

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**Stephen Décary**, Respondent

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 7.7

*Canadian Aviation Regulations*, SOR/96-433, s. 801.01(2)

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**Review Determination**  
**Michel Larose**

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**Decision: December 4, 2000**

TRANSLATION

*The Tribunal dismisses the charge against Stephen Décary of having contravened subsection 801.01(2) of the Canadian Aviation Regulations and the Air Navigation Services Standards, section 821, chapter 1, subparagraph 2.3(b)(i).*

A **review hearing** on the above matter was held Thursday, October 19, 2000, at 9:30 hours at the premises of the Comité de déontologie policière (Police board) in Sainte-Foy, Québec.

**PRELIMINARY COMMENTS**

The procedure was explained to both parties and Mr. Umberto Tamborriello, representing the Minister of Transport, had a preliminary motion to submit to the Tribunal, namely:

1. The Notice of Assessment of Monetary Penalty dated June 21, 2000, should have read:  
"as air controller of Quebec / Jean Lesage Int'l airport"
2. *Air Navigation Services Standards*, Standard 821, Chapter 1, section 2.3 (b)(i)"

The respondent, Mr. Décary, consented to this preliminary motion.

Secondly, the two parties reached an agreement, namely, that the transcript of the conversations between the air controllers and the pilots, on March 22, 2000, based on the master tape, were accurate. This transcript was sent to Mr. Umberto Tamborriello on October 18, 2000, by Mr. Hubert Castonguay, NAV CANADA site manager, and the cassette itself was given beforehand to Mr. Décary.

Mr. Décary made an admission about the second paragraph of the notice of assessment of monetary penalty: "On March 22, 2000, at about 14:28 UTC, you, as airport controller, cleared the aircraft registered as C-FKOS to land on runway 30 ..." [translation]. The rest is the subject of the present dispute.

Finally, a witness exclusion order was issued, to avoid tainting the testimony and lend it more credibility.

## **OBJECT OF THE REVIEW HEARING**

On June 21, 2000, the Minister of Transport sent Mr. Décary a notice of assessment of monetary penalty:

[Translation]

Pursuant to section 7.7 of the Aeronautics Act, the Minister of Transport has decided to assess a monetary penalty against you for contravention of section 801.01(2) of the *Canadian Aviation Regulations*.

On March 22, 2000, at about 14:28 UTC, you, as airport controller, cleared the aircraft registered as C-FKOS to land on runway 30, while the aircraft registered as C-GZCO was taxiing on this same runway, in contravention of the *Air Navigation Services Standards*, Standard 821, section 2.3(b)(i).

The above provision(s) is/are designated pursuant to section 103.8 of the *Canadian Aviation Regulations*, and the procedures governing monetary penalties established in sections 7.7 to 8.2 of the *Aeronautics Act* apply.

The amount of \$250 must be paid in full, by July 24, 2000, to the regional manager responsible for enforcement of the Act, at the address shown above. Payment may be made in cash, by money order or by cheque made payable to the Receiver General of Canada.

[...]

The deadline allowed for payment of the monetary penalty, i.e., July 24, 2000, has not been met, hence, the reason for this review hearing.

## **THE LAW**

Section 7.7(1) of the *Aeronautics Act* stipulates 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).

Section 801.01(2) of the *Canadian Aviation Regulations* (CARs) reads as follows:

(2) No air traffic controller shall issue an air traffic control clearance or an air traffic control instruction except in accordance with the *Canadian Domestic Air Traffic Control Separation Standards*.

The *Air Navigation Services Standards*, Standard 821, Chapter 1, section 2.3(b)(i) reads:

### 2.3 Separation of an Arriving Aircraft from Aircraft using Intersecting Runway

An arriving aircraft shall be separated from another aircraft using an intersecting runway, or non-intersecting runway if flight paths intersect, by ensuring that the arriving aircraft does not cross the landing threshold or flight path of the other aircraft until one of the following conditions exists:

[...]

(b) a preceding arriving aircraft has:

(i) taxied off the landing runway,

[...]

