TATC File No. P-3044-27
MoT File No. 5802-796935

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

Shannon Theresa Lanning, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:
Aeronautics Act, R.S.C. 1985, c. A-2, s. 6.71

Review Determination
Sandra Lloyd

Decision: February 1, 2005

I find that the Minister refused to issue the applicant a private pilot licence in accordance with its authority to do so under section 6.71 of the Aeronautics Act. I therefore confirm the Minister's decision of July 20, 2004 refusing to issue the applicant a private pilot licence.

A review hearing on this matter was held Thursday, January 13, 2005 at Premiere Verbatim Reporting, Discovery Room, in Victoria, British Columbia at 10:00 hours.

BACKGROUND

By letter dated July 20, 2004, Transport Canada refused to issue the applicant, Ms. Lanning, a private pilot licence, on the basis that she did not meet the solo long cross-country requirement as outlined in subparagraph 421.26(4)(b)(ii) of the *Personnel Licensing and Training Standards respecting Flight Crew Permits, Licences and Ratings* (Standard). Specifically, the Minister alleged that the applicant had not done two full-stop landings on one cross-country flight.

The applicant had applied for a private pilot licence on June 16, 2004. The applicant's pilot training record shows that on July 9, 2003, she flew a solo cross-country flight from Victoria to Campbell River and back to Victoria. On July 16, 2003, she completed a flight from Victoria to Nanaimo and return. The applicant's position was that she had thereby met the requirements of Standard 421.26(4)(b)(ii), in that two full stop landings had been made (at Campbell River and at Nanaimo), in spite that they had been made on two different trips.

Pursuant to section 6.72 of the *Aeronautics Act*, the applicant requested a review of the Minister's refusal to issue her a licence.

EVIDENCE

Transport Canada called one witness, Mr. John Milligan, who is Superintendent of Safety Oversight – Operations, for Transport Canada, Civil Aviation in Vancouver. In his position, Mr. Milligan supervises pilot training. He is an airline transport rated pilot with a Class 1 instructor rating. He has 13 years experience in the aviation industry as well as 11 years with Transport Canada. I accepted him as an expert in pilot flight training.

Mr. Milligan explained the applicant's pilot training record of the cross-country flights of July 2003.

Under cross-examination, Mr. Milligan said that there is no definition of "flight" in the *Canadian Aviation Regulations* (CARs) but stated his view that a flight, for the purposes of Standard 421.26(4)(b)(ii), has to take place in a single day. His view was that a cross-country flight should be a series of consecutive flights. Normally he would expect to see three legs flown on the same day, unless a person was going away on an extended trip. He said his interpretation was the industry standard. However, he admitted that to his knowledge, no safety was compromised by what the applicant did.

Ms. Lanning testified on her own behalf. She described her cross-country flight of July 9, 2003. She said when she arrived at Campbell River, she went into the terminal. When she attempted to return to her aircraft, the gate to the ramp was locked and it took 30 minutes to find someone who could unlock the gate for her. She found this experience to be flustering. Her evidence was that when she neared Nanaimo and listened on the radio, she found that airport to be congested and felt she could not deal with another landing. She was afraid of making mistakes and thought it could be a safety hazard if she tried to land at Nanaimo. She therefore made the decision to bypass Nanaimo and continue to Victoria to land.

Under cross-examination, Ms. Lanning said that when her application for a private pilot licence was denied, she talked to Transport Canada and got a recreational pilot permit. Eventually, she did another cross-country, from Victoria with landings at Qualicum and Nanaimo, and got her private pilot licence.

SUBMISSIONS

Mr. Dixon for the Minister of Transport submitted that a "flight" does not extend beyond one's arrival back at the original departure airport. He submitted that if that were not the case, then one could argue that a private pilot applicant's entire 45 hours could be considered to be a "flight". He believes that the CARs requires a private pilot applicant to complete a cross-country flight that arrives back at the original point of departure only once. He also submitted that Canada must follow the International Civil Aviation Organization (ICAO) standards, else Canada risks having its pilot licences unrecognized in other jurisdictions. He submitted copies of standards from ICAO and from other jurisdictions in support of his interpretation.

Mr. Dixon said he sympathized with Ms. Lanning, but submitted that her own statement that she had safety concerns about landing in Nanaimo on July 9, 2003 indicated that it had been premature for her to do her solo cross-country at that time, or that it was appropriate for her to do a second cross-country to get the necessary experience.

Mr. Dixon submitted that the CARs are specific in this matter, that one cross-country flight must be completed with two full stops. He said the applicant's second cross-country met those requirements and that is why Transport Canada issued her private pilot licence after that flight. He requested that the Minister's decision be upheld.

