

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Aurèle Labbé, Respondent

LEGISLATION:

Aerodrome Security Regulations, SOR/87-452, VIII, NO. 2, s. 20(1), 20(3)
Aeronautics Act, S.C., c.A-2, s.7.7

Vehicle Corridor, Security Pass

Review Determination
Carole Anne Soucy

Decision: March 29, 1998

TRANSLATION

The Minister of Transport has shown, on a balance of probabilities, that the Respondent Aurèle Labbé contravened subsection 20(1) of the Aerodrome Security Regulations. The Tribunal therefore upholds the Minister's decision and confirms the \$300.00 monetary penalty. The penalty is to be made payable to the Receiver General for Canada and received by the Civil Aviation Tribunal within fifteen (15) days of service of this determination.

A **Review Hearing** on the above matter was held Tuesday, February 10, 1998, at 10:00 hours at the Federal Court of Canada, Palais de Justice de Québec, in Quebec City, Quebec.

BACKGROUND

On October 3, 1997, Transport Canada issued a Notice of Assessment of Monetary Penalty, which reads in part as follows:

Pursuant to section 7.7 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):

Part III, subsection 20(1) of the *Aerodrome Security Regulations* (SOR/87-452).

Appendix A reads as follows:

On or about September 2, 1997, at about 6:35 hours, at the Jean-Lesage international aerodrome, in Sainte-Foy, Quebec, you were present in a restricted area without having in your possession a restricted area pass in respect of that restricted area and without complying with all conditions of issuance or approval of the pass.

THE LAW

Section 7.7 of the *Aeronautics Act* provides as follows:

7.7 (1) Where the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister shall notify the person of the allegations against the person in such form as the Governor in Council may by regulation prescribe, specifying in the notice, in addition to any other information that may be so prescribed,

(a) subject to any regulations made under paragraph 7.6(1)(b), the amount that is determined by the Minister, in accordance with such guidelines as the Minister may make for the purpose, to be the amount that must be paid to the Minister by the person as the penalty for the contravention in the event that the person does not wish to appear before a member of the Tribunal to make representations in respect of the allegations; and

(b) the time, being not less than thirty days after the date the notice is served or sent, at or before which and the place at which the amount is required to be paid in the event referred to in paragraph (a).

(2) A notice under subsection (1) shall be served personally or by ordinary mail sent to the latest known address of the person to whom the notice relates.

Subsection 20(1) of the *Aerodrome Security Regulations* stipulates as follows:

20. (1) No person shall enter or remain in a restricted area unless the person has in his possession a restricted area pass in respect of that restricted area and complies with all conditions of issuance or approval of the pass.

Subsection 20(3) of the *Aerodrome Security Regulations* reads as follows:

(3) Where a restricted area pass has been designed to be worn on outer clothing, no person shall enter or remain in a restricted area unless the pass is visibly displayed on the person's clothing in a place where the pass is designed to be worn.

THE FACTS

On September 2, 1997, the Respondent Aurèle Labbé was driving without a revolving dome light in the vehicle corridor in the movement area of Jean-Lesage airport. He was preparing to deliver hot meals to various aircraft.

During his rounds, security officer Gaudreau passed the Respondent, stopped, and motioned for him to stop so he could tell him it was forbidden to drive without a revolving dome light and check his identification.

Mr. Labbé slowed down, told him his revolving dome light was being repaired, gave his name and immediately drove off. Mr. Gaudreau again asked him to stop so he could check his pass. The Respondent continued on his way without showing his pass.

Following these events, Mr. Gaudreau reported the incident by completing a Security Infraction(s) Report (Exhibit M-8) and an Incident Report, bearing no. 970902-16 (Exhibit M-9).

ARGUMENTS

The Transport Canada representatives spoke at length about the new regulations, specifically the procedure for the new pass system.

To this end, they called five witnesses and produced fourteen documents.

Documentary Evidence

Mr. Thivierge, for the Respondent, disputed the validity of certain documentary evidence filed by the Applicant, namely the document entitled *Designated Provisions Regulations* (Exhibit M-3) pertaining to the office consolidations and notices about the setting up of the new pass system (Exhibit M-10).

The other objections were clarified and ruled on from the bench.

