

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Mountain Air Charter Ltd., Respondent

LEGISLATION:

Aeronautics Act, R.S.C., c. A-2, ss. 7.7, 8.4(1)

Air Regulations, C.R.C. 1978, c. 2, s. 210(1)(a)

Owner Responsibility, Certificate Of Airworthiness, Airworthiness Directive

**Review Determination
Robert L. Mortimer**

Decision: June 6, 1996

The Minister's allegation is confirmed. The penalty of \$1000.00 is upheld. This amount, payable to the Receiver General for Canada, must be received by the Civil Aviation Tribunal within fifteen days of service of this determination.

The Review Hearing on the above matter was held Thursday, May 16, 1996 at 9:30 hours at the Court House (Queen's Bench) in the city of Calgary, Alberta.

BACKGROUND

A Notice of Assessment of Monetary Penalty dated November 29, 1995 was forwarded to Mountain Air Charter Ltd. from Mr. N.C. Muffitt, Regional Director, Regulatory Compliance, Western Region, Transport Canada. The Notice reads in part:

Pursuant to section 7.7 of the *Aeronautics Act*, the Minister of Transport has decided to assess a monetary penalty on the grounds that you have contravened the following provision(s):

Section 210(1)(a) of the Air Regulations, in that you, between the 10th of December 1994 and the 19th of July 1995, at or near Calgary in the Province of Alberta, did operate Piper aircraft, Canadian registration C-GDVM, at such time as there was not in force a Certificate of Airworthiness, by virtue of your failure to comply with Airworthiness Directive 94-13-11.

Payment of the assessed penalty of \$1000.00 was not received by the prescribed date of January 5, 1996; therefore, arrangements were made to hold a hearing as provided for in section 7.9 of the *Aeronautics Act*.

PRELIMINARY STATEMENT

Mr. MacGregor stated at the outset that he did not have any dispute with any of the disclosure material that he had received.

EVIDENCE

Mr. Ribout entered into evidence the Notice of Assessment of Monetary Penalty, a photocopy of the Registered Mail receipt, and a photocopy of the Certificate of Incorporation of Mountain Air Charter Ltd. (Exhibits M-1 to M-3).

Transport Canada's intended first witness, Mr. R. McFarlane, Civil Aviation Inspector for Transport Canada in the city of Edmonton, was unable to attend for personal reasons, and his evidence was entered in affidavit form (Exhibit M-4).

Transport Canada's next witness, Mr. Hanneson, testified that when he was viewing the subject aircraft at Cheyenne Aero for another purpose, concern was expressed to him that the main landing gear (MLG) trunnion parts installed in the aircraft were outdated and should have been replaced by an improved part.

Airworthiness Directive (AD) 94-13-11 (Exhibit M-5) specified the requirement for inspections of the MLG and for replacement of each trunnion with a part of improved design upon the accumulation of 2000 hours total time in service. The effective date of the AD was August 12, 1994.

Mr. Hanneson stated an AD is a compulsory document that has to be complied with in order to maintain the Type Certificate status of the aircraft in question. The Type Certificate forms the basis of the applicable standard of airworthiness for the particular aircraft type. An AD is in effect an amendment to the Aircraft Type Certificate.

Exhibit M-6 is a diagram from the Piper Parts Catalogue illustrating the MLG trunnion, and Exhibit M-7 is an Airworthiness Information System print-out which shows the ADs applicable to C-GDVM, showing 94-13-11 with an unsigned handwritten notation that it had been complied with (CW) on August 31, 1994. Exhibit M-8 is a photocopy of a Certificate of Registration showing Mountain Air Charter Ltd. of Calgary as the owner of a Piper PA-34-200, registration C-GDVM.

