

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Wilhelm Anton Spehr, Respondent

LEGISLATION:

Aeronautics Act, R.S., c. 33 (1st Supp), s. 7.7

Canadian Aviation Regulations, SOR/96-433, s. 401.03(1)a

Student Pilot Permit, Instructor

Review Determination
Samuel J. Birenbaum

Decision: June 20, 2001

I find that the evidence indicates Mr. Spehr contravened paragraph 401.03(1)(a) of the Canadian Aviation Regulations, and that the Minister's assessed penalty of \$500.00 is appropriate. That amount is to be made payable to the Receiver General for Canada and must be received by the Civil Aviation Tribunal within fifteen days of service of this determination.

A **Review Hearing** on the above matter was held Friday, May 4, 2001 at 10:30 hours, at the Regional Municipality of Waterloo, in Kitchener, Ontario.

BACKGROUND

On August 19, 2000 near Ripley, Ontario, Mr. Spehr, the holder of a student pilot permit, flew solo an aircraft bearing the registration C-GQYK after placing a call to his instructor, Mr. Blake Evans, requesting permission to do so.

EVIDENCE

Following brief introductory remarks, a request for exclusion of all witnesses was granted. Ms. Pat Pybus, for the Minister, introduced her first witness, Mr. Ross Beck, who was duly sworn. Mr. Beck is a safety inspector for Transport Canada, and in September 2000 was advised by Mr. Bruce, another Transport Canada inspector, of the alleged offence. Mr. Beck testified that he investigated the journey log and, after appropriate advice and warnings to Mr. Spehr, undertook an interview with him. Mr. Spehr declined the advice that he may seek counsel, and provided a statement indicating that he flew solo with the authorization of Mr. Blake Evans on August 19, 2000. He next interviewed Mr. Evans who advised that he had not authorized the flight in question, and indeed, had not authorized any solo flying by Mr. Spehr since May 1999.

The first exhibit presented by the Minister's representative is a copy of a certificate of registration for aircraft C-GQYK, serial number AA5A-0052, indicating the owners to be Jan U. Prehn, Joannes J. Prehn and William A. Spehr, dated June 4, 1992 (Exhibit M-1).

The Minister introduced Exhibit M-2, a photocopy of the journey log for aircraft C-GQYK, indicating on August 19, 2000 a local flight with Mr. Spehr as pilot of the aircraft for an air time duration of 0.7 hours and a flight time duration of 0.8 hours. Neither the signature of this entry, nor the licence number of the individual making the entry, was legible.

Exhibit M-3 is a copy of the student pilot permit #5802-394724 issued to William Anthony Spehr on September 12, 1997, valid to August 1, 2002. Although not presented as an exhibit, Mr. Beck indicated that the medical certificate was also current until August 1, 2002.

The case presenting officer next introduced into evidence a taped recording of Mr. Spehr's warned witness statement taken November 3, 2000 by the witness (Exhibit M-4). Accompanying the tape is a typed copy of the contents of the recording. In this interview Mr. Spehr indicates that he always attempts to notify Mr. Evans before a solo flight, or leaves a message for him before flying solo, and that on the day in question, he felt that he had received permission for the solo flight by providing this notification. Mr. Spehr further indicates that he is aware that there is a loose relationship between the flight instructor and student in these circumstances, but that his belief was that the notification fulfilled the requirements for supervision by the instructor. On cross-examination by Mr. Spehr it was indicated that the answer to question #17 on the third line of the printed transcript should indicate "I am not 100% sure." The witness agreed that this was the more correct answer.

The next witness was Mr. Mark Yandle who was duly sworn. Mr. Yandle is an experienced pilot and an inspector for Transport Canada, within the flight training section. He stated that he discussed with Mr. Spehr in February 2001 the meaning of supervision of solo flying by a student pilot under the direction of a flight instructor, and that this should include at least a weather briefing, and the type of training to be undertaken with an acknowledgement from the student.

Exhibit M-5 was then introduced, indicating sections 405.31, 405.32, 405.33 of the *Canadian Aviation Regulations (CARs)* and section 426.56 of the *Personnel Licensing and Training Standards respecting Flight Training Units (Standards)*. These regulations indicate that no person shall commence a training flight unless the trainee has received pre-flight briefing and

flight exercises discussion from the flight instructor, who will then authorize the training flight and receive an acknowledgement of that authorization from the trainee. On cross-examination, Mr. Spehr indicated that he agreed with these regulations but that 80% of his solo flying did not comply with the regulations contained in Exhibit M-5.

