

consistent findings supported by substantial evidence in the record considered as a whole, relying on *Carey v. C.A.B.*<sup>4</sup> He declares that although he raised this issue in his petition for reconsideration it was not discussed in the Board's order, and he urges that the Board state its position regarding his contention.

The Board's decision in the instant proceeding is in no way inconsistent with the court's determination in the *Carey* case. Thus, in the initial decision, which was included with the Board's opinion, the examiner made factual findings which covered in ample detail the respondent's abandonment of command to another pilot without efforts to ascertain the other pilot's qualifications, and respondent's subsequent efforts to conceal his actions from his employer. The respondent did not perfect an appeal from the initial decision, and under the Board's Rules of Practice (sec. 301.46(b)) respondent is therefore deemed to have waived any error of fact or law therein.<sup>5</sup> The only issue before the Board on appeal was that of sanction, raised by the Administrator. In these circumstances, there is nothing which requires the Board to re-examine or restate the examiner's factual findings although, as the Board stated in its opinion, it did consider the whole record to determine the question of sanction and, in this connection, found the examiner's findings supported by the record. Accordingly,

**IT IS ORDERED—**

1. That the effective date of the revocation of respondent's airman pilot certificates and ratings provided in order S-1114, June 22, 1961, be and it hereby is stayed until August 7, 1961: *Provided*, That if on or prior to that date, respondent files with the appropriate U.S. Court of Appeals a request for judicial review of this proceeding, the effective date of the revocation shall be further stayed until 10 days after the reviewing court shall issue any mandate or judgment affirming the Board's order.

2. That the respondent's motion of June 29, 1961, herein, be and it hereby is denied in all other respects.

<sup>4</sup> 275 F.2d 518 (1st Cir. 1960).

<sup>5</sup> Sec. 301.46(b) reads, in pertinent part: "Any error contained in the Initial Decision that is not objected to shall be deemed to have been waived."

**DOCKET SE-134, W. F. WILBUR, respondent—order S-1115 adopted June 23, 1961.**

The respondent, by his attorney, has filed with the Board a withdrawal of his notice of appeal from Examiner Henry F. Martin's initial decision, issued May 8, 1961. He has also asked that the effective date of the 30-day suspension of his airline transport pilot rating ordered in the initial decision be deferred until July 24, 1961. The Administrator has replied, interposing no objection to withdrawal<sup>1</sup> or deferral.

Upon consideration of the respondent's requests, and the reply, we shall order dismissal of the appeal, but deny the request for deferral of the effective date of the sanction. The reasons for deferral advanced by the respondent are based on personal convenience and, in all the circumstances, we do not find that they show such mitigating or extenuating circumstances as would warrant our granting the relief requested. Accordingly,

**IT IS ORDERED—**

1. That respondent's appeal be and it hereby is dismissed;

2. That the suspension of respondent's airline transport pilot rating ordered in the examiner's initial decision of May 8, 1961, herein, be and it hereby is made effective on July 3, 1961.

**DOCKET SE-119, GEORGE G. GRAHAM, respondent—orders S-1116 and S-1123.**

**ORDER S-1116 ADOPTED JUNE 23, 1961**

The respondent has appealed from Examiner S. Thomas Simon's initial decision of January 27, 1961, included herein, affirming the Administrator's order which suspended respondent's airman certificate, with airline transport pilot

<sup>1</sup> Prior to the respondent's filing of the withdrawal of his appeal, the Administrator had filed a motion to dismiss the appeal on the ground that the respondent had not filed a supporting brief, as provided by sec. 301.46(a) of the Board's Rules of Practice in Air Safety Proceedings.

privileges, for a period of 60 days.<sup>1</sup> In his decision, the examiner found that the record sustained the Administrator's conclusion that respondent, pilot-in-command of Frontier Airlines' flight 61 on October 23, 1959, operated the aircraft at the Lee Bird Airport, North Platte, Nebr., in a careless manner and endangered the life and property of others, in violation of section 60.12 of the Civil Air Regulations. The examiner's decision is based on findings that respondent (1) permitted the loading, unloading, and servicing of the aircraft, a DC-3, while it was located on the airport's active runway; (2) permitted the aircraft to be blown backwards down the active runway, in severe wind conditions, to the point of takeoff; (3) took off when the officially reported prevailing wind was in excess of the allowable maximum as provided by Frontier Airlines' Manuals; and (4) took off from a position on the runway which respondent could not have determined, from available information, to provide adequate runway length for a safe operation.

The respondent's appeal relates only to the matter of sanction.<sup>2</sup> He contends that the public interest does not require the suspension of his certificate, and that the proceeding should be dismissed. The Administrator filed a brief in reply, urging that his suspension order is proper, and that respondent's appeal is without merit and should be denied.

Upon consideration of the record and the matters set forth in the appeal and reply, it is the Board's determination that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. Accordingly, we will deny respondent's appeal.

In contending that the public interest does not require a sanction in this case, respondent asserts that a suspension must be shown to constitute a deterrent to a respondent or others. He argues that the facts and circumstances of this case are so unique, and the probability of the same operational situation arising in the future so remote, that a sanction here could not possibly serve as a deterrent.

Respondent's contentions are unsound. His premise that the facts and circumstances are unique, and the possibility of the same operational situation arising in the future is remote, is inconsistent with his position that the maneuver of permitting the aircraft to drift backward down the runway has been utilized by other Frontier pilots at isolated airports. In any event, we are convinced that a sanction in this case performs a useful purpose in preventing and deterring further violations by respondent and others. Thus, a sanction in this case serves as a warning that careless operation of an aircraft endangering the lives and property of others, whether it be on the ground or in the air, does not meet the requirement that a pilot-in-command of a scheduled airline flight exercise the highest degree of care, judgment, and responsibility at all times, and, therefore, subjects the wrong-doing pilot to disciplinary action.<sup>3</sup> Accordingly,

**IT IS ORDERED—**

1. That the respondent's appeal be and it hereby is denied;
2. That the order of the Administrator dated July 12, 1960, be and it hereby is modified to provide that the suspension of respondent's airman certificate order therein shall become effective on July 3, 1961.<sup>4</sup>

<sup>1</sup> The Administrator's order provides that respondent be issued a temporary commercial pilot certificate, with appropriate ratings, for the period of suspension, thus permitting respondent to perform as a copilot.

<sup>2</sup> The Board's Rules of Practice in Air Safety Proceedings (sec. 801.46) provide that objections to alleged errors of fact and law in the initial decision shall be set forth in detail in the appeal brief, with supporting reasons, and that any error in the initial decision not objected to shall be deemed to have been waived. In his appeal brief, respondent states that "although the respondent does not agree with the Hearing Examiner's findings of fact, it does not appear necessary to take detailed issue with them. The Respondent, however, takes issue with the Examiner's conclusion that the public interest and safety of air transportation requires suspension of his Airline Transport Rating (initial decision at 885)." (Pp. 4-5).

<sup>3</sup> We also reject respondent's contention that suspension is not a proper remedy, and that, in lieu of this sec. 609 proceeding, the Administrator should have proceeded under sec. 901 of the Act, the civil penalty provision. The choice of whether to proceed under sec. 609 or sec. 901 is the Administrator's, not the Board's.