It is important to recall that the Civil Aviation Tribunal is an administrative tribunal whose procedure allows considerable latitude and flexibility in applying the rules of evidence. Thus, the Tribunal is not obliged to apply the rules of evidence which prevail in civil or criminal actions.

Sections 19 and 21 of the *Canada Evidence Act* provide that every copy of any Act, regulation or order printed by the Queen's Printer is evidence of that Act, regulation or order.

With regard to Exhibit M-3, the Tribunal believes that the production of this document is complementary, for the sake of information, and therefore accepts its production.

The Respondent also disputes the relevance of the notices produced in the bundle designated as Exhibit M-10. He maintains that none of them concerns him, although the name of the company Aéropro, of which he is President, appears on the distribution list attached to the notice.

The Tribunal believes it need not rule on this objection, as it accepts the Respondent's testimony that he received one or two notices about the new pass system.

Testimonial Evidence

With regard to the testimonial evidence, the Tribunal accepts the following main elements of the testimony heard:

In 1996, the Minister of Transport amended the Regulations respecting security at aerodromes by introducing a new pass system.

Operators were to notify tenants of the need to obtain new passes to gain access to restricted areas, before April 1, 1997.

Ms. Pauline Gagnon, an administrative assistant with Aéropro at the time, testified that she had notified the Respondent of the changes regarding the pass.

It was also put in as evidence that the Respondent spoke with Mr. Savard, the airport's head of security, on two occasions. In April and May 1997, Mr. Savard telephoned him to ask him to turn in his old expired pass (green) and pick up the new computerized pass (red).

The Respondent testified that he believed his pass was valid until March 1998. Although this was the expiry date shown on his old pass, the Tribunal has no reason to doubt the credibility of Mr. Savard's and Ms. Gagnon's testimony. In view of the testimonial evidence submitted, the Respondent cannot plead either ignorance or a lack of understanding.

The security officer who intercepted the Respondent's vehicle testified that he never saw the Respondent's pass and that the Respondent did not show it to him.

The Respondent disputes the Minister of Transport's claims and maintains he was in possession of the pass, that he wore it on the right side while driving his vehicle in the restricted area. However, he does not refute the security officer's claims to the effect that he did not show him his pass.

The Minister of Transport explained that one of the conditions of issuance of the pass is that it must be visible at all times so that security officers can check them when pass holders are moving about in restricted areas.

CONCLUSION

Subsection 20(1) of the *Aerodrome Security Regulations* provides that no person shall enter or remain in a restricted area unless the person has in his possession a restricted area pass in respect of that restricted area **AND** complies with all conditions of issuance.

According to the conditions of issuance, the holder of a restricted area pass must wear the pass visibly displayed at all times in a place where the pass is designed to be worn, as stipulated in subsection 20(3) of the *Aerodrome Security Regulations*, in Part III of the said Regulations.

Even assuming the Respondent was in possession of a pass, it is the Tribunal's opinion that he contravened subsection 20(1) by failing to comply with the conditions of issuance, as put in evidence by the Minister of Transport.

Any other interpretation of subsection 20(1) of the said Regulations would be contrary to the spirit of the law.

Aviation safety is of far too great importance to allow such departures. The pass is a privilege given to certain individuals, after investigation, to allow them access to very specific and restricted areas of airports. The pass holder enjoys the privileges of the pass provided he complies with the conditions of issuance.

In this case, the alleged contravention falls within the scope of Part III of the *Aerodrome Security Regulations* which govern security and safety at aerodromes. These regulations are designed to counter the threat to safety and security at aerodromes and to prevent the unlawful undermining of civil aviation posed by the presence of unauthorized individuals in the restricted areas of airports.

The Tribunal therefore upholds the decision of the Minister of Transport to assess a \$300.00 monetary penalty against Mr. Aurèle Labbé.

DETERMINATION

The Minister of Transport has shown, on a balance of probabilities, that the Respondent Aurèle Labbé contravened subsection 20(1) of the *Aerodrome Security Regulations*. The Tribunal therefore upholds the Minister's decision and confirms the monetary penalty of \$300.00.

Carole Anne Soucy
Member
Civil Aviation Tribunal