

The Alameda Aero Club Newsletter

April 2006

President's Corner

The Attaboy Awards

Time for another round of Attaboys, for good work that keeps AAC flying straight and level no matter what fate, the FAA, or the Port of Oakland throws at us. It amazes me that a bunch of volunteers can manage a large not-for-profit club. We own four airplanes worth over \$200,000 in today's market. Not to mention that there are a lot of us, 159 total, with 113 active as of March 1st. It wouldn't work without the efforts of many people, but some go above and beyond what anyone would expect from a volunteer. Hence, the Attaboys.

And now the envelopes, please. The Attaboy for Outstanding Work in a Supporting Role for Maintenance goes to Ben Barron. Ben still works for UC, but you'd never know it from the number of afternoons he spends at the airport. Ben looks at airplanes as engineering in motion, a constant series of problems to be solved. Many thanks, Ben.

Dave Penney gets the Attaboy for Pinch-Hitting in Multiple Roles. He's the classic example of "if you want something done, ask a busy man." When Mike Klinke's new career took him away for months, Dave stepped in as Vice President; when aerobatic competition made Ben Freeloove hard to find, Dave subbed as Chief Pilot. Let's hear it for Dave.

Next, the Attaboy for Major Work Involving Computerization and Things Mere Mortals Don't Understand, belongs to Brad Dispensa. Brad flies even less than I do, but that hasn't stopped him from working on a mega-project to integrate the AAC website with the functionality of the web-based scheduler, plus making our accounting easier. Kudos to Brad and may all your projects be bug-free.

A special Attaboy for Ace Newsletter Editor and General Good Guy belongs to Jay Smith. Jay's newsletter makes us look like we know what we're doing as an organization. Until Gary Wren blew his cover in a previous edition of the newsletter, few people realize all Jay does for the club: he's there for us as Plane Captain of 12R, and when the call goes out for volunteers, Jay's always there.

Then there's Chad Scott. Chad receives a deserved Attaboy as Go To Guy. Chad organizes barbecues, as Treasurer keeps a close eye on our funds and ensures we don't run afoul of the government. He also does the little things: the club telephone goes down,

Chad chases down responsible people and has it repaired. The clubhouse computer can't recognize its hard drive, Chad's all over it like a cheap suit.

Finally, an Attaboy With Oak Leaf Clusters to Ginny Wilken. (This should be an "Attagirl," but I'm sure she won't mind.) Ginny's everywhere and covers for everybody. She's taken on the task of handling the day-to-day maintenance of our airplanes. The results show. Our fleet is in better shape than a year ago and our maintenance expenses have been tamed where once they were spiraling out of control. Thanks, Ginny, and please don't burn out.

This concludes the Attaboy Awards. Any member can receive an Attaboy, all you have to do is help out. Attaboy winners please note that one "Aww shit" wipes out sixteen Attaboys.

Steve Bevitt

Flying (Not) For Compensation Or Hire

[This article is not intended to constitute legal advice, and neither AAC nor the author are acting as legal counsel in publishing it.]

Is it OK to accept a friend's offer to pay rental fees for a ride in your (or the club's) airplane? Maybe not. Rule 61.113(a) provides that "no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft." "Compensation or hire" isn't defined, but the FAA and the NTSB have given the phrase a broad meaning. According to the NTSB, "compensation need not be direct nor [sic] in the form of money." Administrator v. Murray, NTSB Order No. EA-5061. Compensation includes goodwill, see id., and the expectation or prospect of future economic advantage, see Administrator v. Blackburn, 4 NTSB 409.

The FAA considers almost any present or future benefit to be compensation. In Blackburn, the pilot's employer signed a contract to transport mail for a fee, but began the service a week before receiving its commercial operator's certificate. The employer didn't charge the customer for that week and paid the pilot no wages. Still, the NTSB found the flights were for compensation or hire since the pilot expected an economic benefit: he knew of the contract and made the flights to get a permanent job with the employer. The NTSB affirmed a 60-day suspension.

In Murray, a private pilot lost his certificate for 270 days

for flying people to a Super Bowl party his bar owner friend hosted, though there wasn't evidence anyone paid him directly. The pilot argued he was just helping his friend. Evidence showed he'd worked for the bar owner before, and the passengers had paid the bar owner a fee which included air transportation and admission to the party, and the flights cost the pilot over \$1,000. The NTSB concluded the pilot was banking goodwill in hope of getting future work, and thus the flights were for compensation or hire.

