

SERVED: September 9, 1992

NTSB Order No. EA-3673

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 13th day of August, 1992

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THOMAS C. RICHARDS, Administrator,	)	)	
Federal Aviation Administration,	)	)	
	)	)	
Complainant,	)	)	Docket SE-12513
	)	)	
v.	)	)	
	)	)	
THOMAS FELIX COMBS,	)	)	
	)	)	
Respondent.	)	)	
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**ORDER DENYING PETITION FOR MODIFICATION OF BOARD ORDER**

The Administrator has filed a petition for modification of Board Order No. EA-3616 (served July 2, 1992), which denied the respondent's appeal from a decision affirming the emergency revocation of his Airline Transport Pilot certificate for violations that allegedly occurred when he left his duty station as pilot-in-command of a Federal Express MD-11-F aircraft without insuring that a relief pilot or second-in-command would take over for him during his absence, a situation that left the cockpit pilotless for about a half a minute.<sup>1</sup> In his petition, the Administrator asks that the Board "expunge" certain comments concerning another crewmember on the flight with the respondent, namely, the Relief First Officer (RFO). For the reasons discussed below, we will deny the requested relief.

In our decision, we noted, *id.* at 5-6, for purposes of evaluating the reasonableness of the respondent's conduct, that he may well have

anticipated that the RFO, who was standing just outside

<sup>1</sup>The respondent has filed a response opposing the petition.

the open doorway to the cockpit, would take over for him at the controls as soon as he had departed for the lavatory, despite any awareness he may have had that the RFO did not care for him personally or may have still been upset with him over his seating assignment in the cockpit.

As it turned out, the RFO, notwithstanding, according to the uncontradicted testimony, the fact that respondent after getting up from his seat had signalled him to come in, did not enter and occupy a pilot duty station in the cockpit, where he presumably knew respondent had continuously been at the controls for more than seven hours. Further, it appears that once the respondent had left the cockpit, the RFO remarked to another crewmember, in apparent satisfaction that the respondent had done something that the RFO could use to make trouble for him, words to the effect "I've got him now." While the Board did not agree that respondent's misplaced reliance on the RFO to do what was expected of him was an extenuating circumstance, at least where respondent's expectations were not unambiguously communicated to the RFO, we did imply a belief that the RFO's conduct in the incident might have called his judgment as a certificate holder into question, and we further noted that as a result of the RFO's report of the matter, the respondent's employment with Federal Express was terminated. It is our comments on these matters which the Administrator's petition for modification addresses.

Specifically, the Administrator contends that the Board should expunge at least the second sentence in footnote 7 from its decision on the ground that it contains gratuitous, speculative, and unnecessary comments that will have a "devastating effect...on the RFO's ability to work as a pilot crewmember with other Federal Express pilots during the rest of his career." That footnote reads, in toto, as follows: "While the record suggests that the RFO was unhappy with his seat assignment on this flight, it does not disclose the origin of, or reasons for, his pre-existing dislike of respondent. In any event, although the fate of the RFO is not clear from this record, he appears to have succeeded, by deliberately refraining from entering the cockpit after the respondent left, in having respondent fired from his employment with Federal Express after a 25-year violation-free career." Apart from the fact that, as the respondent's opposition to the petition demonstrates, the footnote is adequately supported, directly or circumstantially, by evidence in the record, we perceive nothing inappropriate in it and no valid reason in the Administrator's petition for excising any part of it.<sup>2</sup>

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<sup>2</sup>The Administrator asserts that the footnote is in error because it suggests that the RFO made the decision to fire respondent from Federal Express, whereas such decisions are made by management officials, not pilots. We disagree that the footnote suggests that the RFO himself fired the respondent. In any event,

Although the Board has no desire to have its decision adversely affect the RFO's career, his conduct on the subject flight is obviously relevant to a proper evaluation of the respondent's, and the RFO's conduct cannot be understood except in the context of his unexplained antipathy for the respondent. The respondent's violations did not occur in a vacuum. Rather, they resulted, at least in part, from a miscalculation concerning the degree of professionalism he could count on from another crewmember. Indeed, it is because the RFO's inaction, when the helm was unmanned, seemed so clearly to raise an issue concerning his willingness to act, notwithstanding the influence of any personal, extraneous factors, in a manner consistent with the dictates of air safety, that we felt constrained to observe, without intending any prejudgment, that the record did not disclose whether he, too, either in the eyes of the FAA or his company, might have been viewed as having failed to fulfill his obligations as a crewmember and certificate holder. While the Administrator represents in his petition that "no enforcement action is or will be sought against the RFO's certificate due to the incident that led to this action against the Respondent (Pet. at unnumbered page 4)," we do not agree that the implication in footnote 7 that the RFO might have been answerable for some regulatory infraction or for some departure from company policy unfairly suggests that disciplinary action was warranted.<sup>3</sup> Nevertheless, to the extent we are mistaken in this connection, the RFO can point to this order's acknowledgement of the Administrator's view that he committed no regulatory wrong.

**ACCORDINGLY, IT IS ORDERED THAT:**

The petition for modification of Board Order No. EA-3616 is denied.

COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Chairman, VOGT did not participate. Member HAMMERSCHMIDT submitted the following concurring statement.

(..continued)

since the RFO submitted a statement concerning the episode to Federal Express immediately after the flight, and that statement was later forwarded on to the FAA, there is no dispute but that the RFO's report was the predicate for the firing and for this action, whether or not the RFO appreciated what impact his report would actually have on respondent's employment.

<sup>3</sup>The Administrator's solicitous defense of the RFO's behavior has a hollow ring. We find it difficult to accept that the Administrator endorses the manner in which the RFO comported himself on the flight, even if he believes no regulatory breach was committed or could be proved.

Member Hammerschmidt, concurring:

I concurred in the Board's decision to deny the appeal of the respondent in this proceeding and to sustain the sanction of revocation, and I agree with the denial of the instant petition. At the same time, I believed, when the matter was originally before us, and I continue to believe, that the RFO'S conduct on the subject flight, even if it did not serve to excuse or mitigate the seriousness of the charges against the respondent, reflected a willingness to compromise flight safety in favor of his own vindictive motives. Against that background, I find myself compelled to register separately from the Board my view that the Administrator's solicitude on behalf of the RFO, whose failure to assume a Position in the cockpit when the respondent left at the very least cannot be reconciled with the goal of encouraging safe and effective crewmember interaction, is both opaque and troubling.