A copy of Journey Log pages for C-GDVM for the period from August 20, 1994 to July 19, 1995 was entered as Exhibit M-9. It has an entry dated August 31, 1994 certifying that "A.D. 94-13-11 complied with. No cracks found in either left or right trunnion. Both left and right trunnions due for replacement at 4710.1 hrs TTAF." On December 4, 1994 a flight was logged at the end of which the aircraft had a total air time of 4710.8 hrs, which was .7 hrs beyond the time at which the trunnions were due for replacement. No maintenance entry is in the log indicating the trunnions were changed before December 4, 1994, nor is there any entry of such action up to and including the last entry shown on July 19, 1995. The log shows that some 166 flights were flown on C-GDVM during the period from December 4, 1994 to July 19, 1995.

In response to cross-examination, Mr. Hanneson stated the time expired MLG trunnions on C-GDVM were brought to his attention by Mr. Kelly of Cheyenne Aero Ltd.

The next witness for the Minister was Mr. John Kelly, an Aircraft Maintenance Engineer, the owner and Director of Maintenance at Cheyenne Aero Ltd., an Approved Maintenance Organization (AMO). He stated that in July 1995 he was asked to carry out an inspection on C-GDVM for Mountain Air Charter Ltd. In checking the Log Book, a routine part of the inspection, he found that the changing of the MLG trunnions as required by the subject AD was overdue for completion. He notified the owner, Mr. MacGregor, of his finding, and so advised workers at Mountain Air Charter Ltd. and Inspector Hanneson of T.C.

Under cross-examination, Mr. Kelly made clear that there was no connection between the time expired trunnion parts and some heavy landing wing damage to the aircraft. He also stated that in his work he ensures all applicable ADs have been complied with before signing out an aircraft as airworthy.

Mr. John MacGregor was sworn as a witness to present the Respondent's case. He stated that he was the owner and CEO of Mountain Air Charter Ltd., and that the monetary penalty had not been paid as a matter of principle. That principle was his contention that it was not the responsibility of Mountain Air Charter to comply with the subject AD, because he paid large amounts of money to AMOs to ensure his aircraft were airworthy, and he relied on the mechanics. He stated that it was unreasonable to expect him to check the mechanic's work, because he did not have the required tools or knowledge.

Mr. MacGregor agreed that the AD was not complied with, but stated he had nothing to gain by not complying with it. He further stated that he had supplied his AMO with a computer listing of applicable ADs in October 1994, and that he thought T.C. should have sanctioned the AMO rather than the owner of the aircraft.

In response to cross-examination questions by Mr. Ribout, Mr. MacGregor stated again that he objected on principle to the assessed monetary penalty because he relied on T.C., the AMO, and the AME to ensure that his aircraft were airworthy; he did not have the capability to ensure that all ADs had been complied with, and it was not reasonable to expect that he had that knowledge.

Mr. MacGregor stated he was the designated Maintenance Coordinator in his company, and that as such his responsibility was to interface with the mechanics. His understanding was that when

an AMO declares an aircraft airworthy it means that all ADs have been complied with; he worked with his mechanic and trusted him that such was the case.

Mr. MacGregor acknowledged that the regulations placed the responsibility on the owner and not on the AMO. He stated that Aerodrome of Calgary had been the AMO that had maintained C-GDVM until July 1995 when he took the aircraft to Cheyenne Aero Ltd. because Aerodrome of Calgary was unable to do the required work at the time. The aircraft has not flown since that time.

In his final argument, Mr. Ribout pointed out that C-GDVM had flown numerous times after the MLG trunnions should have been changed, and that Mr. MacGregor had been the pilot for many of those flights. The log book entry of August 31, 1994 clearly indicated that for AD 94-13-11 to be fully implemented the two MLG trunnions had to be replaced by the aircraft total time of 4710.1 hrs. No evidence had been presented to show that such replacement action was taken, and thus an offence against section 210 of the *Air Regulations* had been committed.

Mr. Ribout argued that the Respondent had admitted that the Maintenance Coordinator was responsible to ensure that all required maintenance was completed on time, and that it was not fair to attempt to move the onus of responsibility to another party. While it may be that the AMO failed Mr. MacGregor in this case, that does not alleviate his responsibility.

Mr. Ribout submitted that the \$1000.00. penalty assessed by the Minister was appropriate, given that 166 flights occurred when the Certificate of Airworthiness for C-GDVM was not in force; the need to deter such offences in the future by others; the need to educate the Respondent about his responsibilities; and, the need to punish the offender.