<sup>4</sup> Stayed by order S-1117 adopted June 30, 1961, until further order of the Board.

## INITIAL DECISION OF EXAMINER S. THOMAS SIMON

The Administrator of the Federal Aviation Agency, acting pursuant to section 609 of the Federal Aviation Act of 1958,<sup>1</sup> issued his order on July 12, 1960, suspending the airline transport pilot rating held by George G. Graham, of Denver, Colo., for a period of 60 days, effective August 1, 1960. On July 20, 1960, an appeal to the Board was filed on behalf of Captain Graham (respondent), by his attorneys, John P. O'Brien and Maurice B. Wigderson, of Chicago, Ill., and under the provisions of section 609 of the Act, the effectiveness of the order is stayed pending the final determination of the appeal. The proceeding before the Board, although initiated by the filing of the appeal from the Administrator's order, is in substance a hearing *de novo* of the allegations upon which the Administrator relies in justification for the suspension of the respondent's airline transport pilot rating, and pursuant to rule 14 of the Rules of Practice of the Board,<sup>2</sup> the order of the Administrator becomes the complaint in this proceeding.

The Administrator's order as amended during the hearing makes the following allegations of fact and conclusions of law:

1. On October 23, 1959, you served as pilot-in-command of Frontier Airlines' flight 61, a Douglas DC-3 aircraft identified as N64423, on a scheduled passenger flight from Lincoln, Nebr., to Denver, Colo., with a number of intermediate stops.

2. Prior to landing at North Platte, Nebr., a scheduled en route stop, the surface winds at Lee Bird Municipal Airport, North Platte, were reported to Frontier Airlines' flight 61 as gusty, from the north-northwest at 30 to 40 knots.

3. Frontier Airlines' flight 61 landed on runway 30, which was the active runway at Lee Bird Field, North Platte, Nebr., at that time.

4. Frontier Airlines' flight 61 stopped on said runway 30, the active runway, to discharge deplaning passengers, to take aboard enplaning passengers, and for servicing while the aircraft, or a part thereof, was located on or over said active runway.

5. Subsequent to the landing and servicing of Frontier Airlines' flight 61 on said active runway 30, you permitted the aircraft, with passengers aboard, to be blown backward down said active runway toward the approach end, to a point approximately 2,300 feet from the northwest end of said runway.

6. From said position approximately 2,300 feet from the northwest end of runway 30, you proceeded to and did take off from said runway, at approximately 1559 G.m.t.

7. The 1558 G.m.t. official U.S. Weather Bureau Surface Weather Observation at Lee Bird Field reports that the wind was from the north-northwest at 45 knots, gusting to 62 knots.

8. The Frontier Airlines' Operations Manual provides that the maximum headwind for takeoff of DC-3 aircraft is 52 knots and the maximum crosswind component is 22 knots.

9. The Frontier Airlines' Operations Manual runway chart does not contain information reflecting the length of runway necessary for a takeoff of a DC-3 aircraft with a headwind component in excess of 40 m.p.h.

By reason of the foregoing, you violated section 60.12 of the Civil Air Regulations in that your actions constituted careless and reckless operation of the aircraft and endangered the life and property of others, for the following reasons:

1. You permitted the unloading, loading, and servicing of your aircraft while the aircraft, or a part thereof, was located on the active runway.

2. You permitted your aircraft to be blown backward down the active runway.

3. You took off when the official wind reported 1 minute prior thereto was gusting to 62 knots and the Frontier Airlines' Operations Manual

<sup>1</sup> 72 Stat. 779; 49 U.S.C. 1429.

<sup>2</sup> Part 301 of the Board's Procedural Regulations, the Rules of Practice in Air Safety Proceedings, PR-33, effective Dec. 31, 1958.

prohibits takeoffs in headwind in excess of 52 knots and crosswind components in excess of 22 knots.

4. You took off from a position on the runway which you could not have determined, from available information, as providing adequate runway length to conduct a takeoff safely.

By reason of your actions as heretofore described, you failed to exercise at all times the high degree of care, judgment, and responsibility required of an airline pilot while serving as pilot-in-command of aircraft in scheduled air transportation.

Upon these findings the Administrator ordered the respondent's airman certificate with airline transport pilot privileges suspended for a period of 60 days, and provided for the issuance of a temporary commercial pilot certificate to the respondent during the period of suspension. A number of preliminary motions<sup>3</sup> were filed by both parties and the respondent answered the allegations of the Administrator's order, putting in issue certain facts and denying that the respondent's actions constitute the careless and reckless operation of an aircraft, endangering the life and property of others, in violation of section 60.12 of the Civil Air Regulations. Pursuant to notice, public hearings were held at Denver, Colo., on August 17, 18, and 19, 1960, at which the respondent was present and represented by his attorney, John P. O'Brien, and the Administrator was represented by his Chief Enforcement Attorney, Ned K. Zartman, and John J. Keyser, enforcement attorney, of the Washington office of the General Counsel.

The respondent is employed in scheduled air transportation by Frontier Airlines as the pilot-in-command of scheduled flights in DC-3-type aircraft. He is 37 years of age, and is the holder of airman certificate 1008991, with airline transport pilot privileges, and is rated in DC-3 aircraft. He has total flight time of 8,300 hours, of which some 8,000 have been in DC-3 aircraft, and has been in the employ of Frontier for 12 years, 2 years as a flight steward, 10 years as a pilot and rated as a captain since 1957. On October 23, 1959, he was the pilot-in-command of Frontier's flight 61, operating between Lincoln, Nebr., and Denver, Colo., with various intermediate stops, including North Platte, Nebr. The aircraft approached the North Platte Municipal Airport at approximately 0833, m.s.t.,<sup>4</sup> and landed at 0845. North Platte Municipal Airport is an uncontrolled airport into which Frontier Airlines operates four scheduled flights a day. No other scheduled carrier operates into or out of North Platte. On this occasion the active runway was runway 30, which is 6,603 feet long, constructed of concrete. At its northerly end it intersects runway 8-26 and shortly beyond this intersection are threshold lights which are 619 feet from the northwest end of the runway.<sup>5</sup>

Although there is no control tower in operation at the airport, the Federal Aviation Agency maintains a flight service station which is equipped to give weather conditions at the airport, including wind direction and velocity. In addition, Frontier Airlines has personnel stationed at North Platte and at the time that Frontier 61 approached the airport, there were two men on duty at this station. Frontier Airlines' station is equipped with instrumentation for reading wind direction and velocity and has radio communication equipment for communicating with its flights over its own frequency.

At 0835, when approximately 10 minutes from the airport, flight 61 called the Frontier Airlines' station at North Platte and requested routinely the altimeter setting and wind direction. The wind was reported by the station agent on duty as 320°, 30 knots, with gusts to 40. This was acknowledged by flight 61. About 3 minutes from the airport, flight 61 for the first time contacted the FAA flight service radio station asking for known traffic, wind direction, and velocity. The wind was reported as NNW 30, gusting to 38 knots.<sup>6</sup> At 0845 flight 61 landed without incident on runway 30 and taxied to the intersection of this runway and runway 8-26.

<sup>3</sup> Except as previously granted at the hearing, all motions of the parties, including the respondent's motion to strike the complaint because of lack of jurisdiction, are hereby denied.