In these cases, the NTSB found that someone associated with the pilots "held themselves out" as providing air transport for a fee, and the pilots' knowing participation made their operations commercial. The FAA notes the difference between private and "common," or commercial, carriage is that "[a] carrier becomes a common carrier when it 'holds itself out' to the public, or to a segment of the public, as willing to furnish transportation . . . to any person who wants it." See FAA Advisory Circular 120-12A. In Murray, the bar owner solicited patrons, offering them air transport and admission to the party for a fee. In Blackburn, the employer entered a contract to carry mail for a fee. These acts were considered to be "holding out" indicative of commercial operations. See also Administrator v. Rawlins, NTSB Order No. EA-4583 (a private skydiving club was "holding itself out" when it advertised in the yellow pages and permitted non-members to jump for a fee, and thus a volunteer pilot's flights were for "compensation or hire"); Administrator v. Blake, NTSB Order No. EA-5051). Thus, even though the pilots in Murray and Blackburn did not themselves receive payment for their flights, these flights helped someone else receive a payment, making the flights commercial, subjecting the pilots to discipline for not complying with Part 135.

Indeed, it was the lack of any "holding out" that saved the pilot in Administrator v. Derkazarian, NTSB Order No. EA-4791, from a 180-day suspension. This pilot made three flights to help a Life Flight helicopter crew stuck on an island. The Life Flight area manager called a mutual friend of the pilot looking for a plane to transport the helo pilot and medical crew off the island. That friend in turn called the pilot. There was no evidence the pilot ever held himself out to the public, and he steadfastly refused payment for his services: he testified he made the flights because he'd have wanted someone to do the same for him. Even though the pilot's friend later sought some payment for the flights (as a commission?), the NTSB found the pilot hadn't "held himself out," and thus the flights were not for compensation or hire.

Despite this strict interpretation of the rule against flying for hire, at times a private pilot may receive some payment associated with flying. See 14 C.F.R. § 61.113(b) – (g). Example: a pilot "may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if: (1) The flight is only incidental to that business or employ-

ment; and (2) The aircraft does not carry passengers or property for compensation or hire." Id. § 61.113(b). While the NTSB seems not to have published any decisions interpreting this exception, it appears to allow you to fly somewhere on business and get paid by your employer for doing so, but only if your employer's business doesn't involve flying. For example: if you sell shower curtain rings, you can probably use your plane to go from city to city to service your shower curtain ring customers. But if you run a skydiving business, that's a different story.

Also, a pilot may share the "operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees," and provided the pilot does not "pay less than the pro rata share" of those expenses. Id. § 61.113(c). For this to apply, however, the pilot and the passengers must have a "common purpose" in making the flight. Two cases help illustrate this caveat. In the first, Blake, the NTSB found that a pilot taking skydivers up for a jump violated § 61.113 even though the evidence showed that each of the passengers paid a pro rata share of the aircraft rental fee. See NTSB Order No. EA-5051. There was no common purpose to the flight, the NTSB concluded, because the pilot's purpose – whether to build time or anything else (short of jumping out of the airplane himself) – was different from the jumpers' purpose. Thus, their payment of part of the airplane rental counted as compensation.

In Administrator v. Carter, NTSB Order No. EA-3730, the NTSB ordered a 30-day suspension where a pilot took a friend's father to a distant hospital in the middle of the night for emergency care. He then sought compensation for the flight's full cost instead of just the father's pro rata share. He might have received a suspension even if he'd sought only the father's pro rata share, because the hearing judge found there was no common purpose to the flight: the pilot and the sick passenger didn't both need medical care in the same city. These two cases clarify that, in order to share flight expenses legally, the pilot and passengers must make the flight for the same reason (whether it be travel or sightseeing).

A final note. The FAA takes these cases very seriously. In only one of the cases mentioned above did the pilot get a suspension reversed entirely. In every other case, the pilot ended up with a suspension. Indeed, in many of those cases, the FAA had revoked the pilot's certificate altogether and the pilot had to go through the (lengthy) appeals process just to get that penalty reduced to a suspension. So think carefully before accepting a friend's offer of a dinner in exchange for a ride somewhere.

Frank Riebli, Attorney at Law

This Month's Pithy Saying

Never fly anything that doesn't have the paint worn off the rudder Pedals.

Harry Bill