

CIVIL AVIATION TRIBUNAL

BETWEEN:

Héli-express Inc., Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S. c. A-2, s. 3(1)

Revocation of CCP Authority, Definition of, Jurisdiction of Tribunal

Review Determination
Guy Racicot

Decision: July 16, 1993

TRANSLATION

The Tribunal quashes the revocation of the company check pilot authority dated December 1, 1992.

The Review Hearing on the above matter was held at 10 a.m. on Friday, May 7, in the Federal Court of Canada, Courtroom 2, Québec City Courthouse, 300 Jean Lesage Boulevard, Québec City, Quebec.

On April 28, 1992, the Regional Director, Air Carriers, for the Quebec Region authorized Héli-Express Inc. to use Mr. José Tito as a company check pilot in accordance with Air Navigation Order, Series VII, No. 6. This company check pilot authority was revoked on December 1, 1992, but no reason was provided. An application to review the decision to revoke was received by this Tribunal on February 8, 1993. The Review Hearing on the application was held in Quebec City on May 1, 1993.

At the beginning of the hearing the representative of the Minister of Transport filed a preliminary motion stating that the Tribunal had no jurisdiction to hear the review application. The Applicant, Héli-Express Inc., opposed the motion.

In support of its motion, the Respondent submitted that the authorization granted to Héli-Express Inc. was a delegation of authority from the Minister rather than a Canadian aviation document. He added that this authority was granted at the Minister's discretion and did not bestow any privileges on Héli-Express Inc. or José Tito, the pilot involved. He said check pilots cannot act on their own behalf, but only on behalf of the Minister. In conclusion, the Respondent's representative said the Minister was not required to follow the procedure prescribed in sections 6.9 and 7.1 of the Aeronautics Act. The Respondent filed a considerable volume of documentary evidence in support of his submissions.

In reply, the Applicant said the authority issued to Héli-Express Inc. constituted a "Canadian aviation document" as defined in section 3 of the Aeronautics Act, which reads:

"Canadian aviation document" means any licence, permit, accreditation, certificate or other document issued by the Minister under Part I to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service".

The Applicant also provided documentary evidence to support his position.

Having reviewed the evidence filed by the parties and heard oral argument on the preliminary motion, the Tribunal rules as follows:

The rights and authority of the Minister of Transport derive essentially from the Aeronautics Act. The Minister is authorized under the Act to make regulations, but not to make regulations or issue orders which are contrary to the provisions of the Act. And although the Minister can delegate some powers to departmental officials, neither the Minister nor they, within the limited scope of their delegated powers, may interpret the Act in a manner contrary to the provisions of the Act itself.

The Aeronautics Act provides a clear definition (quoted above) of the term "Canadian aviation document", and that definition contains the term "accreditation". The fact that Parliament used the phrase "or other document" in the above definition shows that it wanted the term "document" to be interpreted in a broad sense. This definition also contains the word "person", which, in the absence of an exclusionary clause, must be interpreted as including physical persons and moral persons.

For the foregoing reasons, the Tribunal finds that the authority issued to Héli-Express Inc. on April 28, 1992, was a Canadian aviation document within the meaning of the Aeronautics Act, and, consequently, that the Minister was required to follow the procedure prescribed in sections 6.9 and 7.1 of the Aeronautics Act.

In light of the foregoing, the Tribunal dismisses the Respondent's preliminary motion and will now address the application itself.

Pursuant to Air Navigation Order, Series VII, No. 6, Héli-Express Inc. was authorized to employ Mr. José Tito as a company check pilot.

This authority was issued following the approval of Mr. Tito's application by Transport Canada officials. The evidence indicates that Mr. Tito underwent a very rigorous evaluation, including in-flight tests administered by a civil aviation inspector, Richard Archambault, a superintendent at Transport Canada.

The evidence further shows that Mr. Tito's abilities as a check pilot were evaluated at least twice in April 1992 on two tests that he administered to Transport Canada pilots under the supervision of Richard Archambault, who was present in the aircraft (see Exhibits M-12 and M-13).

The Tribunal notes that the Respondent did not question Mr. Tito's abilities as a check pilot. Rather, its argument is based on the fact that Mr. Tito is the President of the Applicant company, as indicated in Bernard Henry's letter to Mr. Tito dated January 15, 1993 (Exhibit M-18).

In the course of the Hearing, Mr. Archambault stated that Mr. Tito's authority was revoked because his superiors had directed that a company President could no longer be a check pilot. The witness also said this restriction was not in effect when Mr. Tito received his check pilot authority.

Mr. Archambault added that this new departmental policy was based on the recommendations of Judge Moshansky. The Respondent filed a progress report on the inquiry, dated September 28, 1992, as Exhibit M-16.

The Tribunal reviewed a copy of the air carrier's Check Pilot Manual dated June 1991, which the Respondent filed as Exhibit M-7. Although the manual has no legal force or effect, and its provisions are not binding on the Tribunal, it is interesting to note the following excerpt from section 1.1

"GENERAL PROVISIONS":

[translation]

"Any employee of an air carrier who has the required qualifications and is recommended by the air carrier can be authorized to act as a check pilot. The air carrier's recommendation must be approved by the Director General, Aviation Regulation (DGAR), or an authorized representative, in accordance with Air Navigation Order (ANO), Series VII, Nos. 2 and 3. A check pilot authority is not transferable from one carrier to another, except where one carrier is authorized to exercise operational control over the other carrier through an amendment to its operating specifications."

"Authority to act as a check pilot will be refused to any pilot who owns an interest in an air carrier if the circumstances indicate a potential conflict of interest."

The foregoing excerpts indicate that check pilots must be employees of the carrier, but must not own an interest in the same carrier if a potential conflict of interest exists.

The Tribunal recognizes that it is difficult to reconcile these two restrictions, and understands the difficulties encountered by Transport Canada officials in enforcing them.

Nonetheless, all indications are that, when Mr. José Tito's appointment as a check pilot was authorized in April 1992, he apparently met the conditions prescribed in the manual. As the manual had not been amended, he was still eligible in December 1992. The only change during this period was the Respondent's interpretation of the provision.

The Tribunal understands the Respondent's concern for its public image, as it outlined in its submissions, but nothing in the facts of this case justifies the revocation of the authority issued to Mr. Tito.

The situation might have been quite different if a regulation had been in force, but it is not the function of the Tribunal to act in place of Parliament.

**ACCORDINGLY, THE TRIBUNAL QUASHES THE REVOCATION OF THE
COMPANY CHECK PILOT AUTHORITY DATED DECEMBER 1, 1992.**