

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Transport Aérien Royal, Respondent

LEGISLATION:

Air Carriers Using Large Aeroplanes Order (Air Navigation Order, Series VII, No. 2) s 3, 41.1(3), (5), (8)

Interpretation, Flight and Duty Times, Compliance with Order

**Review Determination
Pierre Rivest**

Decision: March 23, 1995

TRANSLATION

I conclude that the Minister has erred in imposing monetary penalties which are not provided for in the "Designated Provisions" of the Air Regulations, Series I, No. 3, subsection 3(1), contrary to subsection 7.6(2) of the Aeronautics Act and that, consequently, the Tribunal has no choice but to dismiss the allegations.

I find not only that the Minister did not use the correct provisions of law to make his allegations but that, even if he had done so, he has not proved that the crew members of Transport aérien Royal acted in such a manner so as to contravene the Act.

A **Review Hearing** on the above matter was held January 25, 1995 at 10:00 hours at the Guy-Favreau Complex in Montreal, Quebec.

BACKGROUND

Transport aérien Royal is alleged to have contravened subsection 41.1(5) of the Air Navigation Orders (ANO), Series VII, No. 2, according to section 3 of that order, on three occasions: August

24, 26 and 31, 1994, by assigning pilots for periods exceeding 15 hours of maximum flight duty time, thereby apparently contravening subsection 41.1(5) of the ANO, Series VII, No. 2 and subparagraph 5.1.7(b)(ii), first paragraph, of the Carrier's Operations Manual (Exhibit M-6).

Motion by the Respondent (Transport aérien Royal)

At the very beginning of the Review Hearing, following the introductions of the representatives of the two parties, counsel for Transport aérien Royal, Jean Fortin, requested that the Tribunal dismiss the matter on the following grounds (a series of documents forming one item was entered as Exhibit T-1):

- the allegation was made under subsection 41.1(5) of the ANO, Series VII, No. 2, and today's proceedings are taken pursuant to sections 7.7 to 8.2 of the *Aeronautics Act (Act)*;
- according to the Air Regulations, Series I, No. 3, subsection 3(1), only the "designated provisions" may be dealt with in accordance with sections 7.7 to 8.2 of the Act, contrary to the action taken by Transport Canada;
- in the schedule to subsection 3(1) of the same Regulations, which lists the designated provisions, there is no mention of subsection 41.1(5) of the ANO; hence, based on subsection 7.6(2) of the Act, Transport Canada cannot take proceedings by "summary conviction," as has been done; and, by the same fact, the Tribunal has no jurisdiction to hear the matter;
- in addition, even if the Tribunal had jurisdiction, Transport Canada has used the wrong subsection to make its allegation, since subsection 41.1(5) of the above ANO only defines what is meant by maximum flight duty time, but does not in itself prohibit anything. The subsection that should have been used is 41.1(3), which, according to section 3 of the same order, states that "**No person shall** act as a flight crew member where he will ... (b) exceed the maximum flight duty time prescribed by subsection (5) ... and no air carrier shall require the person to do so."
- since subsection 41.1(3) has not been used, and consequently nothing has been prohibited, no allegations can be made;
- finally, if the allegation had been made under subsection 41.1(3), Mr. Fortin claims that he could have taken the English text of the same order, which makes no mention of the carrier (unlike the French text) and refers only to the crew members, who could therefore be prosecuted. Given the choice of language, Mr. Fortin says that he would have used the English version to defend his client, who as a carrier could not be accused;

This allegation is false; the two texts were identical.

- for all these reasons, Mr. Fortin asked the Tribunal to dismiss the matter and to absolve his client of all allegations and monetary penalties.

Applicant's reply

I then asked the Minister's representative, Mr. Bourgoïn, for his opinion concerning the allegations made by Mr. Fortin.

Mr. Bourgoin responded by explaining the rights, objectives and prerogatives of the Minister in enforcing the Act, particularly regarding aviation safety, and said that in his opinion the allegation was valid as formulated. In addition, Transport Canada could have chosen to make its allegation under subsection 6.9(1) of the Act and thereby suspend the Carrier's permit; in view of the detrimental consequences of such a decision, Transport Canada preferred to impose a monetary penalty for each count by using subsection 41.1(5) of the order.