<sup>4</sup> Hereinafter all times will be based upon the 24-hour clock and mountain standard time.

<sup>5</sup> These threshold lights are off the runway and are placed at this location so that aircraft landing to the southeast will pass over U.S. Highway No. 30, some 124 feet beyond the end of the runway, at a minimum altitude of 50 feet. However, the 619 feet of runway extending to the northwest is unobstructed and usable for takeoff to the northwest.

<sup>6</sup> These communications were not recorded. The weather at the time was clear, with 12 miles visibility, and the flight was operating on a VFR basis.

to the Administrator's version of the incident, a right turn was on runway 8-26 but due to the strong wind the turn could not be the aircraft parked on runway 30. The aircraft was positioned at the edge of runway 30 and the north edge of runway 8-26 and was headed east. After the engines were shut down, a Frontier station agent came to the aircraft in his personal car and installed the rudder blocks. Two passengers were taken to the terminal building, some 1,600 feet to the east of the agent's car. The car returned to the aircraft with one enplaning agent and with both Frontier agents who were on duty. The engines were started and the aircraft was permitted to drift down the runway some 1,500 feet from the northwest end of the runway. While proceeding down the runway the aircraft was followed by the station agent's car across the grass on the east side of the runway. The engines were started and a station agent removed the rudder gust lock and the aircraft took off without incident. It was observed by an operations inspector that the aircraft was to pass over the northwest end of the runway at 0859.

According to the respondent's version, the aircraft, after touching down, rolled to the intersection of runway 30 and runway 8-26. A right turn to the east was made and at a point approximately 120 feet from the end of the runway the aircraft was turned left into the wind, paralleling runway 30. A gust lock was placed by one of the Frontier agents and the engines were started. After the passengers were deplaned and boarded substantially as in the Administrator's version, the engines were started at 0855. The aircraft made a left turn and after entering runway 30 a second left turn was made, approximately 200 feet down the runway a 180° turn was completed, and the aircraft into the wind. The aircraft was then permitted to drift down the runway to a position some 3,200 to 3,300 feet from the northwest end of the runway. During this drift-down procedure the aircraft was accompanied by the station agent's car alongside of the runway so that the two agents could observe incoming traffic, if any, and any obstruction on the runway. The aircraft stopped in position on the runway and a mag check was run. The aircraft removed the rudder gust lock and the aircraft took off without incident passing the northwest end of the runway at an altitude of 150 feet and a speed of 105 knots.

Three passengers, two of whom were aboard the aircraft both during the landing and one who boarded the aircraft at North Platte, testified on behalf of the Administrator. Mrs. Edna R. Woodward, a passenger on flight 61, testified that the aircraft landed on runway 30, which she identified on an exhibit, and that no passengers got off the aircraft, which was then on the runway. She testified that the position at which the aircraft parked on runway 30 as some 3,200 feet east of the intersection of the two runways. She distinctly remembered that the Administration Building was at all times to her right, and that she was only on her second airplane trip, was positive that the aircraft was on the runway while on the runway.

Mr. J. Pagoni, an Air Force pilot, was a passenger, sitting on the left side of the aircraft. He testified that the aircraft after touching down made an attempt to turn off to the right on runway 8-26 but was apparently unable to do so and the aircraft continued across the intersection and parked on the east side of runway 30, facing into the wind which was quartering from the right at the apex of the intersection of the two runways. After the passengers were deplaned and the engines were started and the aircraft was permitted to drift down the runway. Although unable to state definitely, having no reference points, he approximated the position at which the aircraft stopped down the runway. He observed the agent's car following the aircraft and testified that after a normal runup of the engines, an uneventful takeoff was made. He was positive that, except for the attempted turnoff on the runway, no turns were made other than necessary to control the aircraft as it drifted down the runway. He was quite certain of this fact which was of great importance since he had never seen an aircraft which was not equipped with gust locks or rudder gust lockers back down. He stated that from a pilot's viewpoint the runway was controlled and quite smooth.

Mr. Turner, an experienced airline passenger, was at the terminal waiting for flight 61. He observed the landing of the aircraft and saw it attempt to turn off to the east at the intersection of runway 8-26 attempt a turn to the east. However, the turn was discontinued and the aircraft was parked on runway 30, just beyond

the apex of the intersection. After the passenger agent returned to the terminal with the two deplaning passengers, he was taken in the passenger agent's car, together with a second Frontier agent, to the aircraft. Shortly after he boarded the aircraft the engines were started and the aircraft backed down the runway, followed by the agent's car. He was positive that no turns were made after he boarded the aircraft. From the time he first observed it until takeoff, the aircraft remained on runway 30.

John R. Turner, an air traffic control specialist of the FAA, who was on duty in the FAA flight service station at North Platte, testified that flight 61 contacted the FAA flight service station at approximately 0842, requesting the traffic and wind direction. He remembered giving the aircraft the wind and direction, which at the time was 30 knots, gusty to 38 knots from the NNW. His communications log for the period was introduced in evidence and bears a notation that at 0842 flight 61 made a contact asking for traffic and the weather and that the communications agent "gave gusty winds." The communications log does not reflect any other contact with flight 61 and Mr. Turner does not remember any other contact with the aircraft.

From his operating position in the FAA flight service station located in the Administration Building, he was able to observe the landing of flight 61. He testified that he observed the aircraft park on the east side of runway 30, just south of the intersection of that runway and runway 8-26. He observed the Frontier automobile proceed to the aircraft and take the deplaning passengers to the Administration Building. The car then returned to the aircraft and after one passenger was embarked, the aircraft drifted back down runway 30. He observed the Frontier car follow the aircraft which stopped at a position which he estimated to be one-third of the length of the runway. He was positive that the aircraft made no turns during the time that he had it under observation.

John W. Johnston, an operations inspector of the FAA, stationed at North Platte, was in his office in the Administration Building across the hall from the FAA flight service station. He testified that Mr. Turner, the communications operator, came into his office and informed him of an unusual operation which was taking place involving one of Frontier's aircraft. He proceeded to the communications office from which he observed flight 61 on runway 30, approximately one-third down the runway, with its engines running. He saw several people around the aircraft and a car parked off on the grass. One of these persons was carrying a small object which he believed was the rudder gust lock. As the aircraft took off, he ran downstairs and out of the building and observed the aircraft passing over the northwest end of the runway and checked the time by the communications office clock as 0859.

When he first observed the aircraft he realized that a takeoff would be attempted from that point and in order to mark the position of the aircraft, he alined the aircraft with a metal fencepost one-half inch in diameter, some 12 feet in front of the communications office window and marked the resultant bearing line of position on the wind ledge with a ballpoint pen. After the aircraft took off, he proceeded to the runway and located the runway light which he believed nearest to the place the aircraft had been parked. He placed the glass ring which is ordinarily around the runway light on end so that it could be observed from a distance and returned to the FAA flight service station office and to the window on the ledge of which he had marked the line of position. He alined the inked line of position with the fencepost and the runway light which was identified by the glass ring and satisfied himself that the runway light was the correct one. On the following Monday, 2 days later, he again went to the runway in his car and by prearrangement with his secretary who was using binoculars, made a check of the glass ring to determine whether it had been moved. He affixed a pole with a red flag to the runway light and after returning to the Administration Building, used binoculars to check the line of position previously drawn. After determining that the position was correct, he proceeded to the runway and made three runs in his car to check the distance to the end of the runway by his odometer. He then measured the distance manually, using a 50-foot steel tape, and determined that the runway light was 2,248 feet from the northwest end of the runway.

