**CAT File No. C-0084-02**
**MoT File No. 6504-P-061440-008413**

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Albert V. Ethier**, Appellant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**
*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 5.9
*Air Navigation Orders*, Series VIII, No. 2, s. 3
*Air Navigation Orders*, Series VIII, No. 3, s. 4
*Air Regulations*, C.R.C. 1978, c. 2, s. 210(1)(a)
*Engineering and Inspection Manual*, Part I, Chapter III, s. 3.1.9(b)
*Engineering and Inspection Manual*, s. 2.1.4
*Engineering and Inspection Manual*, s. 2.18.5(d)
*Engineering and Inspection Manual*, s. 2.2.5

**Standards to be met, Certificate of airworthiness**

---

**Appeal decision**
**Ed J. Jenson, G. Richard, James W. Snow**

---

**Decision: September 13, 1988**

**Heard:** Saskatoon, Saskatchewan, August 18, 1988

***The Respondent has contravened Air Regulation 210, section 1, subsection (a) as described in the Notice of Suspension dated February 17, 1988.***

***The penalty imposed and served under an agreement arrived at between the parties applies to the present situation and no further penalty is to be exacted from the Respondent.***

The Minister is appealing the determination rendered by Robert J. Rushford, Q.C., dated June 15, 1988, dismissing the charges against Albert V. Ethier under section 210(1)(a) of the *Air Regulations*.

The facts of the matter are not in dispute and are as described in the review determination.

The Tribunal member of first instance stated that "the issue in this case is whether the installation of the borrowed elevator and trim tab on C-GNUX constitutes a major repair or a minor repair". He found that "the repairs done to Beech C-GNUX were minor repairs within the definition of sections 1.11.2 and 1.11.3 of the *Engineering and Inspection Manual*".

He further found "that such repairs were certified by a Category A aircraft maintenance engineer within the meaning of section 1.11.3 and that certification, while done on a separate sheet of paper rather than in the actual log, is nonetheless a valid certification. The aircraft C-GNUX, therefore, had a valid certificate of airworthiness on the dates in question and the charge against the Applicant under section 210(1)(a) of the *Air Regulations* is dismissed".

The grounds of appeal invoked by the Minister are as follows:

1. The Tribunal member erred in failing to determine whether or not the certificate of airworthiness for aircraft
C-GNUX remained in force following installation of a replacement left-hand elevator and trim tab:

(a) in that the dual inspection and certification of flight controls required by Part II, Chapter II, paragraph 2.1.2(b) were not completed as required by Part II, Chapter II, section 2.1.4 of the *Engineering and Inspection Manual*;

(b) in that the aircraft was purportedly certified as released for return to service without verification that the dual inspection of the installation was properly certified as required by Part I, Chapter II, section 2.18.5(d) of the *Engineering and Inspection Manual*.

(c) in that the replacement elevator was not certified as a serviceable component, as it had not been inspected by a Category B engineer and issued an A1-99 tag prior to installation on C-GNUX as required by Part I, Chapter III, paragraphs 3.1.9(a) and (b) of the *Engineering and Inspection Manual*.

2. The Tribunal member erred in determining that the purported certification on a separate sheet of paper was valid in being made in accordance with Part I, Chapter II, section 2.2.5 of the *Engineering and Inspection Manual* and *Air Navigation Orders*, Series VIII, No. 2, section 3 and No.3, section 4.

3. The Tribunal member erred in finding that the replacement of an elevator and trim tab constituted a "minor repair" within the meaning of Part I, Chapter 1, section 1.11.3 of the *Engineering and Inspection Manual* and as such, was properly certified by a Category A aircraft maintenance engineer.

4. The Tribunal member erred in considering irrelevant and extraneous matters not relevant to the issues before the Tribunal.

5. The decision of the Tribunal member was not supported by the evidence presented at the hearing.

At the Appeal Hearing, the Minister withdrew the grounds described under the above paragraphs 1(c) and 3.

The issues remaining before the Appeal Tribunal are, therefore, whether the repairs done to aircraft C-GNUX required dual certification and whether this was done in accordance with authorized procedure.

The Minister argued that the elevator and trim tab fall under the definition of "control system(s)" referred to in Part II, Chapter II, section 2.1.2(b) of the *Engineering and Inspection (E & I) Manual* which provides as follows:

2.1.2 Applicability

With the exception for ultralight aircraft and gliders when dismantled for transportation, the dual inspection and certification of aircraft flight and power plant controls shall apply to:

(b) the applicable control system(s) following repair, replacement or adjustment.

The Minister further argues that the inspection and certification of the aircraft carried out by Mr. Cherwoniak alone following completion of the work on C-GNUX does not fulfill the requirements of Part II, Chapter II, section 2.1.4 of the *E & I Manual* which reads as follows:

2.1.4 Logbook Certifications

Separate certifications relating to each inspection shall be made in the appropriate sections of the aircraft logs pursuant to ANO, Series VIII, No. 2 and 3 and as follows:

"I have conducted an inspection for conformance to the type of the flight/power plant controls that were affected by the work accomplished".

