the conclusion of a proceeding of this type.

I have reviewed extensively the testimony and evidence that you have introduced here during the course of this two-day hearing.

We are involved in an action of an emergency order of revocation. When the Federal Aviation Administrator brings an action of revocation against a pilot's certificate, what the Administrator is saying in effect is that he, the Administrator, believes that that particular pilot, the subject of the action, does not possess the requisite qualifications to hold a pilot's certificate of any class, whether private, commercial, or an airline transport rating certificate.

This is an unusual case as Counsel for both sides have pointed out, and correctly so. Usually one act or one incident of sufficient severity suffices to cause the Administrator to bring an action as he has brought here in this particular case.

But, here we have three different flights, three different aircraft, all by the same Respondent, Mr. Donald N. Kroner. And, the paramount, central, and overriding issue to be decided, as set forth in Administrator's amended Emergency Order of Revocation, is: In his flight of December 7, 1976, and the Respondent's flight of December 19, 1976. Did he, the Respondent, as the Administrator has alleged in his Order, violate Sections 91.79 A and 91.79 B and 91.9 of the Federal Aviation Regulations during the course of those aforesaid three flights? That is what we have to deal with here.

91.79 A and B reads in effect, the pilot has operated a civil aircraft at altitudes less than 1000 feet over a congested area or areas, or over an open air assembly of persons at an altitude that did not permit, in the event of a power failure, an emergency landing without undue hazard to persons or property on the surface.

The other section we are concerned with here, is 91.9 which to paraphrase it says in effect that by reason of the pilot's aforesaid operation, that he was engaged in a careless or reckless operation endangering the lives and property of others.

We have a lot of air crashes taking place in this country every year. Many of them we remember or we hear in news accounts on television, or hear about it on radio, but I cannot recall offhand a more "public crash" than the one that occurred on December 19th. It is not too often you hear of an aircraft colliding with a stadium, an athletic stadium at that, and particularly when that stadium a few minutes before had been occupied by thousands of persons. To say there was a bit of notoriety about that crash would be an understatement. Certainly, very few people within the confines of the City of Baltimore and certainly no one even before this hearing took place was completely unaware of this crash.

I am not saying that all of the publicity is unfortunate because that is not the paramount concern here. The concern here is was the Respondent, Donald N. Kroner, acting as pilot in command on two flights, of two separate aircraft, on December 19th, both of which were operated within the area of Baltimore Memorial Stadium.

The first flight being a Cessna 150, maroon and white in color. The number of that aircraft, registration number being N-2935 and the second flight involved a blue and white Piper Cherokee, registration number being N-6276J.

Now, the other incident, was on December 7th. We have had testimony that a yellow and white aircraft, registration number N7595U, a Cessna 150, flew over Bill Pellington's Restaurant and the adjacent

shopping center at altitudes less than 200 feet; and whether or not Mr. Kroner, the Respondent in this proceeding, was the pilot of that plane on that date, time and place.

As we all know the blue and white Piper Cherokee N6276J, was the plane that ended up crashing into the upper deck of the Baltimore Memorial Stadium.

Based on the testimony, the evidence, and exhibits introduced during the course of this proceeding there can be no doubt, that the Administrator's allegations pertaining to those two flights on December 19, 1976, by Respondent Kroner, that the Administrator has proven those charges by an almost overwhelming margin of the evidence. I should say of the reasonable, probative, reliable and substantive evidence. The Administrator has come forth during the course of this proceeding with 15 witnesses. That constitutes a wealth of testimony. Of those witnesses, seven of them, are eye witnesses to either of these incidents; either the incident of December 7th or the incident on December 19th at the stadium.

Where the stadium is concerned we had eye witnesses in, Mr. Reagan, Mr. Ayers, Baltimore County Police Officers, Griffin, Brown and Rankin. Those are five eye witnesses who testified as to what occurred in or about the Baltimore Memorial Stadium on the afternoon of December 19th.

It is well in passing to note a great majority of these witnesses that I have just alluded to, Administrator's witnesses, all said they did not detect, see, or know of any mechanical failure or difficulty on the part of the Respondent's aircraft prior to the crash into the upper deck of the stadium.

