

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Jerry Mervin Wolsky, Respondent

LEGISLATION:

Aeronautical Information Publication, RAC 4.4.8

Aeronautics Act, S.C., c.A-2, s.7.7, 7.9, 8, 8.5

Airspace, Structure, Classification & Use, s. 3(1), 5(1), 12(1)

VFR Flight in Class C Airspace, Radio Failure as a Defence, Due Diligence, Dissent

**Review Determination
Robert J. MacPherson**

Decision: February 6, 1997

I find, both on the evidence and the admission of Mr. Wolsky, that the Minister's allegation is sustained. The penalty is increased from \$100.00 to \$200.00. This amount, made payable to the Receiver General for Canada and sent to the Civil Aviation Tribunal, must be received within fifteen days of service of this determination.

A **Review Hearing** on the above matter was held Tuesday, February 4, 1997, at 10:00 hours, at the Federal Court of Canada, in the city of Calgary, Alberta.

BACKGROUND

By registered letter dated June 3, 1996, Jerry Mervin Wolsky was issued a Notice of Assessment of Monetary Penalty.

The Notice reads as follows:

Pursuant to section 7.7 of the *Aeronautics Act*, the Minister of Transport has decided to assess a monetary penalty on the grounds that you have contravened the following provision(s):

Airspace Structure, Classification and Use Regulations, Section 12, Subsection 1: in that you did, on or about 19 January 1996, at or near Calgary, Alberta, operated aircraft Cessna 310, Canadian registration C-FWMN, in VFR flight into Class C airspace, specifically the Calgary International Airport Class C airspace as described in the Designated Airspace Handbook, without receiving a clearance to enter the airspace from the Calgary Air Traffic Control Unit.

Mr. Wolsky picked up a Cessna 310 aircraft, in southern Florida USA, for his employer Executive Airlines. His job was to ferry the aircraft from Florida to Calgary, Alberta. One hour into the flight, the number one radio ceased to function. A two-day stop was necessary in Abilene, Kansas to repair the aircraft heater. In Sheridan, Wyoming the right hand throttle cable was frozen and required servicing. At Sheridan a flight plan to Calgary was filed by the pilot Wolsky. The flight plan was never opened. The flight arrived in Calgary with no radio transmitter operational, and entered the Calgary International Airport Class C controlled airspace without prior authorization.

THE LAW

The Airspace Structure, Classification and Use Regulations:

Airspace Structure

3. (1) Controlled airspace shall consist of the following types of airspace:

(b) control zones;

(...)

(3) The horizontal and vertical limits of any airspace of a type referred to in subsection (1) or (2) shall be as specified in the Designated Airspace Handbook.

(...)

Airspace Classification

5. (1) The class of any controlled airspace of a type referred to in subsection 3(1) shall be one of the following, as specified in the Designated Airspace Handbook:

(...)

(c) Class C;

(...)

VFR Flight in Class C Airspace

12. (1) Subject to subsection (2), no person operating a VFR aircraft shall enter Class C airspace unless the person receives a clearance to enter from the appropriate air traffic control unit before entering the airspace.

(2) The pilot-in-command of a VFR aircraft that is not equipped with radiocommunication equipment capable of two-way communication with the appropriate air traffic control unit may, during daylight in VMC, enter Class C airspace if the pilot-in-command receives authorization to enter from the appropriate air traffic control unit before entering the airspace.

The Designated Airspace Handbook:

4.2.3 CONTROL ZONES

Class C

(...)

Calgary Intl., Alta. — 6600' ASL (3000' AAE) ... a circle of 7 miles radius centred on the Calgary Intl., Alta. airport ...

EVIDENCE

Transport Canada called one witness, Regulatory Inspector Kevin German. Exhibits were introduced and identified showing that proper notice had been given to Mr. Wolsky, that the aircraft C-FWMN was owned by Executive Airlines Flight Training, and was flown by the Respondent Wolsky during the flight in question.

On January 22, 1996, by letter (Exhibit M-3), Mr. Gordon Lowe, General Manager of the Calgary ATC Facility, advised Rick McFarlane of Transport Canada, of an unauthorized entry into the Calgary International Airport Class C restricted airspace on January 19, 1996. The Aircraft was identified as a Cessna 310, registration C-FWMN.

Inspector German requested and received from the Calgary ATC, a copy of the ATC log for the evening of January 19, 1996. The log (Exhibit M-4) states at 0120z "Nordo aircraft squawking 7600 inbound. A/C not responding to light gun signals."