The Appellant alleges that the requirements of Part II, Chapter II, section 2.1.3 of the *E & I Manual* were equally not met. The section provides:

2.1.3 Authorized Persons

The dual inspection of aircraft flight and power plant controls, or an equivalent method in the case of aircraft maintained under a Department of Transport-approved continuous maintenance system, shall be limited to the following persons:

(a) an aircraft maintenance engineer licencee

(b) the authorized representative of a Department of Transport-approved organization

(c) a flight engineer or pilot familiar with the applicable aircraft, make and model, as a second signatory when, under extenuating circumstances, only one authorized person as defined in sub-paragraphs (a) and (b) is available

In this instance, according to the Appellant, the Respondent could have acted as second signatory.

The Appellant contends that the Tribunal member erred in not pronouncing on the validity of the certificate of airworthiness with regard to the duty imposed on the person who is releasing the aircraft to verify that the dual inspection was certified.

Part I, Chapter II, section 2.18.5(d) of the *E & I Manual* provides:

2.18.5 An aircraft shall not be certified serviceable unless it has been verified that

(d) any dual inspection required was certified in accordance with Part II, Chapter II, section 2.1 of this manual;

In addition to arguing that the dual certification requirement was not met, the Minister contends that "the purported certification on a separate sheet of paper" was invalid because it was not in the aircraft logs. Part II, Chapter II, section 2.2.5 of the *E & I Manual* stipulates:

Types of Certification to be Used

2.2.5 To provide documentary evidence that a certificate of airworthiness is in force after maintenance has been completed on an aircraft, an "Airworthy Certification" or "Aircraft Release", depending upon the type of maintenance performed, shall be made in the aircraft journey log of that aircraft by an authorized person. Companies which maintain and certify their aircraft under the provisions of a DoT-approved continuous maintenance system may continue to use the certifications and certification procedures contained in their approved maintenance control manual.

Part II, Chapter II, section 2.1.4 of the *E & I Manual*, previously noted, also refers to "the aircraft logs". Part I, Chapter I, section 2.4 of the *E & I Manual* provides for the sole exception concerning attachments.

The Respondent, in dealing with the issue of certification brought up in the Appellant's grounds of appeal under paragraphs 1(a) and (b), contends that:

"There is no evidence whatsoever that the control systems were repaired, replaced or adjusted. The only evidence dealing with the control system is the evidence of Herbert Cherwoniak commencing at page 110, question 317, wherein he indicates that he disconnected the control to the trim tab by removing one bolt and thereafter, presumably, replacing that bolt. If the makers of the legislation in question had intended two certifications where the control system is connected and disconnected, they would have drafted section 2.1.2(b) to read as follows: ‘the applicable control system(s) following repair, replacement, adjustment or disconnection'. Since

the persons drafting this legislation did not use the word ‘disconnect' or any words of similar import, it is abundantly clear that no dual certification was intended in the case of a disconnection of the control systems, and the Minister is trying to read something into section 2.1.2 which is clearly not found in that section. (see p. 3 outline of Argument by Respondent)".

The Tribunal notes that Mr. Cherwoniak used and signed the two stamps provided for where dual certification is required. The second stamp reads as follows:

I have conducted an inspection for conformance to the type of the flight/power plant controls that were affected by the work accomplished.

The Tribunal takes this to mean that, in Mr. Cherwoniak's opinion, controls or the control system(s) were involved and dual certification required. In the absence of a formal definition of the terms "controls" or "control system(s)", the Tribunal, having considered the relevant legal provisions and the wording of the certificate, concludes that certification is required where controls are affected and that controls are affected by a disconnection.

The Tribunal further finds that certification must be made in the aircraft logs, the exception provision not being applicable in this instance.

Having found in favour of the Appellant on the merits of the matter, the Tribunal must now address the issue of penalty. In this, the fourth grounds of appeal raised by the Minister becomes particularly relevant since the "matters" therein alluded to, in fact, refer to Mr. Halyk's testimony and to the member of first instance's pertinent comments.

The issue here revolves around whether or not an agreement was reached between Mr. Halyk on behalf of his client and Transport Canada and, in the affirmative, what was the scope of this agreement.

The Tribunal, notwithstanding the Appellant's representations to the contrary, finds that an agreement was reached between the parties. This conclusion is evidenced by Transport Canada's acknowledgement that it had agreed to a reduced suspension as witnessed by the second notice. The only question remaining is not one of principle (Transport Canada does negotiate and make deals), but of scope.

Did the agreement involve not only a reduced suspension, but a condition that, as of that date, there were no additional pending investigations or proceedings with respect to the Respondent? In view of Mr. Halyk's uncontested testimony and the circumstances of the situation as evidenced by the record, the Tribunal finds in the affirmative. Such an agreement was reached and Transport Canada's subsequent attempt to change the terms of the agreement at a time when a significant portion of the suspension had been served cannot be held against the Respondent.

The Tribunal, therefore, finds that the penalty imposed and served under the second Notice of Suspension applied to the present case and that no further penalty is to be exacted from the Respondent.