

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**Millardair**, Respondent

**LEGISLATION:**

*Air Navigation Order Series 11*, No 274(1)

Air Regulation S. 521(c)

Air Regulation S. 521(c)

Air Regulation S. 554 (1)

*ANO II*, No. 27, s. 4(1) --

*C.R.C.*, c. 2, ss 521(c), 554(1) --

section 6.7 of the Aeronautics Act

section 7.3(1) of the Aeronautics Act

**Standard procedures, Noise Restrictions**

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**Review Determination**

**Zita Brunet**

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**Decision: June 6, 1988**

**Heard:** North York, Ontario, May 26, 1988

*Millardair did not contravene section 521(c) of the Air Regulations and are absolved of the \$250 monetary penalty for each of seven infractions.*

The Ministry of Transport requested a hearing upon not having received payment from Millardair of seven monetary penalties of \$250 each.

Seven notices of assessment of monetary penalty were issued on January 21, 1988, to Millardair.

The Notice of Assessment of Monetary Penalty reads as follows:

\* and in accordance with section 7.3(1)

Pursuant to section 6.7 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 521(c) of the *Air Regulations*.

On December 1, 1987, Millardair Flight MAB 1141, a DC-4, took off from Montréal/Dorval Int'l Airport at 07:18 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 2, 1987, Millardair Flight MAB 1145, a DC-4, took off from Montréal/Dorval Int'l Airport at 07:42 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 4, 1987, Millardair Flight MAB 1145, a DC-4, took off from Montréal/Dorval Int'l Airport at 10:16 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 5, 1987, Millardair Flight MAB 1145, a DC-4, took off from Montréal/Dorval Int'l Airport at 07:40 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 8, 1987, Millardair Flight MAB 1212, a DC-4, took off from Montréal/Dorval Int'l Airport at 06:51 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 10, 1987, Millardair Flight MAB 1212, a DC-4, took off from Montréal/Dorval Int'l Airport at 10:41 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

On December 11, 1987, Millardair Flight MAB 1212, a DC-4, took off from Montréal/Dorval Int'l Airport at 08:41 UTC. This is contrary to the applicable provisions of the noise operating restrictions as stipulated in the *Canada Air Pilot*.

Further to a request for preliminary motions, the Ministry of Transport representative filed, as Exhibit M-1, a letter received from Millardair dated January 26, 1988. This letter shows that Millardair do not deny that they operated these flights. The Ministry representative, Mr. Bourgoin, submitted Exhibit M-3 to show that Millardair had not asked for a waiver to the noise operating restrictions that are stipulated in the *Canada Air Pilot* handbook (effective April 9, 1987) (Exhibit M-2). He further explained that there are exceptions to these restrictions. An emergency situation is an exception, but these Millardair flights did not qualify as emergency flights.

The regulations that Millardair is accused of having contravened are:

*Air Regulation* section 521(c) (cited on the Notice of Assessment):

The pilot-in-command of an aircraft operated on or in the vicinity of an aerodrome shall (c) conform to any applicable provisions of the *Aircraft Noise Operating Restrictions Order*.

*Air Regulation* section 554 (1):

The Minister may establish standard procedures for air operations at specific aerodromes, which procedures may be published in a document entitled *Canada Air Pilot*.

*Air Navigation Order*, Series II, No. 274(1):

No person shall operate an aircraft at or near an airport specified in Schedule 1, except in accordance with

(a) the applicable noise abatement procedures and noise control requirements published in the *Canada Air Pilot*, including the procedures and requirements relating to:

(iii) hours when aircraft operations are prohibited or restricted.

Schedule 1 (subsection 4(1)):

Item 6. Montréal International (Dorval).

Millardair testified that they operated those flights at the request of Canada Post. At the time, Air Canada was on strike. Therefore, Canada Post requested Millardair to operate emergency flights in order to move the mail. Mr. Millard testified that there was no contract drawn for these operations. Millardair never knew from one day to the next if they would be called by Canada Post. They had no advance warning of an impending request. All flights were operated within one hour of receiving the telephone call from Canada Post.

Mr. Wayne Millard argues that ATC would have advised the pilot and denied clearance if these flights had been contrary to regulations, but that both the pilots and ATC considered these flights as emergency flights.

Mr. Millard further argues that their flights qualified under the *Canada Air Pilot* noise restriction exceptions entitled "Emergencies", Item 2:

- an emergency air operation (Exhibit M-2)

They submitted Exhibit D-1, which is an excerpt from the *ATC Manual of Operations*, paragraphs 116.1 and 215.5 to support this argument.

There was no air traffic controller at the hearing to testify concerning ATC procedures and to be questioned about this argument. Millardair added that ATC had not been charged for allowing these flights to operate.

The Millardair representatives held firmly that they did comply with all the regulations and they are not ignorant of these regulations. They operated emergency flights at the request of Canada Post. At the time, Air Canada was on strike and Canada Post used the services of another air carrier to move emergency mail that could not travel by rail or road.

They questioned Mr. Bourgoïn on his definition of an emergency air operation. He defined it as follows:

- when there is no alternative available
- when the weather is down at the destination point
- loss of an engine
- no fuel
- illness on board and the need to divert
- any unforeseen situation that necessitates an emergency operation

In his summary, the Ministry of Transport representative felt that Millardair could have asked for a waiver after a few days of having operated these flights. The Post Office Department could also have interceded and asked for a waiver from Transport Canada. He could not comment on ATC procedures or why ATC had not been charged for this contravention.

Mr. Carl Millard, in summarizing their position on this issue, clearly stated that there was at no time an intent by Millardair to break the law. They were performing a vital service to the public and are proud to have done so. They interpret this type of operation as an emergency operation, as defined in the *Canada Air Pilot*.

Mr. Millard asked whether it was possible to obtain a waiver at 03:00 hours in the morning. He was informed by Mr. Bourgoïn that it is necessary to call the airport duty manager, who in turn calls a Transport Canada airways employee, who is on call 24 hours per day.

It was pointed out by Mr. Bourgoïn that information regarding curfews is now mentioned on ATIS (Automatic Terminal Information Service) as a result of this incident.

## CONSIDERATION

The Tribunal finds that there was no evidence of intent, on the part of Millardair, to contravene the *Air Regulations*.

I am taking into consideration that they performed a service that was vital to the public, and I cannot justify penalizing them as a result of performing this service.

They understood that they were operating within the guidelines of the *Canada Air Pilot's* definition of an emergency operation and did not feel that a waiver was necessary.

Mr. Millard, in closing, suggested that this type of occurrence should have been dealt with by giving a warning instead of a penalty; I tend to agree with this observation.

I accept their argument and find that, in this case, they should be absolved of the monetary penalties imposed on them.

In the future, however, now that Millardair are aware that a waiver is necessary to perform this type of operation, it is expected that they will contact the appropriate authorities within Transport Canada.

Therefore, in conclusion, the Tribunal finds that Millardair did not contravene *Air Regulation* section 521(c) on:

December 1, 1987, at 07:18 UTC

December 2, 1987, at 07:42 UTC

December 4, 1987, at 10:16 UTC

December 5, 1987, at 07:40 UTC

December 8, 1987, at 06:51 UTC

December 10, 1987, at 10:41 UTC

December 11, 1987, at 08:41 UTC

and are absolved of the monetary penalty of \$250 for each of the seven infractions.