

**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 20172-1169 □ 703-689-2270
888-FLY-ALPA (888-359-2572) □ FAX 703-689-4370

VIA FACSIMILE AND OVERNIGHT MAIL

November 24, 2009

Office of Administrative Law Judges
National Transportation Safety Board
490 L'Enfant Plaza, SW
Room 4704
Washington, D.C. 20594

RE: Administrator, FAA vs. Richard I. Cole
NTSB Docket No.: SE-18728

RECEIVED
NTSB OFFICE OF JUDGES
WASHINGTON, D.C.
2009 NOV 24 P 4:35

Dear Case Manager:

Attached please find the Answer in the above-referenced case.

In addition, Respondent has no objection to a hearing in Minneapolis, MN. It is estimated that a hearing will take three to five days. Respondent estimates that discovery in this matter will take no less than 90 days. Therefore, Respondent requests no hearing date be set until Respondent has a reasonable opportunity to fully conclude discovery.

Sincerely,

Jay Wells, Senior Attorney
Air Line Pilots Association, International
535 Herndon Parkway
Herndon, VA 20170
Telephone: (703) 481-2422
Facsimile: (703) 481-2478
Jay.Wells@alpa.org
Attorney For Respondent
Richard I. Cole

cc: Richard Lewis Faber, Esq.
Richard I. Cole

**UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD**

**J. RANDOLPH BABBITT, Administrator,
FEDERAL AVIATION ADMINISTRATION**

Complainant,

v.

RICHARD I. COLE,

Respondent.

NTSB Docket No.: SE-18728

**Administrative Law Judge:
Unassigned**

RECEIVED
JUL 24 2009
NTSB
WASHINGTON, D.C.
P 11:35

ANSWER

Respondent, Richard I. Cole, through the undersigned counsel, pursuant to 49 C.F.R. §§ 821.31 (b) and 821.52 (d) of the Board's Rules of Practice in Air Safety Proceedings, answers the Order of Revocation (hereinafter the "Administrator's Complaint") as follows:

FIRST DEFENSE

In answer to the specific allegations set forth in the Administrator's Complaint, Respondent answers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted that NWA 188 was originally planned for 3 hours and 12 minutes and that top of descent was originally planned to begin twenty minutes prior to touchdown.

5. It is admitted that NWA 188 was originally scheduled to arrive at the gate in MSP at 8:01 p.m. (CDT), however, the flight was delayed leaving San Diego.
6. It is admitted that NWA 188 was dispatched and issued an air traffic control clearance from SAN to MSP.
7. Denied for lack of information or knowledge.
8. Denied for lack of information or knowledge.
9. Denied.
10. Denied for lack of information or knowledge.
11. Denied for lack of information or knowledge.
12. Denied.
13. Denied for lack of information or knowledge.
14. Denied for lack of information or knowledge.
15. Denied for lack of information or knowledge.
16. Denied for lack of information or knowledge.
17. Denied.
18. Denied for lack of information or knowledge.
19. Denied for lack of information or knowledge.
20. Denied.
21. Denied.

Any remaining allegations set forth in the Administrator's Complaint that have not been expressly admitted are denied.

SECOND DEFENSE

Respondent states the following as affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Respondent did not intentionally or willfully violate any federal aviation regulations and Respondent's lack of intentional or willful conduct justifies a reduction, mitigation, or waiver of sanction.

SECOND AFFIRMATIVE DEFENSE

The air traffic controller(s) did not comply with the requirements of the air traffic control manual and other relevant orders, rules, procedures, policies and practices with respect to Northwest Flight 188, nor coordinate effectively with Northwest dispatch, and such failure was a causal or contributing factor in the incident referenced in the Administrator's Complaint. Respondent asserts that he had a right to rely, and did rely, that the controllers would comply with all relevant orders, rules, procedures, policies and practices. Such reliance justifies a reduction, mitigation, or waiver of sanction.

THIRD AFFIRMATIVE DEFENSE

The Administrator's sanction is not in compliance with Board precedent and policy, justifying a reduction or waiver of sanction.

FOURTH AFFIRMATIVE DEFENSE

The Administrator's selection of sanction is not in compliance with his own guidelines, policy and precedent, justifying a reduction or waiver of sanction.

FIFTH AFFIRMATIVE DEFENSE

There were mitigating facts and circumstances that caused or contributed to the incident, including but not limited to aircraft systems design and human factors, justifying a reduction, mitigation, or waiver of sanction.

SIXTH AFFIRMATIVE DEFENSE

Respondent timely filed a report under the NASA Aviation Safety Reporting System, justifying a waiver of sanction.

SEVENTH AFFIRMATIVE DEFENSE

The Administrator's Complaint fails to state facts justifying a cause of action for revocation of Respondent's airman certificates.

EIGHTH AFFIRMATIVE DEFENSE

The revocation of Respondent's certificates was contrary to law and regulation.

