

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

William Paul Denomme, Respondent

LEGISLATION:

Canadian Aviation Regulations, SOR/96-433, s. 401.03(1)

Family Orders and Agreements Enforcement Assistance Act, s.69(3)

Notice of Suspension, Pilot proficiency check, Suspension of CAD -- commercial pilot licence, New evidence at appeal level, Flying without permit, Mitigating factors, Flying without medical certificate, Family Orders and Agreements Enforcement Assistance Act

Appeal decision

David S. Ahmed, Elizabeth M. Wieben, Faye H. Smith

Decision: May 1, 2003

On the basis of the evidence presented at review, we concur with the Tribunal Member's conclusion that Mr. Denomme breached subsection 401.03(1) of the Canadian Aviation Regulations. However, we reduce the penalty to a sum of \$100 for each of the three contraventions for a total penalty of \$300. We do not believe that a higher amount is required for deterrent purposes on the facts of this case. That amount, made payable to the Receiver General for Canada, must be received by the Civil Aviation Tribunal within 15 days of service of this determination.

An appeal hearing on the above matter was held Tuesday, February 18, 2003, at 10:00 hours at the Federal Court of Canada, in the city of Edmonton, Alberta.

BACKGROUND

The substance of this appeal is based on the allegation of the Minister that Mr. Denomme has exercised the privileges of his commercial pilot licence when he did not hold a valid and appropriate medical certificate. It is thus alleged that he breached paragraph 401.03(1)(b) of the

Canadian Aviation Regulations (CARs) by operating an aircraft on three separate dates, being May 28, 29, and July 5, 2001, as set out in the Notice of Assessment of Monetary Penalty for which the Minister assessed a penalty of \$1,000 each contravention for a total monetary penalty of \$3,000.

To understand the nature of the Appellant's submissions, it is necessary to comment briefly on the procedural effect provided by the *Family Orders and Agreements Enforcement Assistance Act* (FOAEA) which is federal legislation enacted to provide assistance to the provincial enforcement services in achieving compliance with provincial support orders. The provincial enforcement service may apply to a federal department for the suspension or refusal to renew documents of entitlement under that department's jurisdiction which will remain so until the holder of the document satisfies the payment arrears as required under the provincial support orders.

Such application was made by the provincial agency to Transport Canada to suspend the pilot licences of Mr. William Paul Denomme due to alleged arrears in support payments. As of December 10, 1999, Mr. Denomme's commercial pilot licences and medical certificate were suspended.

Following these suspensions, Transport Canada alleged that Mr. Denomme had, on 10 separate occasions from January 17, 2000 to February 24, 2000, operated his aircraft while not being in possession of an appropriate licence, thereby contravening subsection 401.03(1) of the CARs.

These allegations were reviewed at a Tribunal hearing on February 22, 2001 in Edmonton, Alberta. There being no evidence the Notice of Suspension had been communicated to Mr. Denomme, the Tribunal Member accepted Mr. Denomme's defence that he had not received any notice of the suspension of his licences and cancelled the assessed monetary penalties.

Subsequent to the review hearing in February 2001 and the cancellation of the assessed monetary penalties, Transport Canada alleged in a further Notice of Assessment of Monetary Penalty dated April 2, 2002, that Mr. Denomme had again exercised the privileges of his commercial pilot licence when he did not hold a valid and appropriate medical certificate on May 28, 29 and July 5, 2001. As noted above, he was assessed a total monetary penalty of \$3,000. Non payment of this assessed amount resulted in a review hearing before this Tribunal on October 17, 2002. The Tribunal Member at review found that the Minister had proven the alleged violations on a balance of probabilities and found that Mr. Denomme had received appropriate notice of the suspensions as required by the FOAEA Act. He confirmed the \$1,000 penalty per violation, for a total assessed penalty of \$3,000.

GROUND FOR APPEAL

Mr. Denomme appeals the Review Determination on grounds set out in his application for appeal dated November 15, 2002. In summary, he asserts that the Tribunal Member came to a wrong conclusion on the facts of the case, when he held that Mr. Denomme should have known that his licences and medical certificate were suspended indefinitely. He states that the Member further

erred in holding that Mr. Denomme cannot reasonably rely on the Review Determination in the first review hearing in February 2001 for a belief that his documents were no longer suspended.

APPELLANT'S SUBMISSIONS

At the commencement of his submissions, Mr. Denomme suggested that he would like to file some documents for this appeal panel's consideration. He stated that the documents related to an agreement which Mr. Denomme reached with his ex-wife, some character references prepared by others on his behalf and a copy of a letter indicating a meeting with his lawyer. The appeal panel did not accept any of the three documents offered on the basis that they were not seen to be relevant to the issues to be decided by the panel.

Mr. Denomme stated that at the time of the first review hearing in February of 2001, he was unaware of the procedure under the FOAEA Act. He stated that the Tribunal Member in his Review Determination of October 29, 2002 explained it fully and that he has a clear picture of it now.

Addressing questions raised earlier by the panel, Mr. Denomme, in his final arguments, stated that he obtained a pilot proficiency check (PPC) in May of 2001. On that occasion the inspector conducting the PPC was a Transport Canada inspector. He stated that he was unaware that his documents were under suspension, and the check pilot from Transport Canada did not inform him of this fact either. In the result, he passed the PPC and states that he believed that he was operating the aircraft in good faith.