To support his argument, Mr. Bourgoin entered as evidence a document (*Minister of Transport and Skylink Airlines Ltd.*, CAT File No. P-0061-41, Exhibit M-5) showing that a similar allegation had already been made and that the Respondent (Skylink Airlines Ltd.) had been found guilty.

I then noted that the example used (Skylink Airlines Ltd.) referred to the ANO, Series VII, No. 3, and not No. 2 as in the present case.

Even though the subsections in both orders are somewhat similar, there is no indication that the defendant in the previous case actually raised all points of law raised by Transport aérien Royal.

I reserved my decision concerning the motion by Transport aérien Royal and asked the parties to proceed with the presentation of the evidence.

THE FACTS

Although I have used the question and answer format for the examination, the following are not textual quotes of the parties' statements.

Examination of Transport Canada

Witness: Inspector André Charette

Question (Q.): Transport Canada's representative, Mr. Bourgoin, first asked his witness, Inspector André Charette, to explain the meaning of subparagraph 5.1.7(b)(ii), first paragraph, of the **Operations Manual** of the Carrier, Transport aérien Royal (Exhibit M-6).

Answer (A.): This section states that the flight crew members must report for duty at least 1½ hours before the departure time. (The original text is in English).

Because of the work that must be done by the pilot-in-command before the flight, to properly prepare for the flight - the flight plan, weather conditions, fuel, weight and balance report, Notices to Airmen (NOTAM), etc. - 1½ hours is necessary, and this is probably the reason why it was included in the Operations Manual.

Q: What obliges an airline to have an operations manual and to follow it?

A: This requirement is found in the ANO, Series VII, No. 2 and all personnel are obliged to comply with it.

It should be noted here that witness André Charette does not give the number(s) of the sections of the order at issue. This was raised again later, but by a witness for Transport aérien Royal.

Q: Can you describe and explain the significance of Exhibits M-7, M-8, M-9 and M-10?

R.: Exhibit M-7 is a timetable prepared by the company bearing the flight numbers and departure and arrival times for each station where the aircraft will stop. The darkened blocks give this information for flights 330/331 and the lighter blocks for flight 452/453.

In the first case, it can be clearly seen that the anticipated flight times, added to the 1½ hour preparation period, add up to 15 hours of maximum flight duty time.

Exhibits M-8, M-9 and M-10 are copies of journey logs of the aircraft used for the flights at issue. The logs show the real flight times (contrary to the timetable).

The journey logs show that in fact the time taken for the flight and the stops was longer than the time shown on the timetable (Exhibit M-7) and that, with the addition of the 1½ hours pre-flight, the allowed total of 15 hours is exceeded, in the first case (August 24) by 59 minutes, in the second case (August 26) by 40 minutes and in the third case (August 31) by 30 minutes.

Q: Were the times set by the carrier for the stops realistic and feasible?

A: Here, witness André Charette (who was on board for the August 24 flight, sitting in the jump seat between the two pilots) gives explanations regarding the times planned by the carrier for the stops.

He answered yes and no to the question, explaining that it depended on the ground services that the aircraft required: refuelling, cleaning, boarding, etc. The times might have been unrealistic.

Q: The third flight, the one on August 31, left two hours late; were the crew members on duty according to the published timetable or according to the new time of departure?

A.: I don't know.

Q: In theory, is the period of 15 hours between the published timetable and the real time of maximum flight duty respected?

A: Theoretically yes, but in this case it was exceeded due to the late departure.

Cross-examination of Inspector André Charette

Cross-examination was made by Jean Fortin.

At this point, there was a rather long discussion on the personal notes and the blocks that appear on Exhibits M-7, M-8, M-9 and M-10.

Mr. Fortin wanted to know whether these notes were those of Inspector Charette, who had already made notes on the originals: blocks, signature, etc.

The answer to all the questions was yes, except in the case of certain lightly handwritten notes.