Section 103.08 of the CARs reads as follows:

103.08 (1) The provisions set out in column I of the schedule to this Subpart are hereby designated as provisions the contravention of which may be dealt with

under and in accordance with the procedure set out in Sections 7.7 to 8.2 of the Act.

(2) The amounts set out in column II of the schedule are the maximum amounts payable in respect of a contravention of the provisions set out in column I.

(3) A notice issued to a person by the Minister pursuant to subsection 7.7(1) of the Act shall specify

(a) the designated provision that the Minister believes has been contravened;

(b) the particulars of the alleged contravention;

(c) that payment of the amount specified in the notice will be accepted by the Minister as and in complete satisfaction of the amount of penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person in respect of that contravention;

[...]

## THE FACTS

After having read the documents contained in the file and those submitted, and hearing the testimony of the applicant and the respondent as well as their respective arguments, the Tribunal accepts the following elements for the purposes of this determination:

The aerodrome chart of Quebec / Jean Lesage Int'l airport is the following:

(See diagram in the paper copy of the determination.)

Of the conversations between the AIR controller (Mr. Décary) and the GROUND controller (Mr. Julien) and the three pilots of MCR, ZCO and KOS, in particular the last two, the Tribunal accepts only those it considers most relevant to resolving the dispute (cf. R2-A and R2-C):

[Translation]

<b>Mar. 22, 2000 Air controller Stephen Décary</b>			<b>Mar. 22, 2000 Ground controller Joseph Julien</b>		
<b>Time</b>	<b>Agency</b>	<b>Communications</b>	<b>Time</b>	<b>Agency</b>	<b>Communications</b>
14:14:48	ZCO	Quebec Golf tower Zoulou Charlie Oscar hello.			
14:14:55	ZCO	Hello Sir Cessna one five			

<b>Mar. 22, 2000 Air controller Stephen Décarý</b>			<b>Mar. 22, 2000 Ground controller Joseph Julien</b>		
<b>Time</b>	<b>Agency</b>	<b>Communications</b>	<b>Time</b>	<b>Agency</b>	<b>Communications</b>
		two Golf  Zoulou Charlie Oscar 3500 feet in descent ten miles southwest of Quebec to land 24.			
14:19:15	AIR	Zoulou Charlie Oscar, I can give you runway zero six, winds are calm.			
14:19:19	ZCO	OK Sir, I'm taking runway zero six Zoulou Charlie Oscar.			
14:20:00	KOS	Quebec tower here Katana Fox Kilo Oscar Sierra.			
14:20:03	AIR	Kilo Oscar Sierra hello, follow the Chaudière river, call me back directly over bridges runway two four in use thirty on request.			
14:22:00	AIR	Mike Charlie Romeo Roger cleared to land runway three zero.			
14:22:03	ZCO	"unreadable" Quebec Zoulou Charlie Oscar on final zero six.			
14:22:07	AIR	Zoulou Charlie Oscar cleared to land zero six.			
14:23:34	AIR	Mike Charlie Romeo can you keep clear of runway zero six.			
14:23:43	AIR	OK Roger, I have a Cessna 152 that is landing on runway zero six.			
14:25:00	MCR	Mike Charlie Romeo call ground one two one decimal nine please.			
14:25:07	AIR	Zoulou Charlie Oscar you are going to leave OK you			

Mar. 22, 2000 Air controller Stephen Décary			Mar. 22, 2000 Ground controller Joseph Julien		
Time	Agency	Communications	Time	Agency	Communications
		are leaving on Hotel there, call ground one two one decimal nine off runway.			
14:25:13	ZCO	Zoulou Charlie Oscar.			
			14:25:22	MCR	Quebec ground Mike Charlie Romeo backtracking three zero for Bravo.
			14:25:30	GROUND	Mike Charlie Romeo checking for the three zero for what destination.
			14:25:35	GROUND	Understood so you are going to taxi three zero Charlie India for Aéropro.
			14:26:16	ZCO	"unreadable 2 transmissions at same time" Zoulou Charlie Oscar Hello.
			14:26:19	GROUND	Zoulou Charlie Oscar Quebec hello your destination on the ground.
			14:26:22	ZCO	Petro-T Sir.
			14:26:23	GROUND	Zoulou Charlie Oscar you are going to taxi Golf, runway 12, Bravo, the ramp and Delta for Petro- T.
			14:26:30	ZCO	Zoulou Charlie Oscar Golf twelve and Bravo, thank you.
			14:27:23	ZCO	Ground from Zoulou Charlie Oscar.
14:27:25	AIR	Kilo Oscar Sierra cleared to land three zero.			
			14:27:34	GROUND	Zoulou Charlie Oscar ground.
			14:27:36	ZCO	Yes Sir, could you confirm

