

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

c/o/b Business Flights (414660 Alberta Ltd.), Respondent

LEGISLATION:

Aeronautics Act, R.S., c. 33 (1st Supp), s. 7.7

Canadian Aviation Regulations, SOR/96-433, s. 700.02(1)

Suspension of operating certificate, Failure to Appear at hearing

**Review Determination
E. David Dover**

Decision: March 4, 2002

The Minister has proven, on a balance of probabilities, each element of the offences. I uphold the Minister's decision to assess a monetary penalty of \$25,000. This amount, payable to the Receiver General for Canada, must be received by the Tribunal within 15 days of service of this determination.

A Review Hearing on the above matters was held Wednesday, February 13, 2002 at the Federal Court of Canada in Calgary, Alberta.

Because of the interrelationship and common ownership and contracts between North American Airlines Ltd. [hereinafter North American Airlines] and c/o/b/ as Business Flights (414660 Alberta Ltd.) [hereinafter Business Flights] a review hearing on both entities was conducted at the same time. The witnesses gave evidence that encompassed both operations. The evidentiary documents were presented separately. Exhibits M-1 to M-11 are for North American Airlines. Exhibits M-12 to M-23 are for Business Flights. There were no pretrial conferences held between the Applicant and the Respondents.

The hearing was adjourned for 15 minutes and reconvened at 09:20 hours on February 13, 2002. As there was still no representation from the Respondents, proceedings were commenced without their presence.

BACKGROUND

On May 3, 2001 the Minister of Transport issued a Notice of Assessment of Monetary Penalty claiming that North American Airlines had contravened subsection 700.02(1) of the *Canadian Aviation Regulations* (CARs) with 10 offences and assessed a monetary penalty (\$5,000 each offence) for a total of \$50,000, against North American Airlines as the Respondent, pursuant to section 7.7 of the *Aeronautics Act*.

On May 3, 2001 the Minister of Transport issued a Notice of Assessment of Monetary Penalty claiming that Business Flights had contravened subsection 700.02(1) of the CARs with five offences and assessed a monetary penalty (\$5,000 each offence) for a total of \$25,000, against Business Flights as the Respondent, pursuant to section 7.7 of the *Aeronautics Act*.

THE LAW

Subsection 700.02(1) of the CARs states.

700.02 (1) No person shall operate an air transport service unless the person holds and complies with the provisions of an air operator certificate that authorizes the person to operate that service.

MOTION TO AMEND NOTICE

Prior to the commencement of the hearing the Minister requested the following amendment:

The Minister wishes to notify the Civil Aviation Authority of its intention to amend North American Airlines Notice of Assessment of Monetary Penalty dated May 3, 2001, Appendix "A" Offence #5, aircraft registration to read C-GNAV instead of C-FNAV.

The Minister requested that the Notice of Assessment of Monetary Penalty dated May 3, 2001, Appendix "A" Offence #4, issued to Business Flights reads the 26th day of March 2001, instead of the 27th day of March 2001.

There were no objections and the motions to amend were so granted.

OPENING STATEMENTS

Mr. Glenn Hector stated that the Minister would prove that both North American Airlines and Business Flights conducted flight operations on March 26 and 27, 2001 for reward and hire after their operator certificates were cancelled at 23:59 hours on March 23, 2001.

Mr. Hector further stated that he would prove the cargo manifests would be cross-referenced with the flight departures. Through their testimony inspectors would testify about their observations of the departure of certain flights conducted by the companies while the suspensions were in effect.

FOR THE APPLICANT—The Minister of Transport

The case presenter, Mr. Glenn Hector, advised he would produce seven witnesses.

Mr. William Curtain was sworn. Mr. Curtain stated that Transport Canada employed him as an Inspector with the Aviation Enforcement Branch in Edmonton, Alberta.

Mr. Curtain entered the following items as evidence.

Exhibit M-1: Mr. Curtain testified that he obtained the excerpt from the North American Airlines Operations Manual, specifically section 1.2 - Page 1:

Operational Control of 414660 Alberta Ltd. (Business Flights)

North American Airlines Ltd. exercises operational control over 414660 Alberta Ltd. dba Business Flights under the provisions of a "Management Agreement to Exercise Operational Control" duly signed and dated September 01, 1996.