In making his final argument, Mr. MacGregor acknowledged that by regulation T.C. places the onus of responsibility on the owner; but he had relied on the signed statements in the log book meaning that the ADs had been carried out as required to make the aircraft fully airworthy. He had depended on his Aircraft Maintenance Engineer, and a pilot should be able to rely on the signature of an engineer that the aircraft is airworthy.

Mr. MacGregor argued that the number of flights after the time expiry was irrelevant because the failure to change the parts was an oversight, more on the part of the engineer than on himself, that was not discovered until it was noted by Cheyenne Aero in July 1995. He stated further that T.C. should accept some of the responsibility because they licensed the AME he relied on to confirm the serviceability and airworthiness of his aircraft.

In responding to an invitation to comment on the amount of sanction, Mr. MacGregor stated that he thought the \$1000 penalty was reasonable.

THE LAW

In the section on Enforcement, the *Aeronautics Act* reads in part:

8.4 (1) The registered owner of an aircraft may be proceeded against in respect of and found to have committed an offence under this Part in relation to the aircraft for which another person is subject to be proceeded against unless, at the time of the offence, the aircraft was in the possession of a person other than the owner without the owner's consent and, where found to have committed the offence, the owner is liable to the penalty provided as punishment therefor.

Section 101 of the *Air Regulations* gives the following interpretations:

"air carrier" means any person who operates a commercial air service;

"owner" in respect of an aircraft includes

(a) the person in whose name the aircraft is registered, ...

"registered owner" means a person to whom a certificate of registration has been issued;

Section 210 of the *Air Regulations* states in part:

210. (1) No person shall fly or attempt to fly an aircraft, other than a hang glider or an ultra-light aeroplane, unless there is in force in respect of that aircraft:

(a) a certificate of airworthiness issued under this Part or under the laws of the country in which the aircraft is registered,

The Airworthiness Manual states in part:

573.107 Individual Responsible for Maintenance

(a) Each air carrier shall appoint an individual to be responsible for co-ordinating with the approved maintenance organization to ensure that required maintenance is performed.

575.7 Record Keeping – General

(a) The owner of an aircraft shall maintain a record of the maintenance performed on that aircraft.

575.103 Maintenance Release

(c) No person shall sign a maintenance release unless the maintenance in respect of which the release is prepared has been performed in accordance with the applicable standards of airworthiness.

575.203 Requirements (Maintenance Records)

(a) Except as provided in 575.205, each owner or operator of an aircraft shall keep the following records for that aircraft and retain those records for a period of one year following the deregistration of the aircraft:

(1) Records of all maintenance performed on the aircraft, and the certifications of maintenance release in respect of such maintenance;

(2) Particulars of all airworthiness directives applicable to the type and model of aircraft, and all those applicable to the particular aircraft and its installed equipment, including the times when compliance is required and in the case of recurring requirements, the times when subsequent action is required.

593.107 Owner Responsibility

(a) To ensure that an aircraft complies with approved design data and is in a condition for safe operation, the aircraft owner shall comply with:

(1) all airworthiness directives issued by the Minister which apply to the aircraft or to an aeronautical product embodied on that aircraft; and

(2) where applicable, all airworthiness directives or equivalent instructions issued by the foreign airworthiness authority.

Airworthiness Manual Advisory 593/1 under the paragraph heading of RESPONSIBILITIES advises at section 3.2:

The owner of an aircraft is responsible for compliance with all ADs relating to his aircraft. This means that the owner must ensure that the requirements of all ADs issued relating to his aircraft or aeronautical products are complied with and recorded in the aircraft maintenance records in accordance with Chapter 575. Failure to comply with an airworthiness directive will cause the Certificate of Airworthiness to be out of force and make it an offence to fly the aircraft.

DISCUSSION

The basic facts in this case are clear and not in dispute.

Aircraft C-GDVM, a Piper PA-34-200, is registered to Mountain Air Charter Ltd. In accordance with AD 94-13-11, the MLG trunnions on that aircraft were due to be replaced at a Total Air Time of 4710.1 hrs.

