

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Perimeter Airlines (inland) Ltd., Respondent

LEGISLATION:

C.R.C., c. 2, s. 210(1)(a) --
Section 7.6(2) of the Aeronautics Act
Section 210(1)(a) of the Air Regulations

Certificate of airworthiness --Standards to be met.

Review Determination
William C. Pearson, Q.C.

Decision: October 26, 1990

Heard: Winnipeg, Manitoba, October 17, 1990

The allegations on Count No. 1 and Count No. 2 are dismissed for the attached reasons.

The hearing commenced at 09:00 hours on October 17, 1990, with a motion to exclude witnesses, which was granted.

Mr. Pratt, for the Minister, moved an amendment to Count No. 1 as follows:

- a) To change from 15:00 hours to 11:00 hours; and
- b) to insert the words "attempt to" before the words "fly aircraft C-GQQC" in the first count.

It was Mr. Pratt's contention that a review of the evidence required the amendment. Mr. Monnin argued that no notice had been received by him or his client of the proposed amendment, and that

he was not prepared to meet the case created by the amendment. Mr. Pratt replied that the need for the amendment had only become apparent that morning.

In considering this motion to amend Count No. 1, regard must be had to section 7.6(2) of the *Aeronautics Act* which reads as follows:

7.6(2) A person who contravenes a designated provision is guilty of an offence and liable to the punishment imposed in accordance with sections 7.7 to 8.2 and no proceedings against the person shall be taken by way of summary conviction.

In the Notice of Assessment of Monetary Penalty, it is alleged that the party named therein has "contravened the following provision" followed by Count No. 1. Mr. Pratt sought by his motion to amend Count No. 1 by changing the facts which were therein alleged. It appears to me, therefore, that the contravention alleged by the Minister and for which a penalty of \$1,000 was imposed cannot be amended as to the time of the offence. As to the offence itself, I am of the opinion that the Minister cannot, in the interest of procedural fairness and natural justice, be allowed to amend Count No. 1 as requested and, accordingly, I dismissed the motion to amend.

At the conclusion of the evidence presented by Mr. Pratt, Mr. Monnin moved for a dismissal essentially on the grounds that there was no evidence that Perimeter Airlines (Inland) Ltd. was the owner/operator of C-GQQC on September 14, 1990. I reserved my decision on this point and heard further evidence from Mr. Monnin.

In considering this point, I have reached the conclusion that C-GQQC was, in fact, owned by Perimeter Aviation Ltd. Indeed, the certificate of registration (see Exhibit No. 7) confirms this. If it was operated and flown that day, it was to perform the services (flying instruction, charter flying) for which only Perimeter Aviation Ltd. was licensed. Accordingly, as there is no clear evidence that Perimeter Airlines (Inland) Ltd. is responsible for the contravention charged, I dismiss both counts against Perimeter Airlines (Inland) Ltd.

As I have found insufficient evidence as to which corporation is responsible for the contravention, I need not consider any further questions.