

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Christopher Stanley Adams, Appellant**

- and -

**Minister of Transport, Respondent**

**LEGISLATION:**

*Aeronautics Act, c. A-3, s. 6.3(1)(c) (now s. 7.3(a)(c))*

*C.R.C., c. 2, s. 218(a)*

section 218(a) of the Air Regulations

section 218(a) of the Air Regulations

section 6.3(1)(c) of the Aeronautics Act

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**Overweight aircraft, Journey log entries**

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**Appeal decision**

**G. Richard, K. Crofton, Zita Brunet**

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**Decision: May 4, 1989**

**Heard:** Gander, Newfoundland, April 6, 1989

*Count 1: the review determination is confirmed and the appeal denied. The Appellant did contravene section 6.3(1)(c) of the Aeronautics Act and a 14-day suspension is imposed. The suspension will come into effect at 24:00 hours May 25th, 1989, and terminate at 24:00 hours June 8, 1989.*

*Count 2: the appeal is upheld and the 7-day suspension is repealed.*

Appeal Hearing on the above application heard by the Civil Aviation Tribunal, at Town Hall, Lancaster Room, 100 Elizabeth Drive, in the city of Gander, Newfoundland, on the 6th day of April 1989 at 10:00 hours.

The Appellant had received a Notice of Suspension dated August 3, 1988, which reads as follows:

Count 1: *Aeronautics Act*, R.S.C., c. A-3, section 6.3(1)(c), in that on or about October 13, 1987, you flew an aircraft operated by Springdale Aviation Ltd. from Hope Brook Mines in Newfoundland to Paddy's Pond and failed to enter that flight in the aircraft journey log.

*Aeronautics Act* section 6.3(1)(c) states, in part, that no person shall wilfully omit to make any entry in a record required under this Part.

Count 2: *Air Regulation* section 218(a) in that on or about October 13, 1987, you flew a Cessna 185 on floats from Hope Brook Mines in Newfoundland to Paddy's Pond with four passengers on board when the weight of the aircraft exceeded the maximum permissible weight.

*Air Regulation* section 218(a) states, in part, that no person shall fly any aircraft unless the weight of the aircraft and its load does not exceed the maximum permissible weight specified in the certificate of airworthiness.

The periods of licence suspensions are allocated as follows:

Count 1: 14 days

Count 2: 7 days

These suspensions are to be served concurrently.

The member at the initial Review Hearing concluded that Mr. Adams did contravene R.S.C., c. A-3, section 6.3(1)(c) and section 218(a) of the *Air Regulations* as alleged by the Minister. The suspension was to come into effect at 24:00 hours, February 1st, 1989, to February 15, 1989.

A stay of suspension was requested and granted on January 20, 1989, until the determination of the Appeal Hearing.

Mr. Adams appealed the member's decision on the basis that the Minister did not produce sufficient evidence to prove that he was in violation.

With regard to the first matter (Count 1), Mr. Adams acknowledged that he had not recorded the flight of October 13, 1987, referred to in the Notice of Suspension. He stated that the flight took place during a difficult period and that he must have forgotten to make the entries.

A 14-day suspension of his licence was imposed on the Appellant as a penalty for this infraction. Mr. Adams requested parity with the rest of the country by pointing out that the COPA magazine reported a monetary penalty having been levied for the same infraction. He questioned the fact that he was given a suspension instead of a fine. Counsel for the Respondent, Ms. Lynne Rhéaume, explained that the setting of the sanction by means of a monetary penalty or a suspension of the licence is left to the discretion of the regional manager of Transport Canada,

who takes into consideration the seriousness of the infraction, the number of previous contraventions, and whether the pilot earns his living from the use of the airplane. The penalty is set as a deterrent to prevent the same infraction from occurring again.

The panel is of the opinion that under the circumstances under consideration, mere forgetfulness cannot be successfully invoked to avoid complying with the prohibition against the willful omission to make entries into the record. Furthermore, we accept the views expressed by Mr. Carter concerning the possibility of an oversight (Transcript, p. 23, 24). We therefore uphold the determination of the member presiding over the Review Hearing that Mr. Adams did contravene section 6.3(1)(c) of the *Aeronautics Act* by not making the necessary entries into the logbook. As to the penalty, the Minister chose to proceed by way of suspension under section 5.9. of the *Aeronautics Act* rather than by imposing a monetary penalty under section 6.6 of the Act. The Tribunal cannot interfere with the Minister's decision to impose a suspension, but can vary the severity of the sanction. (Reference *Attorney General v. LaRonge Aviation Services Ltd.*, Federal Court Decision, November 31, 1988).

Compliance with the log recording requirements is essential to the maintenance of aviation safety. This is particularly important in the context of a commercial operation where the lives and welfare of passengers are at stake. Without it, enforcement of the *Aeronautics Act* and *Air Regulations* would be extremely difficult if not impossible. For these reasons, we have decided to confirm the determination of the member presiding over the Review Hearing as to the penalty.

Count 2, which is the second alleged infraction, involves *Air Regulation* 218(a). In his review determination, the Tribunal member stated, "Mr. Carter produced evidence: master list (Exhibit) one to six, including weight and balance figures, passenger weights and fuel requirements, that in the probability of balance establish that Mr. Adams was overweight". The issue of whether Mr. Adams' aircraft was overweight as alleged hinges on his having taken on a full load of fuel on taking off at Hope Brook Mines, allowing him to go to Paddy's Pond and return to Springdale without having to refuel on the way. If he did take enough fuel on board to complete this journey, the aircraft would have been overweight, given the additional weight of the passengers and cargo.

In this case, the burden of proof is on the Ministry of Transport to prove that an infraction was committed, i.e., to prove that Mr. Adams' aircraft was overweight. The transcript of the Review Hearing indicates that Mr. Trethewey in his final summary stated, "The determination here involves the balance of probabilities, as opposed to beyond a reasonable doubt as would be done in a court of law".

We agree that the standard of proof before this Tribunal is that of a balance of probabilities. This does not mean however that a suspicion or a belief, however strongly held, can alone in the absence of any evidence satisfy this standard. There must be some evidence which on balance makes it more likely than not that the alleged infraction was indeed committed.

The appeal panel has had the benefit of reading the transcript of the Review Hearing proceedings. The testimonies were carefully studied. While there was evidence as to the amount of fuel required to complete the journey without refuelling, no evidence was submitted

concerning the amount of fuel actually on board when the aircraft took off from Hope Brook Mines with passengers on board. The witnesses called by the Respondent both stated that they did not know whether Mr. Adams had refuelled at Paddy's Pond, and one thought that he had left the area before Mr. Adams did. The testimony of these witnesses attests that they have no knowledge of whether or not Mr. Adams refuelled at Paddy's Pond, and not to the fact that he did not. After being asked by Mr. Adams, "And is it possible that Springdale Aviation may have landed in Paddy's Pond and dropped off the passengers and then left Paddy's Pond and flew to another pond to refuel before going on to Springdale? Is that possible?" Mr. Carter stated, "Many things are possible".

While we found Mr. Adams' testimony to be of little assistance, on the basis of the record we find that the Respondent did not meet the burden of proof and establish that the aircraft was overweight on a balance of probabilities. Accordingly, Mr. Adams' appeal is upheld with regards to the alleged infraction of *Air Regulation* 218(a) and as a result the 7-day suspension of his licence is dismissed.