Examples: in Exhibit M-7, the date, 24/8/94, at the bottom of the dark block and the words at the lower left were not written by the inspector; the same is true of Exhibit M-8, in the top left corner and under the **AC/TYPE**, for the times written in lightly; the same occurs on Exhibit M-9, and on Exhibit M-10, with the times indicated in the centre of the sheet.

To the question of who could have added these notes to the original copies, witness André Charette has no answer. Mr. Bourgoin, the Minister's representative, supposes that these are notes added by another Transport Canada investigator, after those already made by Inspector Charette.

Mr. Fortin then submits that these were alterations to items of evidence and that these Exhibits would be rejected in a court of law.

I then asked if the added notes changed anything at all in the value of the Exhibits at issue and whether they constituted sources of errors.

It was agreed that they did not, and the debate was closed on this question.

Q: Mr. Fortin then asked witness André Charette if the times for the stops indicated on the timetable (Exhibit M-7) were realistic according to his personal knowledge and whether, in fact, they were respected?

A: Witness André Charette is not in a position to say whether these times are realistic, since they depend on several factors, including, among others, the refuelling and tidying up of the aircraft. They seem slightly short to him.

He also cannot confirm whether the times have been respected, except for the August 24 flight, when he was on board; but even then he can not confirm whether the times for the stops have been respected.

As there were no further questions, this concluded Transport Canada's presentation of evidence.

Examination of the Respondent (Transport aérien Royal)

First witness: Mr. René Savard, Chief Pilot

Q: Mr. Fortin asks Mr. Savard to explain the meaning of the first paragraph of subparagraph 5.1.7(b)(ii) of the Company's Operations Manual (Exhibit M-6), in which it refers to being on duty 1½ hours before departure.

A: This requirement is purely for commercial purposes. It is to ensure that the flight will not leave late. However, as the Company counts on the professionalism of its flight personnel, it is actually satisfied if the crew members are on duty one hour before departure.

There was a time when the Company required that the crew members be on duty two hours before departure. It was realized that this was not necessary.

In fact, since September 1994, the Company has modified its Manual to indicate one hour instead of 1½ hours. There were discussions with Transport Canada on this matter; the inspectors' views are divided.

Until quite recently, the Company was still waiting for an answer from Transport Canada; but, in any case, it was realized that authorization from Transport Canada on such matters is not necessary, since the only sections in the Manual which must be approved are section 5 (Flight Watch) and section 12 (crew training program).

These requirements are found in the ANO, Series VII, No. 2, section 42.

Q: So what is the Company's policy concerning the time on duty before flights?

A: 1 hour.

Q: Is this acceptable for the flights that concern us today?

A: Yes.

Cross-examination of René Savard

Q: The Minister's representative returns to sections 5 and 12 of the Operations Manual and asks the witness, Mr. Savard, if the Manual has been approved by Transport Canada.

A: Yes, by the Director, Air Carriers, Mr. Laflamme, and the Regional Director, Mr. Bernard Henry.

Q: At that time, did the Manual indicate 1½ hours on duty before the flight?

A: Yes, but in his letter, the Regional Director only approved section 5 of the Manual, which concerned the Flight Watch, and section 12, which concerned training.

He could not approve section 5.1.7 because it does not need to be approved. This section is more a matter of company policy than a rule in itself.

At this point the Minister's representative questions the fact that it would be solely a question of policy but does not say that witness René Savard is wrong. Mr. Savard reiterates that it is a question of professionalism and that the crew members know how much time they need to prepare their flights properly.

Q: What about the time during stops? What are the duties of the pilot before the new departure?

A: The time required for a stop varies between 30 and 45 minutes. There are issues of fuel, tidying up the aircraft, and sometimes changes of cabin personnel, so the time required may vary.

Q: That is in Canada, but is it the same abroad?

A: Yes, with exceptions.

Q: If the Operations Manual is not approved by the Minister, what purpose does it serve?

A: It provides guidelines. Transport Canada can always issue an opinion on its satisfaction or dissatisfaction with the Manual, but it cannot reject it ("say no").