[...]

The North American Airlines Ltd. Operations Manual shall be the Operations Manual for North American Airlines Ltd. and 414660 Alberta Ltd. c/o/b as Business Flights shall be issued to appropriate personnel.

[...]

It is agreed that:

a. The Chief Pilot of North American Airlines Ltd. shall act as Chief Pilot of 414660 Alberta Ltd. c/o/b as Business Flights;

[...]

d. Type qualified pilots may interchange between North American Airlines Ltd., and 414660 Alberta Ltd. c/o/b as Business Flights; and

[...]

Exhibits M-2 and M-3: Transport Canada Notices of suspension of Air Operator Certificates.

Mr. Curtain stated that on February 20, 2001 Notices of Suspension were faxed to Mr. Don Hollier, President of North American Airlines (Exhibit M-2) and Business Flights (Exhibit M-3) stating that on March 23, 2001 at 23:59 hours both their Air Operator Certificates would be suspended if conditions contained in these notices were not adhered to.

North American Airlines and Business Flights did not employ a Chief Pilot on a full time basis as required by CARs 704.07(2)(b)(ii) and 703.07(2)(b)(ii). The remedy was for North American Airlines and/or Business Flights to employ a Chief Pilot.

Exhibits M-4 and M-5: Mr. Curtain testified that on March 24, 2001 he issued the Suspended Air Operator Certificates to North American Airlines Ltd. (Exhibit M-4) and to 414660 Alberta Ltd. (Exhibit M-5).

Exhibits M-6 to M-10: Mr. Curtain testified that each of these exhibits contained the following information: Current File Inquiry, Certificate of Registration of Aircraft, Standard Certificate of Airworthiness, Excerpts from Aircraft Journey Logbook, Waybill from Checker Courier indicating weight of freight to be hauled.

He stated that the weights listed on the waybills from Checker Courier correspond to the weights listed in the journey logbook for the specific flight taken on the day in question.

Contained in the Notice of Assessment of Monetary Penalty, Appendix "A" for North American Airlines are ten (10) offences alleging operations of different aircraft for March 26 and March 27, 2001.

Exhibit M-6 covers offences #1 and #2; Exhibit M-7 covers offences #3 and #4; Exhibit M-8 covers offence #5; Exhibit M-9 covers offences #6 and #7; and Exhibit M-10 covers offences #8 and #9.

Exhibit M-11: Mr. Curtain testified that this exhibit contains Transport Canada's Authorization to Conduct a Leasing Operation; Aircraft Journey logbook indicating that there were eight passengers on board on March 26, 2001; a Passenger Manifest indicating the names of these passengers; and a copy of North American Airlines invoice #2055 to AMEC E&C Services Ltd. dated March 27, 2001 for a flight performed on March 26, 2001.

Mr. Curtain testified that the next exhibits commencing with Exhibit M-12 pertain to the operations of Business Flights.

Exhibits M-12 to M-14: Mr. Curtain stated that these exhibits contain the following: Transport Canada Data Files, Certificate of Registration of Aircraft, Certificate of Airworthiness, Excerpts from the Aircraft Journey logbook, Checker Courier waybill. As in previous exhibits the weights shown on the Checker Courier waybills correspond to the entries for freight in the journey logbook entries.

The Transport Canada Notice of Assessment of Monetary Penalty dated May 3, 2001, Appendix "A" to Business Flights outlines five offences. Exhibit M-12 covers offence #1; Exhibit M-13 covers offences #2 and #3; and Exhibit M-14 covers offences #4 and #5.

Mr. Curtain testified that he obtained all the above documentation from North American Airlines and indicated that the Companies had been most cooperative in releasing information to him. Mr. Curtain stated that the Air Operator Certificates were reinstated on March 28, 2001.

Exhibit M-15: Mr. Curtain presented his case report outlining his case study and including his recommendation for sanction. I refer to the highlighted sections:

There were 10 separate flights with a total of 20 legs. Technically each leg of each flight is a separate offense.

In view of the company's acceptance of responsibility, discontinuing the offense, and voluntarily providing requested evidence, I recommend the company be assessed an appropriate first offense monetary penalty for each of the 10 calendar flights under the designated provisions of CARs 700.02(1). I do not recommend penalties be assessed for each leg of each flight. I do not recommend any action be taken against the pilots.

