

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

Dik Cusveller, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 7.1(1)(b)

Review Determination
William D. Nicholson

Decision: November 23, 2005

I have determined that the Minister has made its case and the suspension of Mr. Cusveller's instrument rating suspension is confirmed.

A **review hearing** on this matter was held Tuesday, October 4, 2005 at 10:00 hours, at Canada Place, Public Work Canada Building, in Edmonton, Alberta.

BACKGROUND

On May 16, 2005, Dik Cusveller was pilot-in-command of a Beech 100 King Air aircraft during a Pilot Proficiency Check (PPC)/Instrument Rating renewal check flight. The flight test was conducted by Inspector Pat Cowman who assessed the PPC as failed and IFR as failed. Mr. Cusveller appealed the decision to suspend his instrument rating.

THE NOTICE OF SUSPENSION

The Notice of Suspension was given by Form 26-0363 and stated that, pursuant to subsection 7.1(1) of the *Aeronautics Act*, and in consideration of the flight test, Mr. Cusveller's instrument rating was suspended. Reinstatement of the instrument rating would require a satisfactory completion of a flight test.

THE EVIDENCE

The Minister called one witness, Pat Cowman.

Mr. Pat Cowman, Transport Canada Inspector, gave a description of the check ride development and format and how the flight of May 16, 2005 proceeded.

The check ride was depicted as having followed the recommended procedures of the Approved Check Pilot Manual (Exhibit M-1), emphasizing the marking scale and assessment standards starting on page 65. Standard 723, Schedule I - Pilot Proficiency Check (Exhibit M-3) was entered and paragraph (2)(d) was highlighted by being read and described. This part shows that under the heading "Instrument Procedures":

[...]

(i) An area departure and an area arrival procedure shall be performed where the pilot:

(A) adheres to actual or simulated air traffic control clearances and instructions;
and

(B) properly uses the available navigation facilities;

[...]

Mr. Cowman explained that he planned to conduct the flight test in day VFR simulating IFR conditions. Most of the flight would be in the Wetaskiwin area using the radio navigation facilities referred to as "Papa Two" (Exhibit M-6).

An encompassing description of the May 16, 2005 flight test was given. The ride was initiated upstairs at the Airco facilities. Medicals and licences of Mr. Cusveller (captain) and Mr. Boroumand (pilot not flying) were checked. It was noted that during the oral portion, Mr. Cusveller had difficulties with both the general and technical questions. While in the ground run phase of the pre-take-off checks, the first officer (Mr. Boroumand) had to assist with the propeller governor and auto-feather checks. It was during this ground phase that the global positioning system (GPS) was first observed showing a failure. The flashing warning light was cancelled by pushing a button. A warning message of "NAV Super Flag Failure" was observed and could not be remedied. No maintenance check was called for. Neither radio facility was selected prior to take-off. The departure was on an Edmonton City 3 departure which calls for flying runway heading climbing to 7,000 feet (GPS not required). They then flew two headings instructed from air traffic control (ATC). They were then instructed to fly direct to "Papa Two", at which time the crew selected "Direct to" on the GPS. At this time, Mr. Cowman asked why the failure message was "on" and noted that conventional navigation systems were not selected. He then cancelled the ride. The aircraft was landed and the debriefing completed.

At this point in his testimony, Mr. Cowman stated that he had seen the message annunciator light flashing twice, once on the ground and once in the air. The horizontal situation indicator (HSI) did not show correct navigation information.

When asked why he had not failed and cancelled the ride on the ground, Mr. Cowman explained that until take-off the candidate has the ability to correct the situation and that an inspector must see it in use or attempted use.

Under cross-examination by Mr. Cusveller, Inspector Cowman stated that he was reasonably knowledgeable with the KLN 90B from his Minister of Transport training and use. He acknowledged that he does not fly every day, did not know what "NAV Super Flag Failure" meant, nor did he know that the HSI could not be used with a "NAV Super Flag Failure". When asked what constitutes use, he stated selecting "Direct to" on the GPS with no other navigation means selected or tuned would constitute use.

Mr. Cusveller decided not to call any witnesses and to enter a statement. Mr. Boroumand, the designated witness, was invited back in to view the remaining proceedings.

In the statement to the hearing, Mr. Cusveller described himself as a very experienced commercial pilot having started in 1978 and having held positions as captain and safety officers for various air carriers. He stated that the letter of May 17, 2005 to the Tribunal (Exhibit M-10) best described his position of the suspension.

Under cross-examination, when asked what his intention was when he entered "Direct to" on the GPS, Mr. Cusveller answered "to go to the facility".

CONCLUSION

The evidence indicates that an assessed failure for the instrument rating was reasonable and should stand.

This brings up the next point. Should Mr. Cusveller's file be expunged of the failure/suspension? It is my conclusion that it should not be. The error that must be considered is not selecting "Direct to" in the air but having taken off after having observed a warning and not discovering what the root cause or ramifications of the observed failure would be to the navigation system.

DETERMINATION

I have determined that the Minister has made its case and the suspension of Mr. Cusveller's instrument rating is confirmed.

November 23, 2005

William Nicholson
Member
Transportation Appeal Tribunal of Canada