Mar. 22, 2000 Air controller Stephen Décary			Mar. 22, 2000 Ground controller Joseph Julien		
Time	Agency	Communications	Time	Agency	Communications
					that flight plan is closed, please.
14:28:29	KOS	Tower from Kilo Oscar Sierra, I have traffic on runway three zero.			
14:28:38	KOS	Kilo Oscar Sierra pulling up.			
			14:28:42	ZCO	Ground Quebec GROUND from Zoulou Charlie Oscar.
			14:28:45	GROUND	Zoulou Charlie Oscar Quebec GROUND the aircraft is on low approach and pulled up, you may continue to taxi to Bravo.
			14:28:51	ZCO	Zoulou Charlie Oscar.
14:31:57	AIR	Kilo Oscar Sierra cleared to land runway three zero, check traffic leaving on Bravo.			
14:32:45	AIR	Kilo Oscar Sierra a turn-around at Bravo one two one decimal nine off runway good-bye and thank you for your vigilance.			

Regarding the testimony, Mr. Daniel Chénier, for the Minister of Transport, stated that on March 22, 2000, at about 9:15 hours, being a flight instructor for Pro Aviation, he was at the controls, with his pupil, of his Katana registered as C-FKOS, and checked in with the air controller at the Pont de Québec and was cleared to land on [runway] 30 when he was about 1 mile on final. About 30 seconds later, he noticed a Cessna 152 on 30 about 150 to 200 feet past the Golf taxiway backtracking slowly up 30 towards Bravo, as Juliet is closed at that time of year.

Estimating that the Cessna 152 would not have time to reach Bravo, he asked his student to pull up and head back east, i.e., to the right and circle again. He notified the air controller while pulling up.

In response to questions from Mr. Décary, the air controller had the witness specify that clearance to land on 30 was given at 14:27:25 when Mr. Chénier, pilot of KOS, was at Boulevard

Charest, that is, 2 miles before reaching 30, not 1 mile, and that it was at 14:28:29 that KOS realized there was traffic on runway 30.

Mr. Umberto Tamborriello called Mr. Joseph Julien as a second witness.

Mr. Julien was the ground controller on March 22, 2000, around 14 :28 UTC and had heard KOS on the air frequency mention that there was an aircraft on the runway.

The other aircraft (ZCO) was taxiing back on Hotel to go to the air terminal. According to him, both runways (12/30 and 06/24) were assigned to the air controller and one of the two aircraft had landed on 24 and the other on 30.

Also, according to him, the Cessna 310 (MCR) had landed on 24 and taxied onto 30 and it was MCR that spoke to him first and he cleared it to taxi back on 30 to Bravo. This first contact occurred when MCR was already on 30.

ZCO had not yet called him and had just taxied off 24 to taxi on Hotel then Golf and backtrack on 30 to take Bravo to the air terminal.

MRC (cf. R2-C) had been cleared, after having taxied back on 30, to take Charlie India for Aéropro instead of Bravo (14:25:22; 14:25:33).

[Runway] 30 was still under the control of the air controller and the two records (cf. R3) were given to him just before the two pilots of MCR and ZCO called him. So ZCO was taxiing on [a] red runway (30), and he is the one who ventured to have both aircraft taxi on a runway in use and normally, the air controller should have had his aircraft ZCO taxi off and turned responsibility for 30 over to him. ZCO was actually 200-300 feet from Bravo on 30 and he saw KOS in final. As ground controller, he told ZCO that KOS was pulling up and that he could continue on to Bravo.

