

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Arthur Leslie Wiens, Respondent

LEGISLATION:

Air Regulations, C.R.C., c.2, ss. 210(1)(a) & 220

Flight when Certificate of Airworthiness not in force, Failure to notify Minister of accident

Review Determination
L.R. Ohlhauser

Decision: June 29, 1994

I find that Mr. Arthur Leslie Wiens did contravene section 220 and paragraph 210(1)(a) of the Air Regulations as alleged by the Minister. The assessed monetary penalty of \$2,500 is confirmed. The said payment shall be made payable to the Receiver General for Canada and forwarded to the Civil Aviation Tribunal within 15 days following service of this determination.

The Review Hearing on the above matter was held Tuesday, June 7, 1994, at 10:00 hours in the Court House Jury Room in the City of Peace River, Alberta.

BACKGROUND

Mr. Arthur Wiens failed to pay the monetary penalty of \$2,500 assessed under section 7.7 of the *Aeronautics Act*. The Notice of Assessment of Monetary Penalty reads in part as follows:

"CHARGE #1:

Section 220 of the Air Regulations in that on the 3rd of July 1993, at the Fred Pratt farm near High Prairie, Alberta you were pilot in command of a Piper PA-25-235, Canadian registration C-FGUB and failed to notify the Minister when it

was crashed causing damage to the left wing, left landing gear and propeller to such an extent that more than ordinary running repairs were necessary and did thereby commit an offense under section 7.6(2) of the Aeronautics Act R.S.C. 1985 c.A-2, as am. R.S.C. 1985 (1st Supp.) c.33.

A monetary penalty of \$500.00 is assessed.

CHARGE #2, COUNT #1:

Section 210(1)(a) of the Air Regulations in that on the 29th of June 1993, at the Alexander Kryzalka farm near High Prairie, Alberta you, as pilot in command, flew a Piper PA-25-235, Canadian registration C-FGUB, when the certificate of airworthiness issued by the Minister of Transport for that aircraft was expired and did thereby commit an offense under section 7.6(2) of the Aeronautics Act R.S.C. 1985 c.A-2, as am. R.S.C. 1985 (1st Supp.) c.33.

A monetary penalty of \$500.00 is assessed.

CHARGE #2, COUNT #2:

Section 210(1)(a) of the Air Regulations in that on the 2nd of July 1993, at the David Belyan farm near High Prairie, Alberta you, as pilot in command, flew a Piper PA-25-235, Canadian registration C-FGUB, when the certificate of airworthiness issued by the Minister of Transport for that aircraft was expired and did thereby commit an offense under section 7.6(2) of the Aeronautics Act R.S.C. 1985 c.A-2, as am. R.S.C. 1985 (1st Supp.) c.33.

A monetary penalty of \$500.00 is assessed.

CHARGE #2, COUNT #3:

Section 210(1)(a) of the Air Regulations in that on the 3rd of July 1993, at the Michael Starko farm near High Prairie, Alberta you, as pilot in command, flew a Piper PA-25-235, Canadian registration C-FGUB, when the certificate of airworthiness issued by the Minister of Transport for that aircraft was expired and did thereby commit an offense under section 7.6(2) of the Aeronautics Act R.S.C. 1985 c.A-2, as am. R.S.C. 1985 (1st Supp.) c.33.

A monetary penalty of \$500.00 is assessed.

CHARGE #2, COUNT #4:

Section 210(1)(a) of the Air Regulations in that on the 3rd of July 1993, at the Fred Pratt farm near High Prairie, Alberta you, as pilot in command, flew a Piper PA-25-235, Canadian registration C-FGUB, when the certificate of airworthiness issued by the Minister of Transport for that aircraft was expired and did thereby

commit an offense under section 7.6(2) of the Aeronautics Act R.S.C. 1985 c.A-2, as am. R.S.C. 1985 (1st Supp.) c.33.

A monetary penalty of \$500.00 is assessed."

A Certificate of Service was served on Mr. Wiens personally by Constable C.T. White of the Grimshaw R.C.M.P. detachment on April 23, 1994.