In that connection you may recall, Mr. Raymond Meyers who is employed by the Federal Aviation Administration, as an Inspector, specializing in the maintenance, testified that he did an exhaustive inspection of the entire aircraft, that is the Piper Cherokee aircraft that crashed into the stadium. He did an exhaustive inspection of that aircraft and found no evidence whatsoever of any mechanical malfunction or failure. In fact, in addition, he testified that it was his opinion, based upon his inspection of the aircraft following the accident, that the engine was running, and the prop was turning at the time of impact of that aircraft into the upper deck of the Baltimore Memorial Stadium.

So, as I alluded to earlier, the Administrator has shown by an overwhelming margin of the evidence that the allegations as set forth in his Order pertaining to the two flights of December 19, 1976, by the Respondent are valid. He has proven to my satisfaction all of those allegations.

Now, the flight of December 7th involving a yellow and white aircraft, Cessna 150, registration number N7595U -- The Administrator's evidence is not as substantial there as in the December 19th incident.

However, it is my considered opinion and judgment that there is sufficient evidence for the Administrator to have successfully proven his allegations relating to that flight on December 7th as the Administrator has charged in his Emergency Order of Revocation.

The Respondent rented an orange and white aircraft, Cessna 150, from Coleman Aviation on December 7th at approximately 2:30 that afternoon. He returned the aircraft at 3:30.

Now, Baltimore County Police Department Patrolman Harry Marklin, if you recall, testified that he went out to Bill Pellington's Restaurant and Bar in the shopping center area there. He testified that at approximately 2:45 he saw a white aircraft, a yellow or orange stripe, fly 75 to 80 feet above the rooftops of the shopping center. Baltimore County Police Detective Robert Reddick also was there at the same place at the same time and the same date and testified to virtually the same thing as Patrolman Marklin did.

In addition Officer Reddick said he saw this aircraft, the white and orange aircraft, pass over at approximately 100 feet altitude. Officer Reddick said, in addition to that, he spoke to the Respondent on at least two occasions, December 10th and December 14th, about this flight of December 7th. And, it was Officer Reddick's opinion that the Respondent was the pilot in command of the aforesaid aircraft on December 7th which went over the shopping center surrounding Pellington's Restaurant and Bar.

As Counsel for the Administrator stated in his final argument, the Baltimore Memorial Stadium incident in and of itself would suffice where the Order of Revocation here is concerned. We could totally disregard the December 7th incident and there would still be ample grounds and justification to affirm the Administrator's Order of Revocation.

But, as I said earlier, I believe the evidence -- There is credible evidence substantial enough so that in the final analysis I would have to hold that the Administrator has successfully proven all the allegations by a fair and reasonable preponderance of evidence adduced before us in this proceeding and I will find and hold accordingly.

Now, I would like to say before I make my specific findings, I know of very few pilots that I have encountered or come in contact with in these proceedings or otherwise, who do not have a love for aviation. Many of them have made great efforts at great personal sacrifice to achieve and to have and to hold the type of Federal Aviation certificate ratings that they have. Usually -- As I say it is a great personal expense, great personal sacrifice. I am not unmindful of that where Mr. Kroner is concerned.

However, I cannot be unmindful either of the willful and almost incredible disregard of the safety of the general public in and about the Baltimore Memorial Stadium on December 19th. For any airman to do what was done here with these two aircraft, at different times. The Respondent flew first around the exterior of the stadium and the second flight actually not only within the confines of the stadium itself, but down into the stadium.

You may remember that at least one witness testified the plane went over the goal posts 10 to 20 feet above those goal posts. There can be no condoning of flying behavior or conduct of this type. It is extremely fortunate that no one, save the Respondent himself, was injured as a result of this type of flying.

Some of you know and some of you don't know that being a pilot, being licensed by the Federal Aviation Administration, to fly an aircraft is not a right, it is a privilege that is afforded to those individuals who fly. If you do not adhere to, or obey the Federal Aviation Regulations, or if you show a lack of judgment or a basic lack of the inherent qualities which are a prerequisite for any licensed pilot to possess at all times,

then, the Federal Aviation Administrator has been granted by law, by the Congress of this country, a great amount of discretion and latitude to suspend or revoke any airman's certificate or that of a mechanic or air traffic controller or navigator for any reason that he, the Federal Aviation Administrator, sees fit. This is in the interest of the safety of the general public in the continental limits of the United States. That is in essence what we have here.