According to him, when the air controller gave him the records, he issued no restriction for 30 and if the records are given to him personally and not [placed] in the usual container, it is because follow-up is needed.

Mr. Julien stated there was a conflict and that the only way to avoid it would have been better verbal co-operation between the two controllers, and he himself felt free to use 30 after having been given the records.

Mr. Décary wanted his colleague, Mr. Julien, to make it clear that MCR had landed on 30, and not on 24, and ZCO on 06, and that he, as air controller, still had his two green lights and that the ground controller, that is, Mr. Julien, still had his two red lights.

In response to the Tribunal's questions, Mr. Julien explained that he had been given the record for MCR and that at 14:25:00 he was to be called on 121.9 (cf. R2-A); and that at 14:25:22 (22 seconds later), MCR informed him that it was taxiing back up 30 for Bravo (cf. R2-C); and the ground controller (Mr. Julien) thought that MCR had landed on 24 and was taxiing onto 30



and ZCO had just taxied onto Hotel, and he had also been given the record; and that both aircraft were to call him on the ground frequency just before the initial contact with MCR; and that he took over responsibility for 30 at about 14:25:15 (not found in the transcript).

But meanwhile, the air controller had ZCO taxi off 06 onto Hotel and asked him to contact the ground controller on 121.9 (cf. R2-A and R2-B) (differential of 7 seconds) at 14:25:07.

A first ineffective contact occurred between ZCO and the ground controller at 14:26:16, and at 14:26:19 he asked ZCO its destination on the ground and at 14:26:23 he told ZCO (cf. R2-C), as he had the authority and 30 was his without restriction, that it could taxi on Golf, runway 12, Bravo, the ramp and Delta for Petro-T (cf. R2-C).

Mr. Décary wanted Mr. Julien to make it clear that he had taken MCR on 30 on [a] red light, but not so for ZCO, as the latter was not yet on the runway.

The respondent, Mr. Décary, testified, supported by a detailed diagram, that when he cleared KOS to land on 30, ZCO was not on that runway, for which he held control on [a] green light at 14:27:25 (cf. R2, p. 4 of A).

Moreover, at 14:25:07 (differential of 2 minutes 18 seconds) (cf. R2, p. 4 of A), he had cleared ZCO, after its landing on 06, to leave on Hotel, and asked it to contact the ground controller on 121.9.

This initial contact with the ground controller, his colleague Mr. Julien, was indeed established at 14:26:16 (cf. R2, p. 1 of C), that is, 1 minute and 9 seconds later.

This initial contact of ZCO with the ground controller actually proved ineffective, as two transmissions were taking place at the same time (cf. R2, p. 1 of C).

At 14:26:23, the ground controller gave ZCO instructions for taxiing towards the air terminal for Petro-T, and at 14:26:30 ZCO began its taxiing from Hotel (cf. R2, p. 2 of C).

According to his diagram, ZCO was to taxi a distance of 2,197 feet from Hotel (200 feet off 06) to Golf which crosses 30 (cf. I1) (point A to point B). There is a differential of 55 seconds between the clearance given to KOS to land on 30 at 14:27:25, and the clearance given to ZCO to taxi from Hotel at 14:26:30. Subtracting 10 seconds for ZCO to stop at the yellow line on Hotel and change its frequency still leaves 45 seconds, and at a slow speed, say 15 km/h, ZCO would have covered 990 feet, and taxiing quickly, at 30 km/h, it would still have covered 1,980 feet, again from Hotel to the junction of Golf and 30.

Mr. Décary therefore wondered where ZCO was when he cleared KOS to land at 14:27:25. ZCO should still, in this time interval and also according to variable speeds, have been on Golf and not on 30, 200 feet past the Golf intersection taxiing back towards the airport, still according to the instructions given by the ground controller at 14:26:30 from Hotel.