The replacement had not been done by December 4, 1994 when the aircraft's Total Air Time reached 4710.8 hrs. The aircraft was subsequently flown for another 166 flights until July 1995 without the time expired MLG trunnions being replaced. During those flights the Certificate of Airworthiness was not in force because of that outstanding requirement.

The AD was initially complied with, but the deferred changing of the trunnions was apparently forgotten. The required deferred action was a maintenance function, and it should have been done on time by the authorized maintainers of the aircraft. That it was not done reflects a failure to comply with directives on the part of the contracted maintainer.

Mr. MacGregor appointed himself the Maintenance Coordinator for Mountain Air Charter Ltd., and in that capacity he had the oversight responsibility to ensure all maintenance requirements on the company aircraft were met in a timely and satisfactory manner.

Mr. MacGregor acknowledges that responsibility, but argues that he trusted his contract maintainer to ensure the aircraft was fully airworthy when it was given a maintenance release, and that it is the maintainer who should be held responsible for not ensuring the MLG trunnions were replaced when they should have been. Mr. MacGregor stated several times that he had not paid the monetary penalty because he considered this contention a matter of principle.

I believe that Mr. MacGregor first learned that the subject AD had not been completed on C-GDVM after that fact had been brought to Mr. Hanneson's attention in an observation by Mr. Kelly. I further accept that Mr. MacGregor did not knowingly keep operating C-GDVM when the C of A was not in force.

The issue in this case is whether Mr. MacGregor should be held accountable for this breach of the *Air Regulations*. Whether T.C. instead should have taken this enforcement action against the AMO or AME concerned should be given some consideration. An AME and the AMO in which he is employed presumably should be accountable for complying with all the relevant aircraft maintenance requirements when they undertake a contractual arrangement to maintain an aircraft.

Exhibit M-9 , a copy of pages from the Journey Log for C-GDVM, was entered during the hearing, but it was not thoroughly examined. In a review of the document, the following maintenance entries may be noted:

- August 31, 1994 – Total Air Time 4644.1 hrs. Event No. 3 inspection completed and AD 94-13-11 complied with. In relation to that AD, this entry includes the statement that the left and right trunnions (are) due for replacement at 4710.1 hrs. The stamp on this entry indicates the maintenance was performed by Triad Aviation, AMO 123-94.
- October 21, 1994 – 4679.8 hrs. Engine and instrument repairs. Release signature block includes the identification of AMO 277-91.
- October 29, 1994 – 4681.1 hrs. Brake repair. Same signature as previous entry, including AMO 277-91
- November 12, 1994 – 4697.0 hrs. Appears to be an engine serviced entry. Same signature and AMO 277-91 entry as before.

- December 28, 1994 – 4719.5 hrs. Some replacement action – detail not clear. Stamp not readable. Signature appears to be the same as the previous one. At this point the MLG trunnions were overdue for replacement.
- February 11, 1995 – 4747.6 hrs. Appears to be a #1 Inspection with various repairs and replacements indicated. Signature appears to be the same and AMO 277- is discernible.
- March 31, 1995 – 4785.5 hrs. Entry date not consistent with place in log. Gear servicing after reported problem. Found serviceable. Same signature and AMO 277-9 noted.
- April 28, 1995 – 4786.7 hrs. Appears to be a #2 Inspection. Entry generally not readable. Signature appears the same and AMO 277-91 is written.
- July 19, 1995 – 4846.3 hrs. Instrument testing, reinstallation and replacement. Work and release by Airborne Precision Instruments Ltd.

From the above entries it appears that AMO 277-91 performed maintenance work seven times in the period from October 21, 1994 to April 28, 1995, and certification of that work was by the same person each time. Three of the maintenance activities were done before the MLG trunnions change was overdue, and four were done after. It seems reasonable to expect that the AME who worked at AMO 277-91 would have checked the recent previous maintenance entries in the log, noted the requirement for the replacements, and made arrangements with the owner to ensure it was done on time. That apparently was not done either during the three times the AMO did maintenance work on C-GDVM before the time expired for the replacement action, or during the four subsequent maintenance activities they performed.