Mr. Wiens did not appear at the hearing, and a search of the Court House did not locate him. I was satisfied that Mr. Wiens had been duly served with the Notice of Hearing; therefore, the hearing commenced in his absence at 10:10 hours, June 7, 1994.

EVIDENCE

Pat Parsonage testified that Dave Steer, a farmer, had contacted him regarding an aircraft accident that had occurred north of High Prairie involving aircraft C-FGUB. Mr. Parsonage testified that his investigation in the matter included attending at the alleged accident site and taking photographs. He testified that Mr. Wiens had been spraying when the aircraft he was piloting crashed.

Mr. Parsonage testified that, during his inspection of the accident site, he witnessed casting and other objects resembling aircraft material that may have been torn off the aircraft during its crash landing. Mr. Parsonage testified and produced in evidence documents indicating that the Certificate of Airworthiness of the aircraft registered C-FGUB had expired as of June 22, 1992. He further testified and produced in evidence correspondence to Mr. Wiens from himself relating to the rejection of the Certificate of Airworthiness, and issues surrounding the new application for a Certificate of Airworthiness. These issues related to inconsistencies in the aircraft log book, including concerns about the propeller and technical errors.

Affidavit evidence from Clyde Johnson showed that "the first notification to the Transportation Safety Board of an occurrence involving C-FGUB was received from Transport Canada, Inspector P. Parsonage on 09 July 1993", and that "to the best of my knowledge, there was no other notification to the Transportation Safety Board regarding this occurrence."

Mr. Parsonage testified that, in follow-up, he tried to locate the aircraft in the fall of 1993 and that, during his investigation, he had obtained copies of invoices from Leavens Aviation Inc. related to aircraft parts shipped to Mr. Wiens on July 15, 1993. The parts were for a PA-25 aircraft.

Mr. Parsonage then provided in evidence photographs he had taken on July 9, 1993 of a field where an aircraft was alleged to have crashed. He testified that the furrows he noted confirmed to him that an aircraft had crashed. In addition, he testified that chemical spills were confirmed by the smell and the burnt foliage.

Constable Rick Skolrood was affirmed and gave evidence that he was assigned to investigate a civil aircraft accident. He entered in evidence photographs of a PA-25 which were taken at the Kryzalka farm.

Alexander Kryzalka was sworn and gave evidence that he was a farmer near High Prairie. He testified that he had hired Arthur Wiens to spray his crops, and he confirmed that the photographs entered as Exhibit M-10 were taken by him. From those photographs, he identified Art Wiens as the person in the red coveralls. He indicated that Mr. Wiens was the pilot of the aircraft.

Barry Moschop was sworn and gave evidence. He testified that he is a Transport Canada Airworthiness Inspector based in Edmonton. It was his testimony that, on August 20, 1993, he had attended at an airport near McLennan and observed and inspected aircraft C-FGUB. He stated that he took photographs (Exhibit M-11) and met Art Wiens.

Mr. Moschop testified that the photographs and his personal inspection led him to the opinion that aircraft C-FGUB had undergone recent repairs and painting. He indicated that the repairs included approximately 50 per cent of the top of the left wing, about 40 per cent of the left flap, left aileron, and left landing gear.

From Exhibit M-10, he identified Art Wiens as the person in the red coveralls. He further testified that there were differences between the photograph in Exhibit M-10 and those he had taken at the airport in McLennan. The differences included a different landing gear on the left side, and evidence of recent painting.

He testified that Art Wiens had informed him that the repairs were made to the aircraft as a result of an accident near LaCrete in June 1992.

Mr. Moschop testified that the invoice for aircraft parts from Leavens was consistent with the parts used in the repairs he had observed on aircraft C-FGUB.

Ian MacLeod was sworn and gave evidence that he was a Transport Canada Investigator based in Edmonton. He stated that his responsibility was to investigate and to facilitate the investigation of the matter with Transport Canada and the R.C.M.P. He testified that he had obtained information from B&K Aircraft Salvage in Hebron, North Dakota. He testified that B&K Aircraft Salvage had forwarded to Art Wiens in Peace River a propeller and a left gear leg which could be used for the repair of a PA-25.

