

Altitude Deviation Case Law

*The following case eventually resulted in case law which states that a pilot is **NOT** protected from a violation by a "read back" of the clearance as understood by the pilot.*

*The initial ruling of the Board was to reverse the suspension of the non-flying pilot-in-command's certificate whose incorrect read back was not heard and then whose aircraft subsequently ascended to an altitude that **resulted in the loss of the standard safety separation** with another transport category aircraft. Administrator v. Merrell, EA-4530 (1997).*

The FAA filed a petition for reconsideration stating that the Board was substituting its interpretation for that of the Administrator, and that the Board's policy on this issue threatened aviation on this issue, and that the policy to dismiss certificate action against a pilot for failing to follow the clearance that the pilot clearly misunderstood/misquoted did not threaten aviation safety. In fact, they stated, the policy fostered aviation safety by placing the burden of accurate communication on both the pilot and the controller. Administrator v. Merrell, EA-4670 (1998).

The FAA appealed the case to the United States Court of Appeals, District of Columbia Circuit, which overturned the Board's finding of no violation. On September 21, 1999, the court ruled that FAR 91.123 states that a pilot must follow ATC directions unless there is an emergency, and does not suggest that he may rely on readback procedures to absolve himself of responsibility. FAA v. Merrell, 190 F.3rd 571 (C.A.D.C. 1999).

As a result of the district court's ruling the Board vacated the previous two orders and affirmed the initial decision of the law judge. The Board stated that "under the Administrator's interpretation of the relevant regulations...an error of perception does not constitute a reasonable explanation for a deviation from a clearly transmitted clearance or instruction. Rather, inattentiveness or carelessness is presumed from the occurrence of a deviation unless, as we understand it, the misperception or mistake concerning the clearance was attributable to some factor for which the airman was not responsible, such as an equipment failure." Administrator v. Merrell, EA-4814 (2000).