

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

J. Thomas M. Hanson, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, s. 804

Takeoff at night at unlighted aerodrome

Review Determination
M. Zubko

Decision: September 20, 1989

Heard: Yellowknife, Northwest Territories, September 19, 1989

J. Thomas M. Hanson contravened section 804 of the Air Regulations on or about the 18th day of December 1988. The penalty in respect to the contravention is reduced to \$50 due to circumstances surrounding the contravention. The penalty is to be made payable to the Receiver General for Canada and is to be forwarded to the Civil Aviation Tribunal, 4711 Yonge Street, Suite 702, North York, Ontario M2N 6K8 and is to be received by the tribunal on or before October 31, 1989.

The hearing was held at the COGLA Boardroom on the 6th floor of the Bellanca Building in Yellowknife, Northwest Territories, on September 19, 1989.

Alleged violation of section 804 of the *Air Regulations*, taking off at night while aerodrome is not lighted, at Fort Resolution on December 18, 1988.

The event took place when the subject aircraft and crew arrived at Fort Resolution on a scheduled flight. After unloading and loading the aircraft, all the vehicles departed the airstrip. That being a weekend, and after normal hours of staffing of the terminal building, there was no one around. The terminal building was locked. The pilot attempted a number of times to activate

the radio controlled strip lights. The system did not respond. The pilot took off by the use of the aircraft landing lights. A complaint was filed by Neil Woledge and a DoT investigation ensued.

REASONS FOR DECISION

The Minister presented six exhibits into evidence. These exhibits established that the offence as alleged did in fact take place. There is no question that the aircraft and crew were the same as named in the alleged contravention. There is no doubt that it was "night" as described in the *Air Regulations*.

It was also established in evidence that the runway lights during the takeoff at Fort Resolution on December 18, 1988, were not on.

Prior to takeoff, the pilot attempted to activate the ARCAL (radio activated runway light switching system) a number of times. There was no response.

The pilot under the circumstances had to make a decision; none of the options available to him clearly stood out as the best under those circumstances.

The terminal building was locked and not staffed at the time, and the telephone was not accessible. The flight crew did not know how to switch the runway lights on manually. Apparently such information was not posted outside the terminal building, if it in fact exists outside of the terminal building.

The only option open to the flight crew was suggested, at the hearing, to walk to town to seek help to turn the runway lights on prior to takeoff.

It was stated into evidence that some passengers are scantily dressed for these short flights, frequently wearing "cowboy" boots or ordinary running shoes. Light jackets are frequently seen on these passengers, all along the Mackenzie District.

The shutting down of the engines (and therefore the heat) would not have been a wise option, even if one crew member attempted to walk to town to seek assistance, the other one remaining with the aircraft.

The rotating beacon was functioning. The pilot stated, when asked if he could have returned to the strip after takeoff, that he could have by the aid of the rotating beacon and then the aircraft's own landing lights. This evidence is considered credible.

There were near blizzard conditions, with dropping temperatures at Fort Resolution airstrip that night, and so the heat loss to the aircraft cabin and passengers would have been rapid if the engines were shut down.

It is my opinion that the flight crew exercised the best and safest option available to them on that night and under the existing conditions by taking off by their own aircraft landing lights.

There was no evidence presented that would indicate any pressure was put on the flight crew by the carrier, and the pilot accepted full responsibility for that violation.

There was no evidence that it was the habit of the carrier or the pilot to ignore regulations.

Legislation and regulations are not so precise that they cover every situation under all operational, climatic and social conditions, and aircrews do on occasion compromise strict compliance with regulations for the safety of the passengers, when everything is taken into consideration.

The Respondent in his summation questioned the motive of the initial complainant, Neil Woledge. Was it motivated by concern for safety of the operation, or vengeance? There having been previous altercations between Woledge and Ptarmigan Airways; vengeance is probable.

Since this does not alter the fact that the infraction did take place, the reason for the original complaint is not at issue, and was not a factor in whether the crew would have acted differently on that night.

There is a need for a change in the policy in regard to the operation of community airports such as at Fort Resolution, notwithstanding the need for security of these terminal buildings. This is a common problem when flights are operated outside of the 09:00—17:00 time throughout the entire Territory.

The carrier's agents should not abandon the airports prior to takeoff of the departing flights, as was done that night. Perhaps it should be part of the conditions of contract or employment of their agents.

The access to the telephone is vital in such cases. Other emergencies can strike without warning, requiring the assistance of R.C.M.P. or medical attention or the fire department.

To expect the crew to walk for assistance in such cases is not realistic in this age and should not be considered a viable option. Loss of life can result. Such practice should in fact be discouraged or forbidden, especially in blizzard conditions in the north.

The Minister's inspectors, Mr. McFarlane and Mr. Gillespie, are commended for their objectivity and fairness in the investigation and presentation of this case.

Mr. Hanson presented his case equally well, and his witnesses brought forward important information to assist in the determination of this case, and I thank all of them.

In view of the above, I find that Mr. J. Thomas M. Hanson contravened section 804 of the *Air Regulations* as alleged by the Minister. The monetary penalty in respect of the contravention is reduced to \$50 due to the circumstances surrounding this case.

The penalty is to be made payable to the Receiver General for Canada on or before October 31, 1989, and is to be forwarded to the Civil Aviation Tribunal, 4711 Yonge Street, Suite 702, North York, Ontario M2N 6K8.