Mr. Lowe's letter sums up the incident as follows:

On the evening of January 19th an unknown target was observed 50 miles southeast of Calgary heading towards the airport squawking code 7600 (radio failure).

Weather at the time was CAVOK winds calm, runway 34 and 28 were active.

Blind transmissions were issued with instructions for identification turns etc. to no avail. The aircraft proceeded to set-up for a landing on runway 25. Other IFR traffic was vectored well out of the way. The aircraft landed runway 25 (light signal issued by tower) and came to a halt at the intersection of runway 34 dripping pools of fluid (gas/oil). This resulted in unserviceable status for runway 34 and 25 a reduction in TMU arrival rate from 46 to 28 with runway 28 the sole active. This status lasted for about 30 minutes until the aircraft could be removed and the liquids absorbed by dry chemicals. Some delays resulted to other Users.

The pilot later called the tower supervisor stating that he had filed a flight plan with RONLY in remarks along with ADCUS.

The flight plan was not received. Had this aircraft decided to land on runway 28 and stopped at the intersection of 34, the impact would have been much different.

Two points need to be addressed. First the missing flight plan. Secondly RONLY remarks do not qualify for automatic entry into class 'C' airspace. CFWMN/C-310 was the aircraft in question, apparently originating from somewhere in Florida arriving here January 19th 2000 MST (January 20th 0300 Z).

Exhibit M-5 showed the official sunset for the date in question to be 0005Z.

Mr. Wolsky took the stand and was sworn. Mr. Wolsky then proceeded to read from (Exhibit D-8) a paper entitled "Recollection of Events: C-FWMN C-310 Flight". Mr. Wolsky related the problems relating to the aircraft during the flight from Florida. Mr. Wolsky filed a flight plan in Sheridan Wyoming, for the last leg of his flight from Sheridan to Calgary.

Inspector German contacted the Casper FSS and confirmed the flight plan had been filed. The flight plan has to be opened by the pilot after the aircraft is airborne. This was not done, and the flight plan was discarded.

DISCUSSION

The evidence shows the flight, originating in Florida, encountered numerous radio and mechanical problems en route to Canada.

Mr. Wolsky testified he is a very experienced pilot, with world wide experience in the delivery of aircraft. Mr. Wolsky holds an Airline Transport licence, and an Instrument Rating. Mr. Wolsky testified under cross-examination he is very familiar with the Calgary Terminal Control area, and fully aware of the Class C airspace contained therein. Mr. Wolsky is aware of the flight rules in the USA.

Problems were anticipated with the number 2 radio by Mr. Wolsky in Sheridan Wyoming. He received no reply to his transmissions on arrival. He assumed no one was listening. When he

filed his flight plan he indicated RONLY (Receive Only) on the flight plan. No copy of a flight plan was put into evidence.

The USA flight rules state the pilot must open his flight plan after take-off. Mr. Wolsky says he broadcast his take-off on the appropriate frequency, but received no reply.

The flight plan was never opened. Flight plans are discarded if not opened by the pilot after take-off. The flight arrived in Canadian territory without a flight plan or any other prior notification.

CONCLUSION

It is clearly the responsibility of the pilot-in-command of an aircraft involved in an International flight such as this to ensure a flight plan is in place.

The flight from Sheridan to Calgary was initiated without confirmation of a flight plan being opened. Messages were transmitted, and replies were not received. The flight was continued to the Calgary control zone with this knowledge.

Class C airspace at the Calgary airport was entered by Cessna 310 C-FWMN piloted by Jerry Wolsky without prior permission or authorization to do so. The transponder code 7600 (radio failure) does not constitute authority to enter Class C airspace. The pilot had the opportunity to make other arrangements in Sheridan; however, he elected to continue the flight to Calgary.

The emergency circumstances surrounding the subsequent landing do not change the fact that the pilot was landing at Calgary, with or without an emergency.

The VFR flight landed after sunset, another violation of the VFR flight permit issued to the flight in question. It appears the pilot was going to land the aircraft at Calgary that evening regardless of the circumstances or the consequences.

DETERMINATION

I find, both on the evidence and the admission of Mr. Wolsky, that the Minister's allegation is sustained. The penalty is increased from \$100.00 to \$200.00.

Robert J. MacPherson
Member
Civil Aviation Tribunal