So, that, ladies and gentlemen, based upon my entire review and consideration of all of the testimony and evidence, coupled with the documentary exhibits, I make the following specific findings of facts and conclusions of law:

One: It is found that on or about December 19, 1976, Respondent, Donald N. Kroner, acted as pilot in command of a Piper Cherokee, Pa-128, civil aircraft N6276J, on a VFR flight over Baltimore, Maryland.

Two: That during the course of said flight at approximately 5:15 p.m. the Respondent operated said aircraft over Baltimore Memorial Stadium on two low passes.

Three: That each of the passes described above were at an altitude of less than 100 feet above said stadium and were made at a time when several thousand people were located in said stadium.

Four: During the course of the second pass described above, the Respondent, Donald N. Kroner, operated said aircraft into the stands of said stadium, terminating the flight in an accident.

Five: That on or about December 7, 1976, Respondent Kroner acted as pilot in command of a Cessna 150, civil aircraft, N7595U, on a flight in the vicinity of Lutherville, Maryland.

Six: That during the course of said flight the Respondent operated said aircraft at an altitude of approximately 100 feet over a restaurant, Pellington's Iron Horse, located in Lutherville.

Seven: The Respondent admits, and it is found that the area described above is a congested area.

Eight: On or about December 19, 1976, Respondent Kroner acted as pilot in command of a Cessna 150, civil aircraft N22935, in a flight over Baltimore, Maryland.

Nine: That during the course of said flight, at approximately 3:00 p.m., the Respondent operated said aircraft on several passes over Baltimore Memorial Stadium at an altitude of less than 500 feet.

Ten: That at the time of said operation there were many thousands of persons located in said stadium.

By reasons of the foregoing, Respondent, Donald N. Kroner, violated the following Federal Aviation Regulations: One, Section 91.79 A and B, in that Respondent operated civil aircraft N6276J and N7595U and N22935 at altitudes of less than 1000 feet over a congested area, over an open air assembly of persons, and at an altitude that did not permit, in the event of a power failure, an emergency landing without undue hazard to persons or property on the surface.

And, two, Section 91.9 in that by reason of the aforesaid careless or reckless operations he endangered the lives and property of others.

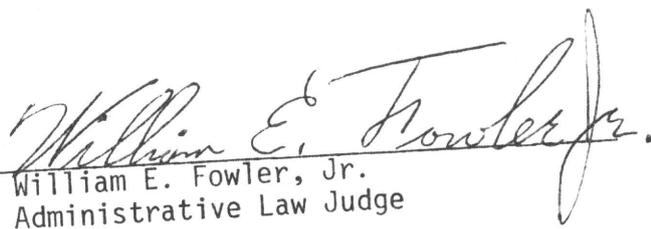
Let the record indicate that pertaining to the two flights of December 19th, in or about the vicinity of Baltimore Memorial Stadium -- I will deem the first flight, the one that took place in the maroon and

white Cessna, N22935 registration number, to be a careless operation. But, the second flight that terminated in the accident, involving a Piper Cherokee, blue and white aircraft, registration number N2676J, operation of that flight is deemed to be a reckless operation under Section 91.9 of the Regulations.

Eleven: This Judge finds that safety in air commerce or in air transportation and the public interest does require the affirmation of the Administrator's amended Order of Emergency Revocation, dated January 5, 1977, in view of the Respondent's violations of Section 91.79 A and B and Section 91.9 of the Federal Aviation Regulations. And, that the said Order of the Administrator must be affirmed.

ORDER

It is ordered that the Administrator's amended Order of Emergency Revocation, dated January 5, 1977, be and the same hereby is affirmed. This order is issued by William E. Fowler, Jr., United States Administrative Law Judge.


William E. Fowler, Jr.
Administrative Law Judge

Under the heading of appeal, either Party to this proceeding may appeal the Judge's oral initial decision. The Appellant is to file notice of appeal within two days of the Judge's decision and must within

five days of this decision file a brief in which he sets forth his objection to the Judge's oral initial decision.

Notice of appeal and the brief shall be filed with the National Transportation Safety Board, Docket Section, 2100 2nd Street, S.W., Washington, D.C. 20590.

If no appeal to the Board is taken from either Party or if the Board does not file a motion to review the oral initial decision in the time allowed, then, the Judge's oral initial decision shall become final.

Timely filing of such an appeal, however, shall stay the order in the initial decision.