First Sanction/Penalty: Private \$1,000, Corporation \$5,000, Suspension 14-30 days.

Exhibit M-16: Mr. Curtain stated that his case report covering Business Flights contains the same information as Exhibit M-15.

Mr. Curtain was excused.

Mr. Robert Penton was sworn. Mr. Penton stated that he was the Manager of Checker Courier of Calgary, Alberta. He indicated they employed various aircraft charter organizations to move cancelled bank cheques throughout the region. He stated that during the month of March 2001 they employed North American Airlines Ltd. to perform this duty.

Exhibit M-17: Mr. Penton indicated that under the agreement signed by Checker Cabs Ltd. and North American Airlines Ltd., Checker was to be invoiced once a week by the airline:

The Carrier shall invoice Checker with respect to Services provided pursuant to this Agreement on a weekly basis.

Exhibit M-18: Mr. Penton presented a North American Airlines invoice # 2059 to Checker Courier dated March 31, 2001 for the period of March 26-30, 2001.

Mr. Penton stated that the column specifying No of Trips (5) indicated that one trip per location was flown each day. He indicated that trips were flown on March 26 and March 27, 2001 for all the 10 locations or routes. He advised that the banks weighed the cargo, which was to be loaded

into the aircraft. These weights were outlined on the Checker waybill and then entered in the Aircraft Journey logbooks.

Mr. Arthur W. Lashbrook was sworn. Mr. Lashbrook stated that he was a Civil Aviation Inspector based in Winnipeg, Manitoba but had been temporarily transferred to the Transport Canada office in Calgary.

Exhibit M-19: This exhibit is composed of two pages of events that occurred on March 21 and 22, 2001 while Mr. Lashbrook was located in the Calgary Transport Canada office. Mr. Lashbrook testified about the following events.

On March 21, 2001 he advised Mr. MacCrimmon of North American Airlines by telephone that the suspension would take effect at 23:59 on March 23, 2001. Mr. MacCrimmon advised Mr. Lashbrook that the airline was endeavoring to have Mr. Ray Hollier qualified as the Chief Pilot. Mr. Lashbrook advised Mr. MacCrimmon that the candidate was required to complete a questionnaire.

On March 22, 2001 Mr. Lashbrook stated that he received a telephone request from Mr. MacCrimmon to fax a copy of the "Nomination form for an Operations Manager" to the airline office so that they might commence the process to qualify a candidate prior to the suspension.

It was Mr. Lashbrook's evidence that because of the short time remaining before the suspension it was almost impossible to qualify a suitable candidate.

Michael Weir was sworn. While employed by Transport Canada Mr. Weir held the position as Superintendent of Fixed Wing Operations for Alberta, Yukon and the Northwest Territories.

Mr. Weir retired from Transport Canada on July 28, 2001.

Exhibit M-20: Mr. Weir testified that in the week prior to the suspension he discussed the pending action with a number of inspectors. On March 24, 2001 in the a.m., Mr. Weir telephoned Mr. MacCrimmon to advise him that North American Airlines' Air Operator Certificate was in suspension. He stated that he received a telephone call from Mr. Ostap Diduch on the same day and during the conversation Mr. Diduch confirmed that he was aware that his Air Operator Certificates were suspended.

Mr. Weir stated that he initiated a process to have ramp surveillance in place to monitor the movements, if any, of North American Airlines and Business Flights aircraft.

John Richard Pollock was sworn. Mr. Pollock is a Transport Canada Civil Aviation Inspector in Edmonton Alberta.

Exhibit M-21: Mr. Pollock testified that the handwritten notes from March 26, 2001 constitute a record of the events he engaged in by telephone and facsimile in his investigation of the activities of North American Airlines and Business Flights.