NINTH AFFIRMATIVE DEFENSE

Respondent believed at all relevant times he was operating in compliance with the applicable regulations and assigned air traffic control clearance until reaching the clearance limit, justifying a reduction, mitigation, or waiver of sanction.

TENTH AFFIRMATIVE DEFENSE

Respondent was operating under reasonable reliance on the performance of others at the time of the alleged violation which excuses the conduct, or justifies a reduction, mitigation or waiver of sanction.

ELEVENTH AFFIRMATIVE DEFENSE

Respondent reasonably relied on the performance of the pilot flying, who was the pilot in command, in meeting his required duties and responsibilities, justifying a reduction, mitigation, or waiver of sanction.

TWELFTH AFFIRMATIVE DEFENSE

Respondent has demonstrated a cooperative attitude with regard to the incident referenced in the Administrator's Complaint justifying a reduction, mitigation, or waiver of sanction.

THIRTEENTH AFFIRMATIVE DEFENSE

Respondent presented no actual hazard to persons or other air traffic, which justifies a reduction, mitigation, or waiver of sanction.

FOURTEENTH AFFIRMATIVE DEFENSE

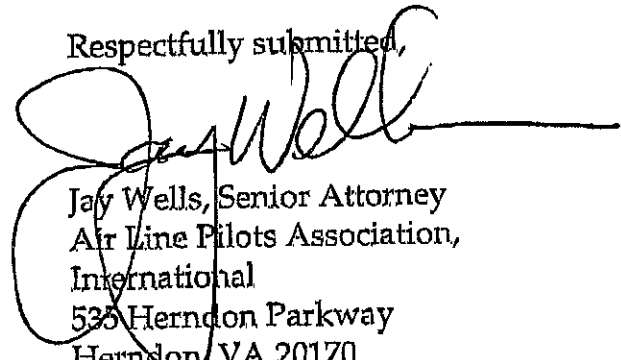
The Administrator has made no allegation or showing that Respondent is not competent or qualified to hold an Airline Transport Pilot Certificate and a reduction or waiver of sanction is justified.

Respondent reserves the right to amend his answer and/or defenses as may be required during the course of this proceeding or as required by the evidence revealed in discovery or as adduced at hearing.

WHEREFORE, Respondent prays that the Administrator's Complaint be dismissed, that his Airline Transport Pilot Certificate be returned, and that he have such other relief as is appropriate under the circumstances.

Respondent has no objection to a hearing in Minneapolis, MN. It is estimated that a hearing will take three to five days. Respondent estimates that discovery in this matter will take no less than 90 days. Therefore, Respondent requests no hearing date be set until Respondent has a reasonable opportunity to fully conclude discovery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay Wells", is written over the typed name and address.

Jay Wells, Senior Attorney
Air Line Pilots Association,
International
535 Herndon Parkway
Herndon, VA 20170
Telephone: (703) 481-2422
Facsimile: (703) 481-2478
Jay.Wells@alpa.org
Attorney For Respondent
Richard I. Cole

Date: November 24, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2009, the foregoing Answer was served as follows:

Via facsimile, with confirmation by mailing the original and one copy via overnight mail, to:

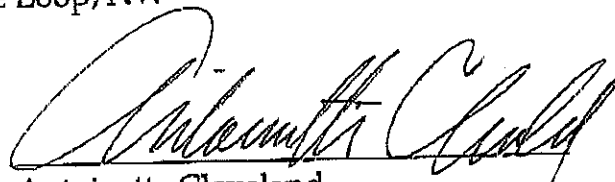
Office of Administrative Law Judges
National Transportation Safety Board
490 L'Enfant Plaza, SW
Room 4704
Washington, D.C. 20594
Fax: (202) 314-6158

And a copy, via facsimile to (718) 995-5699 and overnight mail, to:

Richard Lewis Faber
Managing Attorney
Federal Aviation Administration
Office of the Regional Counsel
Southern Region
1701 Columbia Ave.
College Park, GA 30337

And a copy via overnight mail to Respondent:

Richard I. Cole
2787 Lower Breckenbridge Loop, NW
Salem, OR 97304-3425



Antoinette Cleveland
Paralegal
Air Line Pilots Association,
International
535 Herndon Parkway
Herndon, VA 20170
(703) 689-4275 (phone)
(703) 689-4300 (fax)
Antoinette.cleveland@alpa.org

Date: November 24, 2009



PITTSBURGH CONTRACT ADMINISTRATION OFFICE
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

603 WASHINGTON ROAD, SUITE 401 □ PITTSBURGH, PENNSYLVANIA 15228 □ PHONE 412-531-0873
FAX 412-531-0874

VIA FACSIMILE AND OVERNIGHT MAIL

November 24, 2009

Office of Administrative Law Judges
National Transportation Safety Board
490 L'Enfant Plaza, SW
Room 4704
Washington, D.C. 20594

RE: Administrator, FAA vs. Timothy B. Cheney
NTSB Docket No.: SE-18729

RECEIVED
NTSB OFFICE OF JUDGES
WASHINGTON, D.C.
2009 NOV 24 P 5:10

Dear Case Manager:

Attached please find the Answer in the above-referenced case.