Inspector Johnston testified that while observing flight 61 on the runway he glanced at the wind direction and velocity indicators in the FAA flight service station at least twice. He remembered having seen fluctuating readings between

40 and 60 knots, and having heard the communications operator, Mr. Turner, transmit wind and information at least two times to other aircraft during this period, but did not hear any communication from or to flight 61.

Captain Graham testified that on the approach to landing he communicated with the Frontier radio station and asked that rudder blocks be brought to the intersection of runways 30 and 8-26, and that after touchdown he taxied to that intersection. He turned off runway 30 onto runway 8-26 and because of strong wind decided not to taxi to the Administration Building. He turned his aircraft into the wind, facing approximately 300° across runway 8-26, with his left wing tip about 75 feet from the intersection. He advised the Frontier agent by radio that because of the strong winds the flight would be worked from that position. The engines were then shut down and the rudder blocks were placed in position. Two passengers were deplaned and the agent drove them to the terminal, returning shortly thereafter accompanied by the other Frontier agent on duty and one enplaning passenger. The engines were restarted at 0855 and after communicating with the FAA flight service station to obtain the present wind and requesting a running wind check, a left turn of approximately 30° was executed. The rudder blocks were left in position and the aircraft was followed by the two agents in the Frontier car. The aircraft was taxied to runway 30 where a left turn of 150° was made and the aircraft proceeded downwind. When approximately 200 to 250 feet from the intersection, a communication was received of a 62-knot gust and Captain Graham elected to turn his aircraft 180° into the wind. He then allowed the aircraft to drift back down the runway, controlling its direction with brakes and engines. He testified that he encountered no difficulty in maintaining control and observed no crosswind effect. At a position directly south of the Administration Building, having estimated that he was halfway down the runway and would have 3,300 feet for takeoff he discontinued his backing down. In this position on the runway, he ran up his engines and completed his pre-takeoff check list. In order to ascertain whether he had sufficient runway for takeoff, he referred to a chart in the Frontier Operations Manual and computed the takeoff distance required at his weight, under the wind conditions which existed at the time, as 2,900 feet. He also determined that the maximum crosswind component of 22 knots would not be exceeded, and therefore proceeded to take off without incident at 0907.

Captain Graham testified that after the engines were started and before taxiing from his position on runway 8-26, he requested his copilot to contact the FAA flight service station to obtain a running wind commentary. In accordance with his request, a running commentary was received until a report of "62 knots, gusty" was reported. The commentary then terminated and no further winds were received from the station until just prior to takeoff. When in position on the runway, a request for wind direction and velocity was made and the FAA station transmitted the wind as NW 45 knots, with gusts to 48. He used this wind and direction to determine the required runway length and the headwind and crosswind components.

Ronald W. Gregory, the copilot, corroborated Captain Graham's testimony in all respects. He stated that he observed no crosswind effect on the aircraft either during the taxiing or on takeoff, and that the running commentary of the FAA station ended after the report of "62—gusty." He was certain that he asked for a wind report just prior to takeoff and that the wind was given to him as NW 45 knots, gusting to 48.

Vernon Dale McMullen, the station agent at North Platte for Frontier Airlines, testified that he was on duty during the period involved and had one helper on duty, Arthur Key. After receiving the request of flight 61 for rudder blocks, Mr. McMullen got into his car and drove out to the aircraft, which had parked on runway 8-26, with the left wing tip some 75 feet from runway 30. He drove in back of the aircraft and parked his car on the left side. After installing the rudder blocks, he picked up the two disembarking passengers and drove back to the terminal. Accompanied by Key and the one enplaning passenger, he returned to the aircraft and embarked the passenger. The engines were started and since the rudder blocks were left in place on the aircraft, Mr. Key and he followed the aircraft in his car. The aircraft made a left turn and taxied to runway 30 on which it turned downwind. After proceeding approximately two or three lengths, the aircraft made a 180° turn and proceeded to drift slowly back down the runway. He followed, maintaining a position just abeam of the copilot's seat, to the east, on the grass in order to observe any incoming traffic or any obstructions in

the path of the aircraft. When the aircraft was in a position for takeoff, he removed the rudder blocks and the aircraft took off without incident.<sup>7</sup>

Mr. McMullen produced the Frontier radio station file which indicates a flight radio contact with flight 61 at 0835 in which he gave flight 61 the altimeter setting as 993, the wind direction as 320°, and the wind as 30 knots, gusting to 40. The message file also indicates that flight 61 touched down at 0845, was in the chocks at 0847, departed the chocks at 0855 and took off at 0907, estimating the next station at 1007. This message was received from flight 61 some time after takeoff and after the agents had returned to their office.

The summaries of the testimony given above indicate manifest and substantial issues of fact relating to (1) the time of takeoff; (2) the parking position of the aircraft at which the passengers were deplaned and enplaned; (3) the maneuvers of the aircraft on the ground; (4) the position of the aircraft on runway 30 from which the takeoff was initiated, and the length of effective runway available for takeoff from this position; (5) the actual wind velocity and direction at the time of takeoff; and (6) the substance of the radio communications between the aircraft and the FAA flight service station prior to takeoff.

The testimony of Inspector Johnston establishes the time of takeoff as shortly prior to 0859, as he observed flight 61 passing over the northwest end of runway 30 on takeoff at that time. When the aircraft began its takeoff, Inspector Johnston had run out of the Administration Building to observe the takeoff and was able to view directly the electric clock located in the FAA communications office from his position in front of the Administration Building. The accuracy of this clock was questioned by the respondent, but there is no substantial evidence that the clock was inaccurate and the evidence indicates that the clock was checked at least every 24 hours by FAA personnel. Captain Graham and his copilot, First Officer Gregory, both testified that the takeoff occurred at 0907. Although the message file of the Frontier radio station bears a notation that the takeoff occurred at that time, this notation was made on the basis of a radio transmission from flight 61 to the Frontier radio station some time subsequent to the takeoff and after the Frontier agents had returned to their office. According to this same message file, the aircraft left the chocks at 0855, which would indicate a lapse of time of 12 minutes to drift back down the runway some 1,600 feet, perform the pre-takeoff cockpit check and take off. Although the time of takeoff presents a relatively minor issue in this proceeding, the examiner accepts the testimony of Inspector Johnston establishing the time of takeoff as 0859 and does so upon general credibility considerations.

Although there is some disparity in the testimony of the Administrator's eyewitnesses as to the exact position on runway 30 at which the aircraft was parked for the disembarking of passengers, all agree that the aircraft was positioned on runway 30. Three of these witnesses were disinterested passengers whose testimony was not substantially discredited. The examiner believes these witnesses to be honest and reliable and their testimony credible.

Lt. Pagoni, an Air Force pilot, who as a passenger observed the incident with professional interest, testified with apparent accuracy and honesty. He was certain that the aircraft after landing on runway 30 attempted an unsuccessful turnoff to the right on runway 8-26. After this attempted turnoff, the aircraft was stopped on the east side of runway 30, at the apex of the two runways, and the passengers were deplaned and enplaned while the aircraft was parked on the runway, headed approximately into the wind, with the engines cut off.