Mr. Umberto Tamborriello wondered about the 7 seconds between the hand-off of MCR (14:25:00) and that of ZCO (14:25:07) (cf. R2, p. 3-4 of A) to the ground controller, as he [the ground controller] had been given the records at the same time and another aircraft could have landed and the ground controller thought runway 30 free and there was no red light, that is, no hand-off.

Mr. Décary replied that he still kept his two green lights for 06/24 and 12/30.

## **ARGUMENTS**

### **For the Applicant**

According to the documentary and testimonial evidence, the air controller had control of the runways. It also acknowledged that an aircraft MCR was on 30 and that there was a frequency changeover for the ground controller, but this procedure had not been completed as the lights were still green, and furthermore, MCR had already been handed off. The air controller should have co-ordinated everything with ground control, but did not do so and the air controller's hand-off of runways had not been completed.

Thus, two aircraft [were] handed off to ground control in 7 seconds, knowing there was traffic for 30, as the air controller kept control of this runway for KOS. Mr. Décary, the air controller, should have notified the ground controller, Mr. Julien, for the temporary hand-off. He therefore created this conflict.

The clearance issued in fact remained active for KOS, but he did not ensure that the runway was free and clear and did not cancel this clearance. It is thanks to the vigilance of KOS, which decided to pull up, that a possible collision was avoided; so much so that the air controller, Mr. Décary, thanked the pilot for his vigilance.

According to Mr. Umberto Tamborriello, two conflicting clearances were issued:

1. clearance to KOS to land on 30;
2. clearance to ZCO to use 30 to taxi.

Thus, the runway was clear when KOS was cleared to land on 30, but there was no follow-up, in contravention of section 801.02 of the CARs and standard 821, paragraph 2.3(b)(i) of the Standards, and the risk of a collision occurred as both clearances were still valid in time.

Air controller Décary kept control of both aircraft, and furthermore, did nothing when ZCO appeared on 30, as he had not even scanned his runway.

As to whether Mr. Décary exercised due diligence to avoid this conflict, Mr. Tamborriello responded in the negative as it was he himself, as air controller, who created it (section 8.5 of the *Aeronautics Act*). As for the penalty to be imposed, according to the *Aeronautics Act* (sections 7.7 to 8.2) and in view of section 103.08 of the CARs, a first offence [sic] for breach of

section 801.01(2) of the CARs in the amount of \$250 is consistent with the *Aviation Enforcement Procedures Manual*.<sup>[1]</sup>

Such a penalty is intended to ensure aviation safety, avoid any subsequent offence and set an example.

Finally, Mr. Tamborriello wished to point out to the Tribunal that there had been no great urgency owing to excessive traffic, that the experience of the air controller, Mr. Décary, is a serious fact and that this conflict could have been avoided.

### **For the Respondent**

Mr. Décary pointed out to the Tribunal that only two aircraft are mentioned in the notice of assessment of monetary penalty, namely, KOS and ZCO, but not MCR. Also, when he cleared KOS to land on 30, ZCO was not on the runway; thus, the notice of assessment is inconsistent and the taxiing time between the stop line on Hotel and the intersection of 30 with Golf, a distance of 2,197 feet, at different speeds, does not explain the presence of ZCO at this location.

Finally, Mr. Tamborriello replied by adding that ZCO was handed off at 14:25:07 and at 14:27:25 KOS was cleared to land, for a differential of 2 minutes and 18 seconds, and even if it was moving at very slow speed, Mr. Décary no longer had control of ZCO.

## **REASONS FOR THE DETERMINATION**

The Tribunal must therefore determine whether the offence charged, which is a strict liability offence, was indeed committed by the respondent, the whole while assessing whether the Minister of Transport, which has the burden of proof, has proved all the elements of the notice of assessment of monetary penalty dated June 21, 2000, on the balance of probabilities.

First of all, without going back over all the documentary and testimonial evidence, the Tribunal considers that ZCO was on 12/30, having left Golf to go to Bravo and Petro-T at the Quebec / Jean Lesage Int'l air terminal, while KOS was in final approach, and that the latter had to pull up to avoid a possible collision.

