

CIVIL AVIATION TRIBUNAL

BETWEEN:

Robert Maguire, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, s. 534(2)(a)

Low flying, Built-up area

Review Determination
J. Rouleau

Decision: October 20, 1986

TRANSLATION

Heard: Nicolet, Quebec, October 14, 1986

DETERMINATION

The applicant is contesting a decision by the Minister of Transport dated August 13, 1986, imposing a fine on him of \$1,000 for contravention of section 534(2) of the Air Regulations. A photocopy of the section was entered as exhibit A-2, and a photocopy of the Notice of Contravention was entered as exhibit A-1.

After establishing the identity of the applicant and establishing that he was present on the date and at the places where the contravention occurred, the representative of the Minister of Transport, Mr. Michel Lefèvre, called as a witness Mr. André Monast, the director of a flying school. His testimony may be summarized as follows. On January 4, 1986, he walked a distance of 1 km in downtown Cowansville and during that time he noticed airplanes flying at low altitude on four occasions. On two of these occasions it was a yellow airplane, which was later identified as a Piper J3 with registration marks C-FOIE. This was the plane which the applicant was flying on January 4, 1986.

According to Mr. Monast, the airplane was making some "extremely dangerous manoeuvres", which were "far below standard". The first time he saw the applicant's plane (at point 2 on the map entered as exhibited A-3), it was flying over the municipal park at an altitude of between 100 and 400 feet, and climbing sharply. The second time, he saw the plane above the lake making 360-degree turns so low that the plane appeared to be at treetop height. Mr. Monast complained to the Cowansville police; the report on this complaint was entered as exhibit A-4.

The Tribunal accepted, without prejudice, a solemn declaration entered as exhibited A-5. The Tribunal cannot accept it outright, since the applicant does not admit the facts related in it and in particular because this document would introduce new, incriminating factors without the applicant having a chance to cross-examine the individual who signed the declaration.

In his testimony, the applicant stated that he was turning in order to make observations for landing purposes, and that the turns could be made without any danger in this type of plane. He entered as exhibit A-1 a photocopy of a map of the Cowansville region in order to demonstrate the north/south angle involved in his landing, and thus explain the manoeuvres he was making. Mr. Désilets, a pilot, testified that in his experience (he had been landing at that place for some years) pilots must check the state of the ice at low altitude before landing at that time of year. He said that the manoeuvres the applicant made above the municipal park were made for the purpose of losing altitude in order to land.

After hearing the arguments of the parties, the Tribunal reached the following conclusions:

The representative of the Minister of Transport has proved, to the Tribunal's satisfaction, that the applicant flew over the built-up area of a city at an altitude of less than 1,000 feet on January 4, 1986. The applicant's argument to the effect that he was turning in order to make observations for landing purposes is not a valid defence with respect to flying over a municipal park, climbing sharply, at an altitude of less than 500 feet.

For these reasons, the Tribunal dismisses the applicant's appeal, upholds the finding of contravention, and reserves judgment for thirty days with respect to the amount of the fine.

DETERMINATION OF THE CIVIL AVIATION TRIBUNAL

Subject: Non-payment of a fine imposed by the Minister on Robert Maguire by a Notice dated August 13, 1986, alleging a contravention of section 534(2) of the Air Regulations on January 4, 1986.

It is hereby certified that, after service on the respondent of a Summons to appear before a member of the Tribunal at the time and place indicated for a hearing of the facts alleged against him and after written notice to the Minister setting out the time and place indicated in the Summons, said Hearing was held on October 14, 1986, at 10:00 hours in Room 1.01 on the 2nd floor of the Court House at 395, rue Courchesne, in Nicolet, Quebec.

After hearing the parties, I have concluded, as set out in my decision dated October 20, 1986, that there was a contravention of section 534(2) of the Air Regulations.

Having considered the representations by the Minister of Transport with regards to the amount of the fine, and in the absence of representations on this matter by Mr. Maguire, and in view of Mr. Maguire's record, I hereby set at \$1,000 the amount of the fine to be paid to the Tribunal by the respondent at the address indicated above on or before December 22, 1986.