B. Duane Turner had considerable experience as an airline passenger and was waiting in the Administration Building to board flight 61. The flight was late and he testified that he observed the landing of the aircraft and continued to watch it until it parked in position on runway 30. He observed the aircraft continue on the runway on which it landed, attempt a turn on the intersecting runway and then park on the right side of runway 30. He was taken to the aircraft in the Frontier agent's car. He manifestly was in an

<sup>7</sup> The testimony of Mr. McMullen was subject to a prior inconsistent statement made by him in a letter dated Nov. 11, 1959, addressed to Mr. Johnston of the Federal Aviation Agency, signed by both him and Arthur Key. In this letter, which was actually composed by Mr. McMullen, it is stated: "Unable to turn the aircraft around, the captain headed the aircraft into the wind and the wind drifted the aircraft backward down the runway." Mr. McMullen was unable to satisfactorily explain this inconsistency on cross-examination.



excellent position when boarding the aircraft to observe where the aircraft was parked at the time. He identified the position of the aircraft on an exhibit as being on runway 30, just north of the intersection of runway 30 and runway 8-26.

Mrs. Edna R. Woodward, although obviously not an experienced witness, also placed the aircraft on runway 30 but estimated the position of the aircraft as some 800 feet southeast of the intersection of the two runways. Although her estimate of the position of the aircraft is obviously not correct, she definitely remembered seeing the Administration Building to her right at all times and was certain the aircraft made no turns while it was on the ground.

John R. Turner, the FAA communications agent on duty in the FAA flight service station, although not an entirely disinterested witness because of his official position and the existence of a difference of opinion between him and Captain Graham as to the radio communications between him and the aircraft, also observed the aircraft to park on the east side of runway 30. Although placing the aircraft on runway 30, his testimony differs from that of the other eyewitnesses in that he believed the aircraft stopped just short of the intersection of the two runways.

Captain Graham, Copilot Ronald W. Gregory, and the Frontier station agent, Vernon Dale McMullen each placed the aircraft on runway 8-26, facing into the wind, with the left wing tip some 75 feet to the east of the intersection of runways 30 and 8-26.

There are also differences of opinion between the Administrator's witnesses and that of the flight crew and the Frontier agent as to the maneuvers which the aircraft executed after landing on runway 30. The three passengers, Mrs. Woodward, B. Duane Turner, and Lt. Pagoni, testified that the aircraft made no turns after landing on runway 30, and that it was allowed to blow back down the runway to the position from which it took off. B. Duane Turner and Lt. Pagoni also testified that a turnoff to the right on runway 8-26 was attempted on the rollout, apparently unsuccessfully since the aircraft continued on and parked on runway 30. John R. Turner, the FAA communications operator, did not observe the aircraft make any turns during those times that he had it under observation. Captain Graham's, First Officer Gregory's, and Agent McMullen's testimony was consistent that the aircraft after the unloading and loading of the passengers, made a left turn on runway 8-26, proceeded to the west, and then turned downwind on runway 30 for a distance of approximately 200 feet, at which time a 180° turn into the wind was made and the aircraft permitted to drift down the runway to its takeoff position.

Captain Graham contended that he permitted his aircraft to drift down the runway to a position due south of the Administration Building and estimated that he was halfway down the runway, some 3,300 feet from the northwest end. He was supported in this contention by Copilot Gregory and Station Agent McMullen.

The testimony of the passengers, Mrs. Woodward, B. Duane Turner, and Lt. Pagoni, is of little assistance in determining the position where the takeoff began. Although Lt. Pagoni ventured an opinion that the aircraft may have been halfway down the runway, this opinion was simply a speculation since he was without any valid reference points from which to judge his position. John R. Turner testified that the takeoff was begun at a point approximately one-third down the runway. Mr. Turner has been on duty at the airport for a number of years and in the ordinary course of his duties as communications operator of the FAA flight service station, should have had sufficient familiarity with the airport to be able to approximate the position of the aircraft with respect to the length of the runway.

Inspector Johnston's testimony relating to the position of the aircraft at takeoff is entitled to considerable weight. He was called by Mr. Turner to observe an unusual airline operation which was taking place on the airport and when he entered the communications office saw flight 61 on runway 30 in a parked position, with its engines running, approximately one-third down the runway. Seeing what he believed to be a violation of the regulations, he pinpointed the position of the aircraft and subsequently checked the takeoff position as 2,248 feet from the northwest end of the runway. The respondent attempts to discredit Inspector Johnston's testimony, both as to its exactness and as to creditability by attempting to discredit the method used to determine the location of the aircraft, and by accusing Inspector Johnston of an entrapment since he took no measures to prevent the takeoff of the aircraft.

While Inspector Johnston's method of positioning the aircraft by a bearing line was improvised on the spur of the moment, the method itself appears to have been as accurate as possible under the circumstances and with the means available. Inspector Johnston admitted he made no effort to prevent the flight from taking off, and although the rudder blocks had been removed and only moments elapsed before the takeoff began, an attempt could have been made to communicate with the aircraft. Whether or not Inspector Johnston should have acted to prevent the takeoff of flight 61 is not material to the issues in this proceeding, and the examiner finds that his testimony is both reliable and credible.

The Official Surface Weather Observations of the Department of Commerce Weather Bureau at Lee Bird Field for the morning of October 23, 1959, in evidence, report the wind at 0858 as NNW 45 knots, gusting to 62 knots. This report is consistent with the observations prior and subsequent thereto of a NNW wind existing during the morning hours.\* It is substantiated also by the actual observations of the wind instruments in the communications office by Inspector Johnston and Mr. Turner just prior to the time of takeoff.

Captain Graham and First Officer Gregory claim that the wind was from the NW and that before taxiing from their parking position on runway 8-26, Captain Graham directed First Officer Gregory to contact the FAA flight service station to obtain the existing wind and to request a running commentary of winds until takeoff. A running commentary of the wind was transmitted as requested and continued until a report of a 62-knot gust was received while the aircraft was proceeding downwind on runway 30. It was this report which decided Captain Graham to turn his aircraft into the wind and back down to the takeoff spot. No additional wind reports were received until just prior to takeoff when upon request a report of the existing wind as NW 45 knots, gusting to 48 was received from the FAA flight service station.

Mr. Turner of the FAA had no recollection of any contact with flight 61 after the initial contact minutes prior to the landing of the aircraft, at which time the wind was given to flight 61 as NNW 30 knots, gusting to 38. While Mr. Turner was unable to state definitely that no other wind reports were given by him to flight 61 subsequent to this initial contact, he was positive that no running commentary of the winds was requested by flight 61 and that no running commentary was given by him. He is equally positive that there was no request for or any wind report transmitted by him just prior to takeoff. Inspector Johnston was in the communications station observing the aircraft before takeoff and testified that although he heard Mr. Turner make two transmissions of winds direction and velocity to overflying aircraft in the vicinity, he overheard no transmission directed to flight 61.