The testimony of Messrs. Chénier and Julien are clear in this regard and the Tribunal accords them all the credibility they deserve.

Secondly, the Tribunal, agreeing with the respondent's defence, considers that when Mr. Décary, the air controller, cleared KOS to land on 30 at 14:27:25, ZCO was not on 30, as at 14:25:07 (that is, 2 minutes and 10 seconds earlier), it had, after landing on 06, been cleared to leave on Hotel and to contact the ground controller on 121.9 for further instructions for taxiing on the ground to the air terminal.

Thirdly, the Tribunal must therefore explain the presence of ZCO on 12/30 about 200-300 feet past the Golf intersection and determine imputability.

In this regard, the Tribunal wishes to recall certain facts:

- On March 22, 2000, at about 14:28 UTC, the winds were calm and the 4 runways could be used indiscriminately by the air controller, Mr. Décary, even though runway 24 was in use.
- Three aircraft were involved in this conflict (MCR, ZCO and KOS).
- The air controller cleared MCR to land on 30 rather than on 24, cleared ZCO to land on 06, and cleared KOS to land on 30 within a brief period of time.
- Mr. Décary always kept his two green lights on the two runways in use, which implies that the ground controller, Mr. Julien, had two red lights at the time of the incident.

Therefore, first of all, MCR landed on 30 at 14:22:00, and ZCO on 06 at 14:22:07. MCR was handed off to the ground controller at 14:25:00 and was on 30, and at 14:25:07 (7 seconds later) ZCO was cleared to leave on Hotel and asked to contact the ground controller on 121.9.

Then, 22 seconds passed (14:25:22) before MCR contacted the ground controller, and 35 seconds passed before the ground controller asked MCR to do a turn-around on 30 (still in use for the air controller) to take Charlie, India for Aéropro. A possible conflict with KOS was thus avoided, in other words, MCR left 30 in time.

As for ZCO, after having been asked to contact the ground controller on Hotel at 14:25:07, it attempted to make its contact with the ground controller at 14:26:16 (that is, 1 minute and 9 seconds later), but this attempt proved ineffective as there were two transmissions at the same time. Three (3) seconds later, the ground controller answered ZCO (14:26:19), and 7 seconds later, the ground controller (14:26:23) cleared ZCO to taxi on Golf, runway 12, Bravo, the ramp and Delta for Petro-T at the air terminal.

So it was at 14:26:30, that is, 14 or 11 seconds later, that ZCO was to begin taxiing from Hotel.

What was it happened such that, after KOS received clearance to land on 30, at 14:27:25, it noticed on short final at 14:28:29, that is, 1 minute and 4 seconds later, the presence of ZCO on 30, 1 minute and 59 seconds (14:28:29 v. 14:26:30) after ZCO began taxiing from Hotel?

The only plausible explanation the Tribunal can find—though it regrets not having heard the version of the pilot of ZCO—taking into account the different taxiing speeds estimated by the respondent to cover 2,197 feet (junction of Hotel and Golf with 12/30) to explain the presence of ZCO on 30, is that the pilot of ZCO, after an ineffective initial contact at 14:26:16 and receiving taxiing instructions at 14:26:23, began taxiing before 14:26:30 from Hotel, and at 14:28:29 had travelled 2,397 feet or 2,497 feet farther, that is, onto 30.

As for imputability, the Tribunal refers to Mr. Julien's testimony, which states that this conflict could have been avoided had there been better verbal co-operation between the two controllers on duty. Thus, the lights for both runways being green for the air controller and red for the ground controller, responsibility for the conflict is shared, and the notice of assessment for monetary penalty mentions only Mr. Décary and is therefore inconsistent with the facts and the law.

## CONCLUSION

**For all these reasons, the Tribunal dismisses the charge against Mr. Stephen Décary of having contravened section 801.01(2) of the CARs and the *Air Navigation Services Standards*, Standard 821, Chapter 1, paragraph 2.3(b)(i).**

Michel Larose, M.D.  
Member  
Civil Aviation Tribunal

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<sup>[1]</sup> Second edition, November 1999, TP 4751E.