Mr. Gorle on behalf of the applicant argued that because "flight" is not defined in the CARs, the word is open to interpretation. His position was that Ms. Lanning had completed the cross-country requirement even though it had taken place on two different days. He said a precedent for this had been set with Mr. Milligan's predecessor and that he had a verbal agreement with him that a cross-country could take place on two different days. Mr. Gorle thought there was no safety issue involved and that Ms. Lanning had exhibited good pilot decision-making. He asked that the Minister's initial decision to refuse to issue her a pilot licence be overturned.

In reply Mr. Dixon submitted that good pilot decision-making often has a negative consequence, and that although it may have been a good decision by Ms. Lanning not to land at Nanaimo, the negative consequence was that she would have to do the flight again. Mr. Gorle submitted that pilots should not be punished for good decision-making.

DISCUSSION

Paragraph 401.06(1)(b) of the CARs mandates that, subject to section 6.71 of the *Aeronautics Act*, the Minister shall issue a licence if the applicant provides documentation that establishes, among other things, that the applicant meets the applicable standards as to experience. Standard 421.26(4)(b)(ii) provides that in order to be issued a licence, the cross-country experience that a private pilot applicant shall have will include "a flight of a minimum of 150 nautical miles which shall include 2 full stop landings at points other than the point of departure". The word "a" precedes the word "flight" in this paragraph, indicating a single flight.

Section 6.71 of the *Aeronautics Act* provides that the Minister may refuse to issue a Canadian aviation document on the grounds that the applicant is incompetent or does not meet the qualifications or fulfil the conditions necessary for the issuance of the document; or that the Minister is of the opinion that the public interest and, in particular, the aviation record of the applicant, warrant the refusal.

The word "flight" is not defined in the *Aeronautics Act* or the CARs. "Flight time" is defined in CARs 101.01(1) as follows:

"flight time" means the time from the moment an aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight;

One might infer from this that "a flight" would commence from the time that the aircraft moves under its own power until it is next parked. However, that interpretation would be nonsensical in the context of Standard 421.26(4)(b)(ii), since that standard requires, within one flight, two full stop landings other than at the point of departure. It would be absurd to think that a pilot would not meet the standard if he or she chose to shut the engine down and stay awhile at one of his or her stopover points during a solo cross-country, or if he or she had to overnight at one of the stopover points due to unexpected bad weather, or chose to do an extended trip.

I find that "a flight" for the purposes of Standard 421.26(4)(b)(ii) commences from the time the aircraft moves under its own power and ends no later than when it comes to rest back at its original departure airport.

Copies of standards from ICAO and other jurisdictions, submitted by the Minister, support that interpretation.

I have also considered the practical reason for the solo cross-country requirement. Clearly, the intent is that the pilot applicant must demonstrate his or her ability to handle, on their own, a typical recreational flight that involves a trip away from home base. Cross-country flying is likely to present a variety of challenges and unexpected events including weather changes, air traffic, radio work, and landing at unfamiliar airports. It makes sense that before receiving a pilot licence, a pilot must demonstrate that he or she has sufficient experience to handle these challenges, contingencies, and unfamiliar situations with a reasonable amount of competence and confidence. The requirement of the Standard that a pilot applicant do a 150 mile flight away from home base, stopping at two airports before returning home, seems to me to be entirely reasonable.

The applicant's testimony as to her flight of July 9, 2003 does not persuade me that the Minister's refusal to issue in this case was unwarranted. I agree with the Minister that Ms. Lanning's experience of that flight indicates that it was premature for her to do the solo cross-country or that it was appropriate for her to do another cross-country before she was issued a pilot licence. She successfully completed another cross-country at a later date and is to be congratulated for her commitment in getting the experience required to earn her pilot licence.

I do not agree, as Mr. Gorle suggested, that requiring the applicant to complete a second cross-country amounted to punishing her for good decision-making. Good decision-making is simply one of the things expected of licenced pilots. Completion of a solo cross-country according to the Standard is another. I do not find it surprising nor excessively onerous that a pilot applicant may need to make more than one attempt at completing the solo cross-country requirement, as it is a challenging task for an inexperienced pilot.

Although Mr. Gorle mentioned that Mr. Milligan's predecessor at Transport Canada took the position that Standard 421.26(4)(b)(ii) could be met by two separate flights, he presented no evidence or legal authority to support that position. I find the words of the Standard are not consistent with that interpretation.

DETERMINATION

I find that the Minister refused to issue the applicant a private pilot licence in accordance with its authority to do so under section 6.71 of the *Aeronautics Act*. I therefore confirm the Minister's decision of July 20, 2004 refusing to issue the applicant a private pilot licence.

Sandra K. Lloyd
Member
Transportation Appeal Tribunal of Canada