The material issues of fact set forth previously in this opinion at SS0, are obviously issues depending primarily upon credibility considerations for resolution. The examiner has observed the Administrator's and the respondent's witnesses while testifying and has given consideration to the interest of the witnesses in this proceeding, their reliability, the substantiality of their testimony as related to the circumstantial evidence and general trustworthiness.† The examiner is convinced that the testimony of the Administrator's witnesses is reliable and worthy of belief and should be accepted, and that of the respondent and his witnesses rejected as insubstantial.

Accordingly, the examiner makes the following findings of fact: (1) the takeoff occurred at 0859; (2) the aircraft after landing continued its rollout on runway 30 to the intersection of runway 8-26 at which point it unsuccessfully attempted a right turn and subsequently parked on runway 30, on the east side of that runway, just north of the apex of runways 30 and 8-26. While in this position passengers were deplaned and enplaned; (3) after the aircraft was loaded and the engines started, Captain Graham permitted the aircraft to drift back down the runway while accompanied by the car containing the Frontier agents on duty; (4) the aircraft was stopped and a takeoff thereafter begun from a position 2,248 feet from the northwest end of the runway; (5)

\* 0658 NNW 27 knots; 0758 NNW 30 knots, gusting at 38; 0858 NNW 45 knots, gusting to 62; 0859 NNW 38 knots, gusting to 55; 1059 NNW 40 knots, gusting to 57.

† In this connection Mr. McMullen's testimony has been shown to be subject to a prior inconsistent statement relating to a material issue of fact. The testimony given by him, Captain Graham, and First Officer Gregory, besides being in concordance to an extraordinary extent, is replete with plausible explanations of adverse facts to a degree seldom encountered by the examiner in matters of this nature.

the wind at the time of takeoff was NNW 45 knots, gusting to 62 knots; and (6) no running commentary was requested nor any wind reports given by the FAA flight service station prior to takeoff.

The Administrator has found that the respondent violated section 60.12 of the regulations and that the respondent failed to exercise at all times the high degree of care, judgment, and responsibility required of an airline transport pilot while serving as pilot-in-command of aircraft in scheduled air transportation. These conclusions are founded upon four ultimate facts.

The Administrator made the finding "1. You permitted the unloading, loading, and servicing of your aircraft while the aircraft, or a part thereof, was located on the active runway." The testimony establishes that the aircraft was parked on the active runway, facing into the wind, for a period of 8 minutes, with the engines shut down, while passengers were being deplaned and enplaned and the aircraft serviced. Lee Bird Field is an uncontrolled airport and although the FAA has a flight service station located in the Administration Building, it assumes no responsibility for the control of traffic and landing aircraft are not required to contact this station. Although the visibility was good, the wind conditions were severe and, as testified to by the Administrator's expert, there was always present the danger of a collision with a landing aircraft. Captain Graham had no control over his aircraft during this period and in effect the safety of his passengers was left in the hands of unknown third parties.

The Administrator does not contend that the respondent should not have landed under the wind conditions which were reported to him prior to his landing, but having landed and encountering the problem of being prevented from taxiing off the runway, good operating practice would cause him to proceed to the extreme upwind end of the runway in order to discharge and embark his passengers. After this incident occurred, the Operations Manual of Frontier Airlines was amended so as to require this procedure under strong wind conditions.<sup>10</sup> It is fully recognized that the record does not indicate that there was any traffic landing the period that aircraft was on the ground. Nevertheless, a potential hazard existed which should have been considered and negated insofar as possible by Captain Graham in the exercise of his responsibility as the pilot-in-command of a scheduled airline flight.

The Administrator also makes the ultimate finding "2. You permitted your aircraft to be blown backward down the active runway." Although there is a difference of expert opinion whether this procedure could be performed without danger under certain wind conditions and with precautionary measures taken to provide adequate vigilance against obstructions on the runway and landing aircraft, this procedure is not considered good operating practice in scheduled airline operations.<sup>11</sup> The expert testimony shows however that under the wind conditions which existed, the controllability of the aircraft would be extremely poor, with the possibility of crosswind gusts acting upon the side area and tail surfaces of the aircraft exerting a sufficient strain to sheer the tail wind locking pin, in which event the aircraft could become uncontrollable. Another factor stressed by the expert witness is the danger of a gust lifting the upwind wing with the consequent possibility of the upset of the aircraft.

The third ultimate fact as found by the Administrator is "3. You took off when the official wind reported 1 minute prior thereto was gusting to 62 knots and the Frontier Airlines' Operations Manual prohibits takeoffs in headwind in excess of 52 knots and crosswind components in excess of 22 knots." The wind at the time of takeoff was NNW 45 knots, gusting to 62 knots. The Operations Manual of Frontier Airlines prohibits any takeoff of a DC-3 aircraft with a headwind 25° either side of the center line of the runway in excess of 52 knots. It is uncontested that this maximum would be considered to be that of the heaviest reported gust, which in this case would be 62 knots. The Operating

<sup>10</sup> "Runway Dimensions Required for Operation" \* \* \* Runway length—the total runway length available is considered the minimum for use except where intersection take-offs are authorized for DC-3. Where portions of a runway are temporarily unusable the balance of the runway will not be used for operation unless prior authorization has been received from Flight Operations.

<sup>11</sup> "If after landing, the wind velocity is too strong for safe ground handling, taxi the aircraft clear of the runway or to the upwind end of the runway and install control locks. Wheel chock the aircraft headed into the wind and wait until the wind subsides to permit taxiing."

<sup>12</sup> "Preferably, prior to landing, if safe ground handling is questionable, pass the stop."  
<sup>13</sup> The record indicates that this procedure is not entirely unknown to Frontier Airlines' pilots.

Manual also restricts the takeoff of DC-3 aircraft when the crosswind component is in excess of 22 knots.<sup>12</sup> The crosswind component based upon a 45-knot wind from the NNW for runway 30 is computed to be 27 knots, and is 38 knots when based upon the maximum gust velocity of 62 knots.

In the previous discussion, the examiner made the finding that no wind information was requested of the FAA flight service station by Captain Graham subsequent to his landing at Lee Bird Field.<sup>13</sup> In any event, Captain Graham must have been aware<sup>14</sup> that the wind was unusually strong and gusty since for the safety of his aircraft he felt constrained to perform the unusual procedure of permitting the wind to blow his aircraft back down the runway. Under these conditions, Captain Graham, as a prudent airline pilot in scheduled air transportation, was under the duty to ascertain whether or not a takeoff would be in conformity with the operating restrictions applying to his aircraft. The hazards of crosswind takeoffs are well known and need not be repeated here. However, the Administrator's expert stressed the problem created by unsymmetrical power applications and gave the opinion that the aircraft would have been uncontrollable had the upwind engine cut out while the aircraft was still accelerating on the ground.

The fourth ultimate finding of fact made by the Administrator is "4. You took off from a position on the runway which you could not have determined, from available information, as providing adequate runway length to conduct a takeoff safely." The examiner has found that the takeoff was actually begun from a position on the runway 2,248 feet from the unwind end of the runway. Captain Graham testified that he permitted his aircraft to blow backward down the runway to a position due south of the Administration Building from which he estimated that he had 3,300 feet of runway available for takeoff. To make certain that this length of runway was sufficient to permit a takeoff, he stated that he referred to a performance chart contained in the Flight Operations Manual of Frontier Airlines, and that using the weight of his aircraft, the altitude of the airport, the gradient of the runway and a NW wind of 48 knots, he determined that 2,900<sup>15</sup> feet would be sufficient to comply with section 40.91 of the regulations.