MINISTER'S SUBMISSIONS

Mr. Hector on behalf of the Minister cited authority for the assertion that findings of fact or credibility should not be overturned on appeal unless they are unreasonable.^[1]

The Minister's representative stated that the Member found that the Minister had proved the elements of the alleged violations of subsection 401.03(1) of the CARs. He found that Mr. Denomme, on the day and place set out in each allegation, exercised the privileges of a commercial pilot licence—helicopter through tendering certified true copies of two aircraft journey logs. The logs were entered into evidence by Constable Cathy Shepherd of the RCMP who testified that she made photocopies of the logs having received them from a representative of the company, Heli-Lift International Inc. He further stated that Mr. Denomme's statement that "When I flew for Heli-Lift, I undoubtedly felt my licences were in good standing" corroborates the journey log entries.

The Minister had submitted as Exhibit M-1, a Secretary's Certificate that established that on the dates set out in the allegations Mr. Denomme did not hold a valid and appropriate medical certificate.

On the basis of the foregoing, the Minister's representative submitted that the Member's finding that the Minister had proved the elements of the alleged violations of subsection 401.03(1) of the CARs was not patently unreasonable.

The Minister tendered the following evidence at review in support of its submission that Mr. Denomme was served with the Notice of Suspension as required by subsection 69(3) of the FOAEA Act:

- Exhibit M-12—letter to Mr. Denomme from Mr. Cundy dated August 10, 1999
- Exhibit M-13—letter to Mr. Denomme from Mr. Cundy dated September 10, 1999
- Exhibit M-14—letter to Mr. Denomme from Mr. Cundy dated December 31, 1999
- Testimony of L. Cundy found in the Transcript, page 28, line 7 to page 35, line 22
- Exhibit M-2—handwritten notes of Rick Pollock

Accordingly, the Minister's representative submits that the Member's finding that the Minister had served the notice of suspension of the medical certificate as required per subsection 69(3) above was not patently unreasonable.

DISCUSSION

On the basis of the evidence presented at review, we concur with the Tribunal Member's conclusion that Mr. Denomme breached subsection 401.03(1) of the CARs on the dates cited, being May 28, 29 and July 5, 2001.

Mr. Denomme for his part reiterates his defence of no knowledge that his documents were still suspended. This was the defence used successfully in the former review hearing in February, 2001 with the result that the penalties for the ten alleged flights were cancelled.

The Tribunal Member at the review hearing of October 2002 states that as Mr. Denomme participated in the earlier review of February 2001, he must be taken to know that his licences and medical certificate were then suspended. He also stated that the cancellation of the monetary penalties in the February 2001 hearing did not have the effect of lifting the suspension. The Member had no power under section 7.7 of the *Aeronautics Act* to do so. He therefore finds that Mr. Denomme cannot reasonably rely on that decision for a belief that his documents were no longer suspended. The Member, upon review of the evidence in exhibits M-12 to M-14 referred to above, being the letters sent from Mr. Cundy to Mr. Denomme, and the notes of the conversations between Mr. Denomme and Mr. Pollock, finds that Mr. Denomme did have the required notice.

We conclude as did the Member at review that the Minister did prove the alleged violations on a balance of probabilities. We agree with the conclusion reached by the Tribunal Member at review that Mr. Denomme knew or ought to have known that his documents were still suspended, notwithstanding the cancellation of the monetary penalties at the conclusion of the February 2001 review. We are, however, troubled by the confusion caused by Mr. Denomme's successful passing of the PPC when the Transport Canada inspector conducting the check ride ought to have known that the documents were suspended at that time. He should have checked

Transport Canada records. This is so, despite the fact that Mr. Denomme may have presented his licence and medical certificate to the Transport Canada inspector since there appears to be no requirement to return the suspended documents to the Minister as is the case with suspensions under the *Aeronautics Act* per section 103.03 of the CARs.

We turn now to the assessment of penalty and state that when queried as to submissions regarding mitigation of sanction, the Minister's representative reiterated the amounts cited in the Notice. As the issue had not arisen at the review hearing, he was not able to help the panel as to the fact that Transport Canada had granted the PPC during the currency of the alleged suspension. This issue seemed not to have been discussed prior to the appeal hearing.

While we do not believe that this confusion negates the fact of the suspension itself, we do believe that it does serve to alert Transport Canada to review the effectiveness of its procedures. This case before us has a number of issues that the department ought to review to avoid such confusion in future cases. While the legislation apparently has no requirement for service other than by ordinary mail of the letter of suspension, we can think of no other case where a cancellation or suspension of such privileges is done other than by registered mail or personal service. In spite of the lesser requirement of the legislation, the department may want to consider additional measures for ease of proof in future cases.

DETERMINATION

Regarding penalty, we have considered the mitigating factors set out in the case of *Minister of Transport v. Kurt William M. Wyer*,^[2] and while not wishing to thwart the well-meaning legislation, we do believe that the interests of this case would best be served by reducing the penalty to a sum of \$100 for each of the three contraventions for a total penalty of \$300. We do not believe that a higher amount is required for deterrent purposes on the facts of this case.

Reasons for Appeal Determination by:

Faye Smith, Chairperson

Concurred:

Dr. David Ahmed, Member

Elizabeth Wieben, Member

^[1] *Trent Wade Moore v. Minister of Transport*, C-0138-33, Appeal Determination at page 4.

Minister of Transport v. Thomas Ritchie Phillips, C-0014-33, Appeal Determination at page 5.

^[2] *Minister of Transport v. Kurt William Wyer*, O-0075-33, O-0075-33, Appeal Determination.