He further testified that the Certificate of Airworthiness on aircraft C-FGUB had expired June 22, 1992 and that no subsequent Certificate had been issued by or for the Minister in respect of aircraft C-FGUB.

David Belyan was sworn and gave evidence that he had hired Art Wiens to do some crop spraying at his farm. That contract was in June 1993. From the photograph in Exhibit M-10, he identified Art Wiens and the aircraft used, C-FGUB.

Michael Starko was sworn and gave evidence that he knew Art Wiens, and identified him from the photograph in Exhibit M-10. He testified that he had hired Art Wiens to crop spray at his farm during the end of July 1993.

Frank Pratt was sworn and gave evidence that he had hired Art Wiens to do some crop spraying on July 3, 1993. He identified Art Wiens as the pilot and confirmed his identity from the Exhibit M-10 photograph. He testified that, while spraying, Mr. Wiens "got into trouble and set her down." He testified that it was an uncontrolled landing, but he could not testify as to the damage to the aircraft, as he had not observed it.

James Stokes was sworn and gave evidence that he was self-employed and worked with Mr. Pratt. He further testified that, on July 3, 1993, he assisted Mr. Art Wiens in crop spraying at the Pratt farm. He identified Mr. Wiens from the photograph in Exhibit M-10. He testified that the aircraft went down in the field while spraying and that he had noted some damage to the aircraft.

Kenny Stewart was sworn and gave evidence that, on July 3, 1993, he saw an aircraft at the accident site. He testified that he saw the aircraft in the field and that he knew the pilot as Art Wiens. He identified Mr. Wiens from the photograph in Exhibit M-10. He identified the aircraft in that picture as the one flown by Art Wiens on July 3, 1993.

At the conclusion of the case by the Minister, it was noted for the record that Mr. Wiens was not present.

THE FACTS

The facts of the case are as follows:

1. As a result of a third party concern regarding an aircraft accident, Transport Canada began an investigation which included cooperating with the R.C.M.P.
2. The aircraft was identified as a blue and white aircraft, known as PA-25, and was also identified as C-FGUB. Its owner was identified as Mr. Arthur Leslie Wiens.
3. Mr. Arthur Wiens was identified as having flown aircraft C-FGUB to do crop spraying on June 29, 1993 by Mr. Alexander Kryzalka, on July 2, 1993 by David Belyan, on July 3, 1993 by Michael Starko, and on July 3, 1993 by Fred Pratt.

Although Mr. Wiens was not present at the hearing, the onus remained with Transport Canada to prove the charges.

CONCLUSION

In relation to **Charge #1**, there is un rebutted evidence that Mr. Wiens failed to notify the Minister that his aircraft registered C-FGUB crashed, causing damage to the left wing, left

landing gear and propeller to such an extent that more than ordinary running repairs were necessary.

Regarding Charge #2, there is evidence that the Certificate of Airworthiness issued by Transport Canada for aircraft C-FGUB expired on June 22, 1992.

Charge #2, Count #1 is proven in that Alexander Kryzalka's evidence confirmed that Art Wiens flew aircraft C-FGUB on June 29, 1993.

Charge #2, Count #2 is proven from David Belyan's evidence that he observed Art Wiens crop spraying while flying aircraft C-FGUB, on July 2, 1993.

Charge #2, Count #3 is proven by Michael Starko's evidence, identifying Art Wiens as flying aircraft C-FGUB on July 3, 1993.

Charge #2, Count #4 is proven by Fred Pratt's evidence that he observed Art Wiens flying aircraft C-FGUB on July 3, 1993.

DETERMINATION

I find that Mr. Arthur Leslie Wiens did contravene section 220 and paragraph 210(1)(a) of the *Air Regulations* as alleged by the Minister. The assessed monetary penalty of \$2,500 is confirmed

Dr. L.R. Ohlhauser
Member
Civil Aviation Tribunal