The Minister's representative did not attempt to contradict witness René Savard on this allegation.

Q: Therefore you do not need authorization to change from 1½ hours to 1 hour the flight preparation time?

A: No.

Q: Then you write one thing and do another?

A: No, since I have already discussed the change with Transport Canada. Furthermore, I had to discuss other sections of the Manual because, out of its 60 pages, approximately 2 pages need to be approved, but not those that concern the hours on duty.

The Minister's representative did not seem aware of all the regulations and, although he was sceptical, he could not further contradict witness Savard.

Second witness: Mr. Pierre Clément, Pilot-in-command

Q: Could you explain what Exhibit M-8 signifies?

A: As was said previously, it is a copy of the journey log of the aircraft on which I was the pilot-in-command.

Mr. Pierre Clément explained that, if the following times are calculated:

1 hour on duty before the flight,
+ 10.9 hours of flight time (the minutes are often given as decimals),
+ the time during the stops,
= the total works out to 15 hours, 29 minutes.

If the maximum time of 15 hours has been exceeded, it is due to the unforeseen events in Calgary, where the runway in use (16-34) was closed for 90 minutes, resulting in the flight leaving Calgary 45 minutes late, to arrive in Montreal 29 minutes late, and not 59 minutes as Transport Canada claims.

Here, Exhibit T-2 is filed to this effect. It is the pilot-in-command's report.

It should be noted that, in his comments (Exhibit T-2), the pilot-in-command indicates that they were 25 minutes late.

Q: Mr. Fortin now asks witness Clément to explain his second trip, the one on August 26 to Central America. Exhibit T-4 is filed. It is a copy similar to Exhibit M-10, but without the Inspector's notes.

A: The flight left 3 hours late, at 10:15 p.m. instead of 7:15 p.m. The crew members had been telephoned at home to be informed of the delay, and they did not report for duty until 9:15 p.m., one hour before the flight.

At this point, by again calculating all the hours of pre-flight, flight and stops, we arrive at a total of 14 hours 50 minutes. Obviously, if Transport Canada calculates 1½ hours before the departure instead of one hour, this makes 15 hours 20 minutes, but in reality we worked only 14 hours 50 minutes.

Q: What was the time of the stop in Malagua?

A: 35 minutes.

Cross-examination of Pierre Clément

Q: When are the flight reports prepared?

A: At the end of the flight.

Q: Could the closed runway in Calgary have been anticipated by consulting the Notices to Airmen (NOTAM)?

Q: Yes, this is usually part of the pilot's kit before the flight.

Q: Therefore you could have been warned?

A: It is possible, but not 100% sure. Anyway, on such flights, certain factors can work for or against a delay: the winds, the number of passengers, etc.

Q: On the second flight, the one on August 26, what was your total time on duty?

A: 14 hours 50 minutes, according to the journey log, but, if you look at my Report (Exhibit T-3), you will note that I have recorded a total time of 15 hours 05 minutes. I believed that it was always necessary to add 15 minutes at the end of the flight, which is not the case.

This is why if, Transport Canada adds 30 minutes more than I do (1 hour 30 instead of one hour on duty before the flight), the total comes to 15 hours 20 minutes. However, if we subtract the 15 minutes after the flight and the 30 minutes before the flight, I was actually on duty for a total of 14 hours 50 minutes.

Q: I noticed that you had taken 50 minutes to prepare for your trip; is this normal?

A: It could have been done in 35 minutes.

Q: Could there not be many reasons for accumulating delays during stops?

Then a long discussion took place on the time necessary to refuel the aircraft, depending on whether there were 1 or 2 hoses and for 50,000 lbs. of fuel, etc. The discussion ended with the following answer by Mr. Clément:

A: In general, refuelling is done in 20 minutes. This is what is guaranteed by suppliers in their contracts. Beyond this, it is a question of good faith, and it is what occurs most of the time.

Third witness: Mr. Maurice Dahan, Vice-President, Operations

Q: Referring to the three flights in question, how do you calculate their times so that the maximum flight duty time is not exceeded.

