

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport, Applicant**

- and -

**Alfred Walter Wilson, Respondent**

**LEGISLATION:**

C.R.C., c. 2, s. 555(2)  
subsection 555(7) of the Air Regulations

**Take-Off Below Minimum Visibility**

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**Review Determination  
T.H. Prescott**

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**Decision: October 27, 1986**

**Heard:** Moncton, New Brunswick, October 27, 1986

*I uphold the action taken by the applicant.*

This refers to your form CAT-16 of October 16th, 1986 assigning the undersigned as Hearing Officer to hear and review a charge brought against Alfred Walter Wilson, respondent, by the Minister of Transport, applicant, to which the marginally noted files refer.

1. You will note in Review Determination Form CAT-5 that I have upheld the action taken by the applicant. The original copy of this form was passed by hand to Mme Richard.
2. In upholding the findings of the applicant - the Minister of Transport - I found the evidence as presented by the applicant to clearly demonstrate that the respondent, Mr. Wilson, was in possession of all the necessary information, or should have been, as a licensed pilot, on which to make an operational decision that would be in accordance with authorized procedures.
3. At no time did Mr. Wilson, the respondent, declare that there was an emergency or any extenuating circumstances by which he might find it necessary to carry out an operation

that was contrary to approved procedures. In fact the evidence establishes that the respondent went beyond approved procedural limits governing his flight.

4. It might be noted at this point that the applicant found, prior to the hearing, that the charge laid had been under the wrong section of the Air Regulations, namely Section 555, subsection 7, which was only to go into effect some three days after the incident, January 16th, 1986; the infraction occurred on January 13th, 1986 at 21:30 hours AST (or as some documents show, on January 14th at 00:30 hours GMT).
5. At a pre-hearing meeting, which I declined to attend on the basis that it could prejudice my position as the Tribunal member, it was agreed between the applicant and the respondent that using the Section in effect at that time (Section 555, subsection 2) dated 30/12/78, would be acceptable and would not prejudice the case for the respondent, Mr. Wilson. At the start of the hearing I agreed to this and made a statement to that effect.
6. In evidence, Exhibit #2, the letter of contravention prepared by the Minister should have read "Section 555, subsection 2" of the Air Regulations rather than "Section 555, subsection 7".
7. While Air Regulations Section 555, subsection 2 (Exhibit #5) does not give Runway Visual Range figures per se, the subsection clearly states "No pilot-in-command of an aircraft shall at any time permit an instrument approach to be continued with the intent to land where the runway visibility is reported, by an observer accredited by the Minister, to be less than the visibility required for an instrument approach down to Category II minima." This Section and subsection is supported by ANO V #31, 7/5/78, Amendment #67, 25/7/78 (Exhibit #4) para 5, subpara 2, and para 6, subpara (b)(i)(ii); Category II minima shall not be less than: (i) a decision height of 100', and (ii) an RVR of 1200 ft.
8. It is my opinion and finding that either of the aforementioned Sections of the Air Regulations identifies the infraction.
9. The official weather report at the time (Exhibit #7) shows the weather as being below approved limits.
10. Transport's telex (Exhibit #8) to Eastern Flying Services, and Eastern Flying Services' letter of reply dated January 29th (Exhibit #10) identify the pilot in command of Speedair flight 302 at this time as the respondent Alfred Walter Wilson.
11. In the transcript of a tape (Tape Exhibit #12) made at the time by Air Traffic Control (Terminal Unit) Halifax, which is their custom when it appears that an infraction is likely (Transcript Exhibit #13) shows the information passed to Speedair 302 (marked in green) which identifies the RVR as lower than approved limits.
12. There was no indication of any fluctuations in the weather pattern that would indicate a changing situation at the time, that would suggest a clearing trend.
13. In evidence Mr. Wilson stated that he was only going to have a look to determine what his next step would be, e.g. whether or not he would proceed to Moncton. However, he obviously carried out an approach in the landing configuration, and in this he proceeded beyond authorized conditions outlined in Air Regulations 555.2 and Air Navigation Order 5-31, amendment #67, 25/7/78 as previously outlined