The gravamen of this allegation is that the respondent took off from a position from which he could not have determined from the information available to him, the adequate runway length to conduct the takeoff safely. In addition to estimating the runway available by eye alone, the Administrator contends that Captain Graham could not determine the length of runway required since the performance chart referred to by Captain Graham was limited to headwind components of a maximum of 34 knots and the chart not susceptible to extrapolation.<sup>16</sup> Even if Captain Graham's testimony that he computed the runway length required before the takeoff were to be accepted, his action in not using all the runway available cannot be considered good operational practice for an air carrier in scheduled air transportation. While Frontier Airlines permits the takeoff from certain described intersections of particular runways of DC-3 aircraft under prescribed wind conditions, these airports and the conditions under which intersection takeoffs can be made are set forth in the Operations Manual. Lee Bird Field at North Platte, Nebr., the longest runway of which is 6,603 feet, is not listed for intersection takeoffs. The takeoff weights for each runway at all airports authorized by the airline for use by DC-3's are computed by the dispatcher from

<sup>12</sup> Although Frontier Airlines' Operations Manual permits takeoff with crosswind components of 22 knots, the expert testimony shows that takeoffs of DC-3's with this crosswind component is the maximum used by any of the local-service carriers. According to this testimony the majority of the local-service carriers restrict takeoffs of DC-3's with crosswind components of more than 13 knots. One other carrier permits takeoffs of DC-3 aircraft with crosswind components up to 16 knots.

<sup>13</sup> However, Captain Graham testified that he had received information of a 62-knot gust while taxiing downwind and just prior to takeoff requested of the FAA flight service station and received the information therefrom that the wind was NW 45 knots, gusting to 48.

<sup>14</sup> Lt. Pagoni testified that the aircraft was parked on runway 30, headed into the wind which was quartering across the runway from the right.

<sup>15</sup> Captain Graham manifestly misunderstood the use of this performance chart which required entering the chart with the actual headwind component. His testimony clearly shows that he believed that the chart was constructed for use with one-half of the headwind component. Obviously, Captain Graham's misunderstanding resulted in a longer runway length requirement than would be necessary according to sec. 40.91 of the regulations.

<sup>16</sup> A computation by the Administrator's expert witness using the highest headwind component shown on the chart showed that the runway length required with that headwind component (34 knots) would be 2,600 feet.

charts which are made up by the Engineering Department upon the basis of the entire runway length available. In fact, the evidence shows that the operational chart for determining length allegedly used by Captain Graham, although contained in the Operations Manual, is not intended for operational use by pilots but only by the Engineering Department of the airline for the computation of allowable takeoff and landing weights at the airports regularly served by the airline. Although the procedure used by Captain Graham was not proscribed directly in the Operations Manual, it is evident from the provisions described above that it was not considered as good operational procedure.<sup>17</sup> According to the Administrator's expert witness who is the inspector assigned to Frontier Airlines, good operational practice requires the use of all the runway available except under unusual circumstances where the use of less has been duly authorized.

The length of runway actually available to Captain Graham, some 2,300 feet, was probably adequate considering the strong winds<sup>18</sup> which were present on this occasion and therefore not in violation of section 40.91 of the regulations. Nevertheless, Captain Graham's decision to take off from a position which left him only one-third of the runway for his takeoff, cannot be considered the exercise of good judgment required of an airline pilot in scheduled air transportation.

The highest degree of safety is the legislative standard required by the public interest in the regulation of air transportation<sup>19</sup> and in implementation of this policy directive, the Board, in safety enforcement proceedings relating to the suspension or revocation of airline transport pilot certificates or ratings, has repeatedly stated the standard of care, judgment, and responsibility to which an airline pilot in scheduled air transportation would be held to be the "highest degree" of care, judgment, and responsibility.<sup>20</sup> In determining whether Captain Graham's actions on this occasion were in violation of section 60.12 of the regulations, this standard is applicable. The examiner is convinced that the record in this proceeding sustains the findings of the Administrator of a violation of section 60.12 of the regulations and that Captain Graham on this occasion failed to exercise the high degree of care, judgment, and responsibility required of an airline pilot while serving as pilot-in-command of aircraft in scheduled air transportation.

In sustaining the Administrator's conclusion of law, the examiner has considered not only the individual acts which were charged as constituting a violation of section 60.12 of the regulations, but has also considered the operation in its totality. Viewed as a whole, this operation presents a clear picture of a scheduled airline flight conducted in a manner not only not up to the standard of care required in scheduled air transportation but reminiscent of pioneer days in aviation. The fact that this operation was completed without mishap due either to Captain Graham's skill or simple good fortune, cannot be found to be in justification of the careless manner in which the flight was operated by Captain Graham. The high degree of safety required by the standards set forth in the Act, applies equally to local service as well as to trunkline operations and this standard can only be achieved by the exercise of the highest degree of care, judgment, and responsibility by all pilots-in-command of all scheduled airline flights. Captain Graham has had a previous exemplary record, but in this instance it cannot be found that he conformed to this standard.

The examiner finds therefore that the public interest and the safety of air transportation require the affirmation of the Administrator's order suspending the airline transport pilot privileges of the respondent's airline transport pilot certificate for a period of 60 days.

#### ORDER

Now, THEREFORE, IT IS ORDERED, That the Administrator's order in this proceeding be and hereby is affirmed; the suspension ordered therein to become effective the 7th day of February 1961.

<sup>17</sup> See note 10 *supra*. In which the Operations Manual of Frontier Airlines has since been amended to eliminate any question as to this point.

<sup>18</sup> These winds exceeded the maximum headwind and crosswind components permissible for DC-3's and the takeoff should not have been attempted for these reasons.

<sup>19</sup> Federal Aviation Act of 1958, § 102, 72 Stat. 740; 49 U.S.C. 1302; Civil Aeronautics Act of 1938, § 2, 52 Stat. 980; 49 U.S.C. 402.

<sup>20</sup> *Charles B. Stead, et al.*, 1 C.A.A. 74, 84-85 (1939); *Edward O. Bessey*, 13 C.A.B. 550 (1952); *Charles Robert Sisto*, 13 C.A.B. 125 (1948); *Leonard J. Specht*, 25 C.A.B. 859 (1957), affirmed 254 F.2d 905 (8th Cir. 1958).

## APPEAL

Either party may file a notice of appeal of this decision on or before the 6th day of February 1961. Such notice of appeal should be served on the parties to this proceeding and the timely filing of the notice of appeal will stay the examiner's order pending the determination of the appeal. (Secs. 301.45, 301.46, and 301.47, Rules of Practice in Air Safety Proceedings, as amended.)

## ORDER S-1123 ADOPTED JULY 31, 1961

By order S-1116, June 23, 1961, the Board denied respondent's appeal from the examiner's initial decision, and affirmed the Administrator's order suspending respondent's airline transport pilot certificate for a period of 60 days, although permitting him to perform as a copilot during this period.<sup>1</sup> Respondent has filed a petition asking the Board to reopen the record to receive additional evidence<sup>2</sup> which, respondent asserts, was not in his possession at the time of the hearing in August 1960. The Administrator has replied to respondent's petition, contending that it is without merit and should be denied.