A:

- First flight:

Normally, the flight is planned to take 14 hours in all, including stops, plus one hour of pre-flight, for a total of 15 hours.

For this flight, we arrive at 14 hours 29 minutes, plus one hour of pre-flight, for a total of 15 hours 29 minutes.

The reason for the late arrival is a 45-minute delay in Calgary, which was unforeseen before the flight, and which falls into the class of exceptions as stated in subparagraph 41.1(8)(a)(iv) of the ANO, Series VII, No. 2: "unforeseeable operational circumstances."

- Second flight:

This flight is planned for 13 hours 30 minutes in all, plus one hour of pre-flight, for a total of 14 hours 30 minutes. In this case, in spite of the 3-hour delay, the crew was on duty for a total of 14 hours 50 minutes, including the one hour of pre-flight time.

- Third flight:

This flight is planned for 13 hours 30 minutes, plus one hour of pre-flight, for a total of 14 hours 30 minutes.

However, continues witness Maurice Dahan, the total time was 15 hours, 17 minutes, and the late arrival was due to a 33-minute delay caused by air traffic control in Vancouver, which here was also an unforeseeable operational circumstance.

Q: Returning to Exhibit M-7, the flight timetable, what is the value of this document?

A: This timetable is issued for the long term; it is a question of business planning for the agencies.

However, a more precise weekly timetable is also published, and if we look at the one published on August 23, 1994 (Exhibit T-5), this was the one which was officially in force, and it is based on this one that I made the calculations that I have just given you.

No Cross-examination of Mr. Maurice Dahan

Fourth witness: Mr. Brian Jenner, Chief Executive Officer, Association québécoise des transporteurs aériens. Mr. Jenner testified as an expert witness.

Q: Have you ever been involved in discussions with Transport Canada on the question of delays during flights?

A: Within the scope of the current regulatory reform in Ottawa, I met with the authorities of Transport Canada with Mr. Savard, the Chief Pilot for Transport aérien Royal, and I raised the case of this carrier.

The question of whether a carrier must obtain Transport Canada's authorization for the guidelines that are part of the Operations Manual was also discussed, and it was established that this alleged authorization was a myth.

The proof of this is contained in subsections 31(1) and 42(2) and sections 32, 33 and 34 of the ANO, Series VII, No. 2. These sections say that there must be a Manual, that it must comply with certain provisions of the law, that a copy of this Manual must be provided to Transport Canada's regional director and, except for flight watch systems and the crew training program, nothing else has to be approved. The carrier can make whatever changes it wishes, when it wishes, on the sole condition that Transport Canada be informed. There is not even any mention of a time limit for informing Transport Canada's regional director.

To summarize, except for the sections dealing with the crew training programs and the flight watch, all the rest is merely **normative**, and it is even possible to disregard what is written in the Manual. However, to be a "good neighbour," it is recommended that Transport Canada be kept informed of what is done by the carrier.

Finally, all this had been discussed between himself, Mr. Savard and Transport Canada's Director, Air Carriers, Mr. Laflamme.

Q: So what is your opinion concerning the evidence heard?

A: Transport Canada should not have made the allegations, because what is significant is not whether the crew members should report 1½ hours before the flight, but what their **actual** maximum flight duty time was and, to this end, the time at which they in fact reported for duty before the flight.

Q: One last question: what is your opinion on the time assigned for stops as planned by the carrier?

A: 30 minutes seems a reasonable time.

No questions or representation by the Minister's representative

Evidently, faced with the avalanche of legislative provisions and allegations submitted and used by Transport aérien Royal's representative, the Minister's representative was not in a position to contradict anything at all, and stuck to the count as formulated. Even on questions of a more practical nature, such as the time of stops, there was no cross-examination.

ARGUMENTS

Arguments of the Minister's Representative, Mr. Jules Bourgoin

There are several questions about the manner in which the Carrier conducted this matter.

Transport Canada sent a letter to the Company on September 9, 1994, then a Notice of Assessment of Monetary Penalty on October 7, 1994 (without prejudice), the whole based on section 3 of the ANO, Series VII, No. 2, which stipulates that "Except as may be otherwise authorized in the operations specifications, an air carrier shall operate a large aeroplane on any commercial air service in compliance with this Order."

