

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Aéro Taxi**, Applicant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Air Navigation Orders*, Series VII, No. 3, s. 5(b)

*Air Navigation Orders*, Series VII, No. 3, s. 5(c)

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**Review Determination**

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**Decision: June 21, 1989**

**\*\* Translation \*\***

Heard: Montréal, Quebec, June 16, 1989

*The Department of Transport has not proved on the balance of probabilities that an immediate threat to aviation safety exists or is likely to occur.*

*The suspension of permit OC 6816/29-08-88 issued to Aéro Taxi is not justified.*

On April 28, 1989, the Department of Transport decided, pursuant to section 7 of the *Aeronautics Act* (RSC, 1st Supp, c. 33, December 12, 1988), to suspend Canadian aviation document OC 6816/29-08-88 issued to the company Aéro Taxi because an immediate threat to aviation safety exists or is likely to occur for the following reasons:

(TRANSLATION) "The company no longer employs the qualified managerial personnel required under *Air Navigation Order*, Series VII, No. 3, paragraphs 5(b) and (c)."

"Aéro Taxi is required to submit the names of acceptable candidates for the positions of operations manager and chief pilot in accordance with *Air Navigation Orders*, Series VII, No. 3."

Marcel Devost represented the Department of Transport and testified. Serge Ste-Marie, superintendent of certification for Transport Canada, and Louis Lortie, air carrier inspector (small carriers) for Transport Canada, were also called as witnesses.

Michel Massicotte represented Aéro Taxi. The president of Aéro Taxi and Captain Richard Gordon Fennemore testified.

The sworn testimony and exhibits of both parties revealed the following:

Aéro Taxi is involved in air charters, flying lessons and aircraft maintenance. The firm has 30 employees; they have remained on the payroll since the suspension. Four aircraft are used for charters. The firm has assets of \$1,005,000, but is facing bankruptcy as a result of the suspension. Claude Michaud, the president of the firm, is the sole shareholder of Aéro Taxi and co-chairman of another company. Aéro Taxi had several charter contracts, but was forced to refuse some business since the suspension took effect (Exhibit D-2). There is a shortage of pilots in Canada, and Aéro Taxi has already lost two pilots since the suspension. It has also lost several major clients. Mr. Michaud reorganized the company since he acquired it for the second time in December 1988. He dismissed Captain Pinsonneault, a former company owner who was employed as chief pilot and operations manager. Captain Pinsonneault was dismissed as a result of two incidents involving company aircraft and several instances of overloading. Both of these aspects fall within Captain Pinsonneault's area of responsibility. Mr. Michaud wanted to maintain higher safety standards, and on April 14, 1989, he asked Captain Pinsonneault to notify the Department of Transport of the change and introduce Captain Richard Fennemore, who would be taking over as chief pilot and operations manager. Captain Pinsonneault's dismissal took effect on April 28, 1989.

A meeting was held with Department of Transport officials on April 24, 1989. Inspector Louis Lortie and Inspector Pigeon from Transport Canada and Captain Pinsonneault and Captain Fennemore from Aéro Taxi were in attendance. Inspector Pigeon, who is the inspector responsible for Aéro Taxi, did not attend the Review Hearing. The procedures set out in the operations manual and Captain Fennemore's qualifications were discussed at the said meeting. Captain Fennemore wanted to modify Aéro Taxi's procedures. An examination was scheduled for Captain Fennemore on April 27, 1989. Mr. Pigeon subsequently cancelled the April 27, 1989, examination and said Captain Fennemore was not qualified for the position of chief pilot. Captain Fennemore testified that he did not have an opportunity to discuss the position of operations manager.

Department representatives testified that applicants for the position of chief pilot must have 1,000 hours IFR flight time as pilot-in-command on multi-engine aircraft. Captain Fennemore has 500 hours IFR flight time. The Department of Transport testified that some candidates with less than 1,000 hours have been accepted in view of the company's situation and the other qualifications of the candidates. The Department explained that the standard is 1,000 hours, but exceptions have been made for candidates with as little as 700 hours. The Department did not make an exception in the case of Captain Fennemore because previous candidates with less than 700 hours had been rejected. Exceptions of this kind are authorized by Headquarters in Ottawa.

On April 28, 1989, the effective date of Captain Pinsonneault's dismissal, Mr. Devost telephoned Mr. Michaud and advised him that Aéro Taxi's operating certificate would be suspended that day.

As an interim measure, Mr. Devost suggested that Mr. Pinsonneault could be rehired. Mr. Devost said Mr. Michaud had tried to find Mr. Pinsonneault but was unsuccessful.

Aéro Taxi alleged that it was not treated fairly because the Department did not make an exception on a temporary basis or provide it with advance notice of the suspension. The company claimed that no 1,000-hour or 700-hour standard exists, and these minimum levels are only a matter of internal policy. Mr. Pigeon who evaluated Captain Fennemore's qualifications, and Mr. Charette with whom Mr. Michaud spoke (Exhibit D-5AB), were both unavailable to testify at the hearing. Captain Fennemore also said he submitted an application for the position of operations manager (Exhibit D-6), but it was not considered. Aéro Taxi feels that Captain Fennemore is qualified for both positions. The company further requested that it be allowed to deal with the Ottawa office to ensure that it obtains fair treatment. Mr. Massicotte asked that the suspension be postponed until the review determination is issued.

The Department of Transport claimed that Aéro Taxi should have advised it of the change in management personnel and the dismissal of Captain Pinsonneault. The Department also said Mr. Michaud should not have directed Captain Pinsonneault to find a replacement. Form 26-0067 is an application for an air transport operations certificate; it is not to be used as an application for approval of a candidate for the position of manager.

The Department feels that the suspension is justified in law because, from the time Captain Pinsonneault's dismissal took effect, the company no longer had the qualified managerial personnel required, and that it is not required to give advance notice of a suspension.

Section 7 of the *Aeronautics Act* does not provide for the postponement of a suspension.

With regard to the request for authority to deal with Headquarters in Ottawa in future, the Tribunal is empowered only to review Department of Transport decisions.

The Civil Aviation Tribunal must determine whether an immediate threat to aviation safety exists because Aéro Taxi does not have a chief pilot or operations manager.

The Tribunal takes into account such Department of Transport requirements as chief pilot qualifications. However, the Department has not submitted any evidence of these qualifications. The Tribunal is required to make its own determination based on all the particulars of this case. The burden of proof lies with the Minister of Transport, and the Minister has not discharged that burden to the satisfaction of the Tribunal by proving that the absence of a chief pilot and operations manager approved by the Department of Transport gives rise to an immediate threat to aviation safety.

The Department of Transport has not proved on the balance of probabilities that an immediate threat to aviation safety exists or is likely to occur. The suspension of permit number OC 6816/29-08-88 issued to Aéro Taxi is not justified.