The AMO that made the log book entry about the need for replacements was a different AMO from the one which did the subsequent maintenance, which might partly explain why the oversight occurred, but it in no way justifies or excuses that failure to ensure all ADs were fully complied with. It appears that AMO 277-91 signed a maintenance release four times when the C of A was not in force because the trunnions had not been replaced. In reference to maintenance releases, the Airworthiness Manual refers to "maintenance in respect of which the release is prepared has been performed in accordance with the applicable standards of airworthiness." Accordingly, it might or might not have been reasonable if T.C. had taken some enforcement action against AMO 277-91 and or its AME, but whether or not such action was or should have been taken is not germane to the basic issue of this case, because any such action would not absolve Mr. MacGregor from his responsibilities.

Mr. MacGregor's suggestion that T.C. should bear some of the responsibility for this failure because they licensed the AME is not valid, because it would mean T.C. was responsible for the actions of all aviation licence holders.

The owner of an aircraft, however, has the responsibility, as specified in Airworthiness Manual section 593.107 and Airworthiness Manual Advisory 593/1, to ensure that all applicable ADs are complied with. Section 573.107 of the Airworthiness Manual states that "Each air carrier shall appoint an individual to be responsible for co-ordinating with the approved maintenance organization to ensure that required maintenance is performed." As the Maintenance Coordinator

for Mountain Air Charter Ltd., Mr. MacGregor should have made suitable control arrangements that would ensure the timely completion of the AD.

Regardless of whether others should bear some of the responsibility in this failure to ensure the required maintenance action was taken in time, subsection 8.4(1) of the *Aeronautics Act* clearly provides the authority for T.C. to proceed against the owner of the aircraft. Mr. MacGregor's argument that he did not have the tools or knowledge to check the mechanic's work is rejected. I am not aware of any expectation that he physically check the work himself but he was obliged to ensure that the work was completed and on time. A control system that ensures maintenance requirements are met in a timely manner, whether they be part of an AD or a periodic inspection, seems fundamental to the sound and safe maintenance management of a company's aircraft.

CONCLUSION

Mountain Air Charter Ltd. did operate Piper aircraft C-GDVM between December 10, 1994 and July 19, 1995 during which time the aircraft's Certificate of Airworthiness was not in force because Airworthiness Directive 94-13-11 had not been fully complied with.

Failure to comply with AD 94-13-11 resulted from inadequate attention to the specific requirements of that AD and the related maintenance records of C-GDVM on the part of a number of persons. With the AD requiring significant follow-up maintenance replacement work at or before the aircraft's total flying time reached 4710.1 hrs, Mountain Air Charter Ltd. continued to operate the aircraft long after that replacement work was overdue. I have concluded that no effective maintenance control measure that would have ensured the required maintenance was done on time was in place at Mountain Air Charter Ltd.

Other parties involved with this aircraft during the time in question also failed to act on the requirement clearly noted on p. 49 of the journey log, and continued to sign maintenance releases and to fly the aircraft long after it had reached 4710.1 hrs without the necessary replacement parts installed. Their failures in this regard, however, do not mitigate the responsibility and accountability of the air carrier owner and operator.

In his capacity as both owner and maintenance coordinator of Mountain Air Charter Ltd., Mr. MacGregor was responsible for complying with Airworthiness Directive 94-13-11 by coordinating with his AMO and arranging for the required replacement of the MLG trunnions to be done within the time frame specified in that AD. As he failed to do that, he contravened paragraph 210(1)(a) of the *Air Regulations*.

The assessment of a monetary penalty for this contravention of the *Air Regulations* against Mountain Air Charter Ltd. as the owner of the aircraft is fully in keeping with subsection 8.4(1) of the *Aeronautics Act*.

DETERMINATION

The Minister's allegation is confirmed. The penalty of \$1000.00 is upheld.

Robert L. Mortimer
Member
Civil Aviation Tribunal