Transport aérien Royal did not respond to the Notice of Assessment of Monetary Penalty, except by letter dated October 14 (not submitted as evidence during the Review Hearing), following which there were discussions between Transport Canada and the Carrier. The Carrier did not submit any important points at that time.

In the ANO, Series VII, No. 2, every carrier is asked to submit an operations manual to see whether everything is in accordance with the regulations;

- In the Carrier's operations manual there is mention of a 1½-hour period before the flight to prepare for it;

- if we add the 14 hours for the flight including stops and the 1½ hours, the total is 15 hours 30 minutes, which is 30 minutes more than the 15-hour limit (note: subsection 41.1(5) is not mentioned here).

If there were changes made to the timetable by the Carrier, Transport Canada was not informed and was not in a position, at that time, to know of them.

For the August 24 Montreal/Vancouver flight, the Carrier's reports do not mention a delay; only the flying time and the total time on duty are given.

For the August 31 flight, the pilot should have known that there would be a delay in Calgary.

As for the August 26 flight to Central America, the planned timetable of 13 hours 30 minutes plus 1 hour 30 minutes of pre-flight do add up to a total of 15 hours on duty. However, the stops were not realistic and took more time than anticipated, so these cannot be considered unforeseeable circumstances (note: it is assumed that the Presenting Officer is referring to subparagraph 41.1(8)(a)(iv) of the order).

Finally, it is submitted that the Carrier made changes to its timetables without the approval or prior confirmation of Transport Canada and that, in such circumstances, it is difficult to monitor the activities of a carrier. Ultimately, this poses a threat to aviation safety.

The Minister's representative asks the Tribunal to maintain the monetary penalties imposed.

Arguments of the representative of Transport aérien Royal

In the Notice of Assessment of Monetary Penalty, Transport Canada mentions section 3 of the ANO, Series VII, No. 2, but a little further on, the Notice refers to subsection 41.1(5), indicating that the Carrier "assigned Mr. Pierre Clément for a period exceeding 15 hours...."

Subsection 41.1(5) does not say that a carrier cannot "assign" a crew member for more than a certain number of hours:

- it would have been necessary to use subsection 41.1(3), which states that: "... no air carrier shall **require**...";
- section 3 of the same order cannot have the effect of wanting to **assign** a crew member.

Transport Canada has not proved that Transport aérien Royal **required** its crew members to spend more than 15 hours on duty. The distinction must be made between **assigning** and **requiring**: the latter implies an obligation on the part of someone. For its part, Transport aérien Royal, to avoid any unwarranted interference, agrees to have its crew members report one hour before the flight.

The evidence submitted by Transport Canada is therefore not correct, and even if Transport Canada had used subsection 41.1(3), Transport aérien Royal's witnesses have submitted that, **in fact**, its crew members report one hour before the flight, and thus they do not exceed the 15-hour

limit unless there are unforeseen delays, which are permitted under subparagraph 41.1(8)(a)(iv) of the ANO, Series VII, No. 2.

As for the Minister's allegation that Transport aérien Royal attempted to mislead Transport Canada by submitting false documents, it is up to Transport Canada to ensure that it has the correct documents.

When you start breaking the duty time down into segments of 5 or 10 minutes, the question arises whether this case is not being used as a "test case" (the English term was used at the hearing) for the legislation. If it is, this is not the way to proceed; there are other methods available.

In addition, section 8.5 of the *Aeronautics Act* states that "No person shall be found to have contravened a provision of this Part or of any regulation or order made under this Part if the person exercised all due diligence to prevent the contravention."

That is exactly what Transport aérien Royal did.

Finally, a penalty cannot be imposed if it is not provided for in the Act. The provisions used by Transport Canada do not establish a contravention, since subsection 41.1(3) of the ANO, Series VII, No. 2 is the provision that should have been used.

Even if that had been the case, the English version of subsection 41.1(3) does not refer to the carrier, but solely to the "crew members".

