



Regulations (FAR), 14 C.F.R. Part 121.<sup>2</sup> The law judge, however, determined that the 30-day suspension of respondent's Airline Transport Pilot (ATP) certificate should not be affirmed, and it is from this determination that the Administrator appeals. Respondent argues on appeal that the law judge erred by affirming the violation. For the reasons that follow, the Administrator's appeal is granted and the respondent's appeal is denied.

On January 24, 1996, respondent served as pilot-in-command of a Boeing 737 aircraft operated as USAir Flight 101, from Charlotte, North Carolina, to Seattle, Washington. Respondent's 24-year-old son, a commercial pilot, was a passenger on the flight. When the aircraft was at cruise altitude, more than half way through the flight, respondent's son walked to the front of the aircraft to use the lavatory. He noticed that a flight

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<sup>2</sup>FAR § 121.547 (a) provides as follows:

**§ 121.547 Admission to flight deck.**

(a) No person may admit any person to the flight deck of an aircraft unless the person being admitted is-

(1) a crewmember;

(2) An FAA air carrier inspector, or an authorized representative of the National Transportation Safety Board, who is performing official duties;

(3) An employee of the United States, a certificate holder, or an aeronautical enterprise who has the permission of the pilot in command and whose duties are such that admission to the flight deck is necessary or advantageous for safe operations; or

(4) Any person who has the permission of the pilot in command and is specifically authorized by the certificate holder management and by the Administrator.

Paragraph (a)(2) of this section does not limit the emergency authority of the pilot in command to exclude any person from the flight deck in the interests of safety.

attendant had just exited the flight deck, apparently to obtain beverages for the crew from the galley, and that she had left the door to the flight deck ajar. Respondent's son opened the door and entered the flight deck. According to the First Officer, the son closed the door behind him. He may have sat down in the jumpseat. In any event, the son indicated that he had stopped in for a visit, to which respondent replied, "Okay, but just for a few minutes." The son remained for about five minutes, conversing with the First Officer, and then departed. The First Officer, fearing that a flight attendant or a passenger would lodge a complaint with USAir about the unauthorized entry to the flight deck, reported the incident to the Chief Pilot.<sup>3</sup>

Both respondent and his son testified that the son never entered the cockpit. According to the son, he had only bent down and leaned into the open doorway for a few moments, and briefly spoke with the First Officer. He immediately sensed his father's displeasure by the stern look on his face, and he turned around and returned to his seat in the coach section. According to respondent, he immediately told his son to leave the area. The law judge made a credibility determination in favor of the First Officer. There is no evidence to show that the First Officer had any reason to fabricate the allegation, and respondent offers us no persuasive reason to disturb the law judge's finding. Under the circumstances, the law judge correctly upheld the FAR

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<sup>3</sup>Respondent was suspended for two weeks without pay by his employer. Presumably, the airline reported the incident to the Administrator.

violation.

Turning to the issue of sanction, the law judge affirmed the only allegation made by the Administrator, but nevertheless, he set aside the sanction in its entirety. The Administrator argues on appeal that the 30-day suspension should be reinstated. The Administrator asserts that the law judge erred in crediting respondent's 33-year, violation-free history and that the Board should defer to the Enforcement Sanction Guidance Table contained in FAA Order 2150.3A, which apparently sets forth a range of suspensions from 30 to 90 days as appropriate sanction for this violation. We cannot fault the law judge for failing to defer to the agency's written sanction guidance, since the Administrator failed to offer such guidance into evidence. However, Board precedent is clear that an airman's violation-free history is not an appropriate factor to be considered in mitigation, and the law judge identified no other circumstances which would justify imposing no sanction.<sup>4</sup>

Moreover, this incident was not merely a "technical" violation. Unauthorized admission of a passenger to the flight deck has the potential to interfere with the flight crew's proper performance of its duties. Unauthorized admission of a passenger who is a family member may be even more of an intrusion. Indeed, it is evident here that the son's presence on the flight deck

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<sup>4</sup>Specifically, neither respondent's non-admission of the violation nor the law judge's belief that it was not an aggravated violation support a finding that no sanction is warranted.

interfered with the flight crew's relationship to each other; the First Officer testified that he did not feel comfortable confronting respondent at the time respondent permitted his son to remain on the flight deck. We are concerned that such an intrusion could adversely affect cockpit resource management. The evidence that supports the finding of a FAR violation, therefore, also supports deference to the sanction deemed appropriate by the Administrator.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied;
2. The Administrator's appeal is granted; and
3. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days after service of this order.<sup>5</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>5</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration in accordance with FAR § 61.19(f).