

CIVIL AVIATION TRIBUNAL

BETWEEN:

Francis Robert Ireland, Appellant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 6.9

Air Navigation Orders, Series IV, No. 6, s. 4(2)

Air Regulations, C.R.C. 1978, c. 2, s. 221

Certification of aircraft as airworthy, Airworthiness

Appeal decision
G. Richard, J. Rouleau, Jacques Blouin

Decision: January 9, 1990

Heard: Gander, Newfoundland, December 7, 1989

The appeal is allowed. The Tribunal reinstates the penalty originally imposed by the Minister and determines that Mr. Ireland's suspension will run for an additional period of 105 days following the suspension imposed by Ms. Brunet, which Mr. Ireland is currently serving.

This additional period will commence at 00:01 hours February 15, 1990, and terminate at 24:00 hours, May 30, 1990.

Transport Canada appealed the decision rendered by Tribunal member Zita Brunet in which she found Mr. Ireland responsible, in part, for the contraventions referred to in the Notice of Suspension issued by the Minister of Transport and reduced the suspension imposed on Mr. Ireland from 210 days to 105 days.

The grounds for appeal were stated as follows:

The Tribunal member erred in reducing, without justification, the duration of the suspension imposed by the Minister.

The Appellant argued that, although the wording of the decision points to a finding of partial responsibility, the Tribunal member, in her reasons for decision, actually found Mr. Ireland guilty on all counts and reduced the duration of the suspension without justification.

Mr. Ireland, for his part, acknowledged responsibility for the violations alleged in Count 1 but submitted that aircraft Piper PA-32-300, registered C-GCVN, was airworthy at the time of certification on June 16 and July 24, 1988, and that the maintenance was performed in compliance with the applicable standards of airworthiness. Any defects would have occurred subsequently to his intervention and could have resulted from the contamination of the fuel due to tampering. He further submitted that the Tribunal member reduced the original penalty from 210 days to 105 days because of "possible damage caused by the impact and the possibility of fuel contamination having caused damage to the engine".

The decision under consideration found Mr. Ireland responsible, in part, for the alleged infractions and, therefore, reduced the penalty by half. The operative words are "in part" and "therefore". The reduction of the penalty flows from the finding of diminished or shared responsibility. This panel must decide whether such a finding was justified in order to determine the appropriateness of the resultant reduction of the penalty.

The declaration that Mr. Ireland was responsible "in part" can be interpreted to mean either that Mr. Ireland's responsibility for the deficiencies was not his alone, or that Mr. Ireland was responsible for some, but not all, of the airworthiness deficiencies listed in the notice.

The first interpretation is supported by the Tribunal member's statement, in her reasons for determination, that she took into account the possibility that damage may have been caused by the impact and by fuel contamination. These factors would mitigate Mr. Ireland's responsibility.

The second interpretation, on the other hand, is supported by the member's further statement that, having considered the tampering and contamination hypothesis, she "still finds Mr. Ireland responsible for some airworthiness deficiencies, such as the use of unapproved sealant, a cylinder had an incorrect type stud on the exhaust port, protector nipples missing, elongated magneto flange holes and the colouring on the nozzle showing that it was in the incorrect position prior to the crash". The listing of these deficiencies in exemplary form would imply that the Tribunal member had found Mr. Ireland responsible for other infractions, as certainly she had found him responsible for the violations listed under Count 1.

It is our view that neither of these interpretations, used singly or in combination, can justify a finding of partial responsibility and a consequent reduction of the penalty. As recognized by the Tribunal member, no proof or evidence of the tampering and fuel contamination alleged by Mr. Ireland and his two witnesses was offered. Such unsupported allegations cannot justify a reduction of the penalty on the basis of shared or partial responsibility. With regard to a finding of partial responsibility based on the commission by Mr. Ireland of some, but not all, of the infractions, we concur with the Appellant's contention that a finding of responsibility on any one

of the particulars in each count and anyone of the ANO, Series IV particulars constitutes a finding that a violation occurred for which the penalty assessed by the Minister is warranted. We also agree that the Tribunal member correctly made such a finding.

In view of the above, in accordance with the criteria outlined in a previous decision of the Tribunal, *MoT v. Wyer* (CAT File no. O-0075-33), and in consideration of the seriousness of the infractions of Mr. Ireland's past record and the need to ensure aviation safety, we reinstate the penalty originally imposed by the Minister and determine that Mr. Ireland's suspension will run for an additional period of 105 days following the suspension imposed by Ms. Brunet, which Mr. Ireland is currently serving.