In addition, Respondent has no objection to a hearing in Minneapolis, MN. It is estimated that a hearing will take three to five days. Respondent estimates that discovery in this matter will take no less than 90 days. Therefore, Respondent requests no hearing date be set until Respondent has a reasonable opportunity to fully conclude discovery.

Sincerely,

Jeffrey Small, Attorney
Air Line Pilots Association, International
603 Washington Road
Pittsburgh, PA 15228
Telephone: (412) 531-0873
Facsimile: (412) 531-0874
Jeffrey.Small@alpa.org
Attorney For Respondent
Timothy B. Cheney

cc: Richard Lewis Faber, Esq.
Timothy B. Cheney

**UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD**

RECEIVED
NTSB OFFICE OF JUDGES
WASHINGTON, D.C.
2009 NOV 24 P 5:10

J. RANDOLPH BABBITT, Administrator,
FEDERAL AVIATION ADMINISTRATION)

Complainant,)

v.)

TIMOTHY B. CHENEY,)

Respondent.)

NTSB Docket No.: SE-18729

Administrative Law Judge:
Unassigned

ANSWER

Respondent, Timothy B. Cheney, through the undersigned counsel, pursuant to 49 C.F.R. §§ 821.31 (b) and 821.52 (d) of the Board's Rules of Practice in Air Safety Proceedings, answers the Order of Revocation (hereinafter the "Administrator's Complaint") as follows:

FIRST DEFENSE

In answer to the specific allegations set forth in the Administrator's Complaint, Respondent answers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted that NWA 188 was originally planned for 3 hours and 12 minutes and that top of descent was originally planned to begin twenty minutes prior to touchdown.

5. It is admitted that NWA 188 was originally scheduled to arrive at the gate in MSP at 8:01 p.m. (CDT), however, the flight was delayed leaving San Diego.
6. It is admitted that NWA 188 was dispatched and issued an air traffic control clearance from SAN to MSP.
7. Denied for lack of information or knowledge.
8. Denied for lack of information or knowledge.
9. Denied.
10. Denied for lack of information or knowledge.
11. Denied for lack of information or knowledge.
12. Denied.
13. Denied for lack of information or knowledge.
14. Denied for lack of information or knowledge.
15. Denied for lack of information or knowledge.
16. Denied for lack of information or knowledge.
17. Denied.
18. Denied for lack of information or knowledge.
19. Denied for lack of information or knowledge.
20. Denied.
21. Denied.

Any remaining allegations set forth in the Administrator's Complaint that have not been expressly admitted are denied.

SECOND DEFENSE

Respondent states the following as affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Respondent did not intentionally or willfully violate any federal aviation regulations and Respondent's lack of intentional or willful conduct justifies a reduction, mitigation, or waiver of sanction.

SECOND AFFIRMATIVE DEFENSE

The air traffic controller(s) did not comply with the requirements of the air traffic control manual and other relevant orders, rules, procedures, policies and practices with respect to Northwest Flight 188, nor coordinate effectively with Northwest dispatch, and such failure was a causal or contributing factor in the incident referenced in the Administrator's Complaint. Respondent asserts that he had a right to rely, and did rely, that the controllers would comply with all relevant orders, rules, procedures, policies and practices. Such reliance justifies a reduction, mitigation, or waiver of sanction.

THIRD AFFIRMATIVE DEFENSE

The Administrator's sanction is not in compliance with Board precedent and policy, justifying a reduction or waiver of sanction.

FOURTH AFFIRMATIVE DEFENSE

The Administrator's selection of sanction is not in compliance with his own guidelines, policy and precedent, justifying a reduction or waiver of sanction.

FIFTH AFFIRMATIVE DEFENSE

There were mitigating facts and circumstances that caused or contributed to the incident, including but not limited to aircraft systems design and human factors, justifying a reduction, mitigation, or waiver of sanction.

SIXTH AFFIRMATIVE DEFENSE

Respondent timely filed a report under the NASA Aviation Safety Reporting System, justifying a waiver of sanction.

SEVENTH AFFIRMATIVE DEFENSE

The Administrator's Complaint fails to state facts justifying a cause of action for revocation of Respondent's airman certificates.

EIGHTH AFFIRMATIVE DEFENSE

The revocation of Respondent's certificates was contrary to law and regulation.

NINTH AFFIRMATIVE DEFENSE

Respondent believed at all relevant times he was operating in compliance with the applicable regulations and assigned air traffic control clearance until reaching the clearance limit, justifying a reduction, mitigation, or waiver of sanction.

TENTH AFFIRMATIVE DEFENSE

Respondent was operating under reasonable reliance on the performance of others at the time of the alleged violation which excuses the conduct, or justifies a reduction, mitigation or waiver of sanction.