Upon consideration of the arguments presented in the petition and the answer, the Board finds that respondent has failed to demonstrate that reopening of the record is warranted. Accordingly, we will deny the petition and terminate the stay of the sanction.

In support of his petition, respondent refers to certain language in the initial decision, and states that it reflected so harshly on his integrity that he proceeded to write to passengers on the flight, other than those who testified for the Administrator, inviting their accounts of the incident. Respondent states that he has received replies from three of these passengers,<sup>3</sup> and they support his testimony before the examiner that he taxied the plane to a point well off the active runway, and parked it there for loading and unloading.<sup>4</sup> In addition, respondent asserts that one of these passengers recalls that respondent attempted to taxi downwind before he reversed the aircraft into the wind and allowed it to drift backwards down the runway. Respondent also claims that since March 1961, he has been attempting to obtain official Weather Bureau information bearing on the matter of wind velocity at the time of the incident, and that this information "is forthcoming." Respondent urges that the record be reopened to receive the evidence described, and afford the Board an opportunity to ascertain "whether or not [respondent] was telling the truth."

We are not persuaded by these arguments. Respondent has been represented by attorneys throughout this proceeding, and he was afforded approximately 4 months from date of service of the Administrator's proposed action against his certificate (Apr. 21, 1960), to date of hearing (Aug. 17, 1960), to marshal his evidence, contact his witnesses, and complete his case. Yet he offers no meritorious reason to show why this "new" evidence was not submitted at the hearing.<sup>5</sup> Indeed, it is evident from respondent's petition that no effort was made to obtain the evidence until after the hearing, and after the examiner issued an initial decision which was adverse to respondent. This lack of diligence by respondent in preparing his defense is even more obvious with reference to the weather information, since respondent admits he did not begin to obtain such information until March 1961, 7 months after the hearing, and 2 months after the initial decision had been issued.

Moreover, although gravely concerned with the findings in the initial decision, and, according to his petition, undertaking to gather additional evidence to corroborate his testimony, respondent, in his appeal to the Board.

<sup>1</sup> The examiner's findings are detailed in the initial decision, and also in the Board's order of June 23, 1961. Briefly, they are that respondent parked his aircraft on an active runway for loading and unloading of passengers and servicing; permitted it to be blown backwards down the runway, to point of takeoff, in excessive wind; took off in excessive wind and despite the fact he could not properly gage a safe and adequate runway length; and that respondent operated the aircraft in a careless manner in the foregoing respects.

<sup>2</sup> The Board directed that the sanction become effective July 3, 1961, but pursuant to respondent's request, the Board stayed the effectiveness of the sanction pending a determination of the merits of respondent's petition. (Order S-1117, June 30, 1961.)

<sup>3</sup> No affidavits or other statements from the three passengers were submitted.

<sup>4</sup> See note 1.

<sup>5</sup> Sec. 301.48(a) of the Board's Rules of Practice in Air Safety Proceedings, concerning petitions for rehearing and reconsideration, reads in pertinent part as follows: "If the petition requests consideration of additional evidence the nature and purpose of the new evidence and the reasons why such evidence was not presented at the time of the hearing must be stated."

raised only the question of sanction, declaring, "Although the respondent does not agree with the Hearing Examiner's findings of fact, it does not appear necessary to take detailed issue with them. The Respondent, however, takes issue with the Examiner's conclusion that the public interest and safety of air transportation requires suspension of this Airline Transport Rating \* \* ." (Brief, pp. 4-5.)<sup>6</sup>

In the interests of orderly procedure conducive to the proper dispatch of the Board's business and the ends of justice, we cannot permit respondent to make out his evidentiary case without heed to appropriate procedures. In the circumstances of this case, respondent's request for permission to adduce additional evidence comes too late. Accordingly,

**IT IS ORDERED—**

1. That respondent's petition for reopening and rehearing, dated June 30, 1961, be and it hereby is denied;

2. That the stay provided in order S-1117 of the effective date of the suspension of respondent's airline transport pilot certificate, be and it hereby is terminated on August 10, 1961, and such suspension is hereby made effective on that date.

<sup>6</sup> Respondent did not indicate in his brief that he was attempting to secure additional evidence.

DOCKET SE-166, THOMAS E. STANCH, JR., respondent orders S-1119 and S-1128.

**ORDER S-1119 ADOPTED JULY 11, 1961**

The respondent and the Administrator have each appealed from Examiner S. Thomas Simon's initial decision (included herein), issued April 7, 1961, ordering that respondent's airman pilot (commercial) certificate be suspended for a period of 6 months.<sup>1</sup> The examiner's order is based upon findings that (1) on four occasions the respondent, operating Bellanca aircraft, had made landings with the landing gear retracted, thereby endangering the lives of property of others;<sup>2</sup> (2) on June 5, 1960, respondent flew over a herd of cows at altitudes as low as 75 feet, permitted his passenger to operate a loudspeaker, and thereby stampeded the cows and operated the aircraft carelessly and recklessly so as to endanger the property of others, in violation of section 60.12<sup>3</sup> of the Civil Air Regulations; and (3) respondent operated the aircraft on June 5 in violation of section 43.10(a),<sup>4</sup> in that a registration certificate had not been issued to the owner of the aircraft.

The respondent contends that the examiner has failed properly to evaluate testimony which would exculpate respondent of the violations found in connection with the June 5, 1960, flight; has failed to consider factors in mitigation of the wheels-up landing incidents; and has ignored the Administrator's attempts to prejudice the examiner by, among other things, charging but not attempting to prove various additional allegations.<sup>5</sup> The respondent's prayer for relief, however, is not directed at the examiner's order but requests the Board to rescind the Administrator's order of revocation issued November 10, 1960, and "that the Board grant Respondent such other and further relief as may seem just and proper." (Respondent's brief, p. 10.)

The Administrator alleges that the respondent's carelessness is a character trait which warrants revocation of his certificate for a 2-year period, as the

<sup>1</sup> The examiner's order thereby modified the Administrator's order of revocation, issued Nov. 10, 1960, which revoked respondent's certificate, with a provision forbidding issuance of any new airman pilot certificate for a period of 2 years.

<sup>2</sup> The examiner found sec. 60.12 of the regulations to have been violated on the two recent incidents—the faulty landings on June 9, 1960, and July 24, 1960, with respect to similarly faulty landings in March 1957, and on Oct. 30, 1959, the examiner notes only that the faulty landings inflicted damage on the property of others, there being no charge of violation of sec. 60.12.

<sup>3</sup> Sec. 60.12 provides, "Careless or Reckless Operation. No person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others."

<sup>4</sup> Sec. 43.10(a) provides, in pertinent part: "No aircraft shall be operated unless an appropriate and valid airworthiness certificate \* \* \* and a registration certificate issued to the owner of the aircraft, are carried in the aircraft."

<sup>5</sup> The examiner dismissed allegations that, on the June 5 flight, respondent operated an unairworthy aircraft, flew at an altitude which, in the event of power failure would not permit a safe emergency landing, flew closer than 500 feet to persons or objects on the surface; on another flight led an aircraft into weather below VFR minima; and employed pilots who were involved in accidents.