In conclusion:

- Transport Canada did not use the correct provisions;
- Transport aérien Royal did not attempt to hide anything;
- the documents submitted as evidence by Transport Canada have been tampered with (question of credibility);
- in fact, the crew members did not exceed the hours on duty required, except in exceptional cases, as provided for in the ANO;
- the Tribunal should declare Transport aérien Royal not guilty.

ANALYSIS BY THE TRIBUNAL

In the matter before us today, the Tribunal must deal with two aspects: the purely legal question of whether the provisions of the Act cited apply to the type of allegation made; and the more technical question of whether the hours on duty were exceeded, which is not supposed to occur.

There is every indication that, in fact, Transport Canada used neither the correct subsection nor the correct wording when it claimed that the Carrier assigned a pilot for a period exceeding 15 hours, contrary to the provisions of subsection 41.1(5) of the ANO, Series VII, No. 2.

That section does not refer to assignments.

That fact alone would be sufficient grounds for the Tribunal to reverse the decision of the Minister and cancel the monetary penalties imposed.

However, as other important points of law have been put forward in this matter, the Tribunal judges it appropriate to continue the arguments and to explain other elements that are worth analyzing, even if only from the point of view of aviation safety.

We know that the primary aim of any act and its regulations is to provide a framework sufficient to preserve a certain degree of safety for the public. That is the viewpoint from which the ANO, Series VII, No. 2, was written. If the Minister had really wanted to give it more force, he should have **obliged** the air carriers to account for their activities in a much more precise manner. This does not seem the case at this time, since few sections of this Order require approval by Transport Canada. We must accordingly assume that this is the way in which Transport Canada intends to deal with this aviation activity. This is understandable since, in a 15-hour work period, there are too many variable and unforeseeable elements that may shorten or lengthen a trip involving several flights.

As for subsection 41.1(3), contrary to Mr. Fortin's claims, the French and English versions are identical: both mention the responsibility of the carrier.

Regarding another aspect of the dispute, we must return to the question of the Operations Manual and its objective. Contrary to what Transport aérien Royal has claimed, I do not believe that the sections that do not need approval by Transport Canada are there only for **commercial** or marketing purposes. Rather, I believe that those sections of the Manual must be seen as directives, which have a precise operational goal with which the persons concerned must comply. Much more weight should be given to the Operations Manual, and the regulations should recognize this fact, or Transport Canada will have to cease prosecuting or directly or indirectly accusing carriers based on the Manual.

In spite of what was just said, in the matter before us, it would have been very difficult, this time from a technical standpoint, to reject the arguments by Transport aérien Royal that the Carrier normally did all it could to comply with the regulations. The extra minutes worked by the crew members during flights which, in all, including the stops, take as much as 15 hours, can readily be accepted based on the exceptions allowed in the order (subparagraph 41.1(8)(a)(iv)).

As I have already stated, the elements that make up a flight, whatever its nature, are often extremely varied and difficult to anticipate, so it will always be just as possible for a trip to take less time than indicated on the timetable as for it to take more time. In so far as all reasonable measures are taken to comply with the regulations, there are no grounds to make allegations and even less to impose penalties.

This is therefore a question of good faith, organization and sound planning by a carrier. Obviously, if a carrier plans all its flights to the minute allowed by the legal requirements, the odds are that it will have great difficulty staying within those requirements. Nevertheless, in the spirit of the current regulations, the reasons submitted today for having exceeded the requirements appear acceptable to this Tribunal.

DETERMINATION

After verifying the legal provisions and considering the case in detail, I conclude that the Minister has erred in imposing monetary penalties which are not provided for in the "designated provisions" of the Air Regulations, Series I, No. 3, subsection 3(1), contrary to subsection 7.6(2) of the *Aeronautics Act* and that, consequently, the Tribunal has no choice but to dismiss the allegations.

I find not only that the Minister did not use the correct provisions of law to make his allegations but that, even if he had done so, he has not proved that the crew members of Transport aérien Royal acted in such a manner so as to contravene the Act.

Pierre Rivest
Member
Civil Aviation Tribunal