Mr. Pollock stated in a conference call with Don Hollier, Mr. MacCrimmon and Mr. Diduch the following information was forthcoming:

- The personnel from North American Airlines admitted their Air Operator Certificate was in suspension.
- When asked for information concerning aircraft and actual flights these individuals indicated they would cooperate.
- Mr. Diduch stated that in his opinion the Air Operator certificate was not in suspension because of a commitment given to Mr. MacCrimmon by a Mr. Max Weber, a Transport Canada Inspector on March 22, 2001. Mr. Diduch evidently was of the opinion that the companies had a further week to complete the testing of a chief pilot candidate if they submitted their paper work by March 23, 2001.
- Mr. Diduch admitted to operating aircraft when the suspension was in effect.
- Mr. Pollock advised that he gave the management personnel telephone and fax numbers of individuals who were in a position to lift the suspension.

Mr. Pollock stated that he was aware of the distress both North American Airlines and Business Flights would suffer if they were forced to cease operations.

Gary Bonish was sworn. Gary Bonish stated that Transport Canada employed him as a Civil Aviation Inspector in Calgary, Alberta.

Exhibit M-22: Mr. Bonish testified that he conducted a surveillance observation on aircraft operated by North American Airlines and Business Flights on Sunday, March 25 and Monday, March 26, 2001. His Report indicates:

- Sunday, March 25, 2001 - all aircraft on the Shell Ramp.
- Monday, March 26, 2001 - numerous flights commencing at 0419 and ending at 0557 hours.

Lindsay Cadenhead was sworn.

Exhibit M-23: Mr. Cadenhead stated that Transport Canada employed him as a Civil Aviation Inspector in Toronto Ontario. He stated that he was temporarily assigned to the Calgary, Alberta office in March of 2001.

Mr. Cadenhead testified that he conducted a surveillance operation on aircraft operated by North American Airlines and Business Flights from 0400 until 0605 hours on March 27, 2001. His observations indicate that there were numerous departures, which are documented in Exhibit M-23.

The evidentiary record was closed.

CLOSING STATEMENTS

Mr. Hector contends that the testimony and evidence prove beyond a reasonable doubt that both North American Airlines and Business Flights carried goods and people for reward when their Air Operator Certificates were suspended on March 26 and 27, 2001.

He further contends that both companies were well aware of the proceedings against them, as there were numerous telephone calls, facsimiles and notices for them to respond to.

Mr. Hector stated that in his opinion the management of the companies showed a complete disdain for the regulatory process, which was only strengthened by the fact they failed to appear at the hearing.

ANALYSIS

As there is no representation or factual evidence from the respondents I am left to evaluate the facts put before me by the Minister.

There is evidence that the organizations are in fact interrelated so the operations are connected by the use of aircraft and aircrew. There is evidence that the chief pilot has jurisdiction over both organizations (Exhibit M-1).

I am convinced that the companies received their Notices of Assessment of Monetary Penalty and they were given adequate time to correct the situation [from February 20, 2001 to March 23, 2001] (Exhibit M-15).

The cargo trail has been proven. The banks weigh the material; it is transferred to a Checker Courier waybill, then loaded onto the aircraft and entered in the journey logbook (Exhibits M-6 to M-10, M-12 - M-13 and M-18). Robert Penton from Checker Courier testified to these transactions.

The company management acknowledges that they are aware of the suspensions but they have decided to reinstate their own Air Operator Certificates and proceed with operations (Exhibit M-21).

I am concerned that the conversation between Max Weber, a Transport Canada Inspector on March 22, 2001 might have given the impression that the companies would have an extension of one week if they were able to complete the paper work. There is, however, no actual evidence that this took place and in my opinion the companies had adequate time to correct the deficiencies without waiting until the last minute (Exhibit M-21).

I am convinced the flights for hire and reward took place on March 26 and March 27, 2001 (Exhibits M-22 and M-23).

DETERMINATION

The Minister has proven, on a balance of probabilities, each element of the offences. The proof has come from the evidence presented, through witness testimony and documentary evidence such as exhibits.

North American Airlines and Business Flights contravened subsection 700.02(1) of the CARs and did operate flights for hire and reward on March 26 and 27, 2001 while their Air Operator Certificates were suspended.

I confirm the assessed penalties as follows:

North American Airlines Ltd.

Offences #1 - #10 at \$5,000 each: totalling \$50,000

414660 Alberta Ltd. c/o/b/ as Business Flights

Offences #1 - #5 at \$5,000 each: totalling \$25,000

E. David Dover

Member

Civil Aviation Tribunal