The next witness, Mr. Blake Evans, a flight instructor for Evans Aviation, was duly sworn. He indicated that Mr. Spehr had been, and is now, one of his students, and that they had flown together intermittently in the past, but not in the past two years. He stated that he did not authorize a flight of aircraft C-GQYK by the Respondent on August 19, 2000 and was, himself, on that day, providing instruction to another student in the vicinity. On that day he observed two other converging aircraft in the circuit and was concerned by this observation. On cross-examination, Mr. Evans suggested that aircraft C-GQYK was doing a left-hand circuit for a runway with a right-hand circuit designation. Mr. Spehr indicated that if he felt he was not authorized to perform the flight in question, he would not have signed the journey log, and been so obvious about it. This concluded the evidence provided by the case presenting officer for the Minister.

The Respondent, Mr. Wilhelm Anton Spehr, requested to be sworn and stated that on August 19, 2000 he called Mr. Blake Evans for permission to perform a solo training flight. He stated that he had accumulated 32 hours of solo flying over the past years with Mr. Blake Evans as his flying instructor. This solo flying was done in a very loose manner and when he was asked by Mr. Evans to sign himself onto the aircraft he did not receive the supervision required as indicated in the Minister's Exhibit M-5. There was no cross-examination.

The next witness, Ms. Frauke Prehn, fiancée of Mr. Spehr, was sworn and stated in evidence that she was aware that there was a problem with the flight on August 19, 2000. Subsequently, she and Mr. Spehr visited the office of Mr. Evans, trying to determine who had made a complaint, but were unsuccessful in obtaining this information. The witness further indicated that she was aware that Mr. Spehr flew with the permission of Mr. Blake Evans and felt that, on the day of the flight in question, the procedures followed by the student pilot, Mr. Spehr, were the same as in past flights. This concluded the evidentiary part of the hearing.

LAW

Paragraph 401.03(1)(a) of the CARs states:

401.03 (1) No person shall act as a flight crew member or exercise the privileges of a flight crew permit, licence or rating unless

(a) subject to subsection (2) and sections 401.19 to 401.27, the person is the holder of, and can produce while so acting and while exercising such privileges, the appropriate permit, licence or rating; and

(b) the person is the holder of, and can produce while so acting and while exercising such privileges, a valid and appropriate medical certificate.

Sections 405.31 to 405.33 of the CARs:

405.31 No person shall commence a training flight unless the trainee has received from the flight instructor

(a) a pre-flight briefing; and

(b) where new flight exercises are to be conducted during the flight, preparatory ground instruction.

405.32 Before the commencement of a training flight, the flight instructor who will conduct or supervise the training shall

(a) authorize the training flight; and

(b) receive an acknowledgement of that authorization from the trainee.

405.33 (1) A person who conducts flight training for the issuance of a private pilot licence, a commercial pilot licence or a flight instructor rating—airplane or helicopter shall, for each trainee, maintain a pilot training record that meets the personnel licensing standards.

(2) On request from a trainee receiving training for the purposes referred to in subsection (1), the person responsible for maintaining the trainee's pilot training record shall

(a) certify the accuracy of the entries; and

(b) provide the trainee with the record.

(3) When a trainee has completed flight training, including all of the tests and written examinations required pursuant to Subpart 1, the person who conducted the flight training shall forward the trainee's pilot training record to the Minister.

ARGUMENT

Ms. Pat Pybus, the case presenting officer for the Minister, indicated that on the day in question, Mr. Spehr was identified as part owner of the aircraft and entered in his journey log that he had flown solo, despite the fact that Mr. Evans stated he had not granted permission for solo flying to Mr. Spehr on that date. She indicated the need for regulations to ensure aviation safety in this type of flight training.

The Respondent, Mr. Spehr, indicated that he never, ever was taught the correct procedure to obtain solo flying instruction, and would certainly have followed the regulations which he now knows are required. He stated that at no time did he alter his arrangement with Mr. Evans for solo flights that he performed as the student of this flight instructor.

DETERMINATION

The evidence clearly indicates that on August 19, 2000 the Respondent flew aircraft C-GQKY in a solo manner as part of the necessary training to obtain a pilot licence. He indicates that he followed all the procedures that were followed in previous solo training flights, and which he thought were the appropriate procedures. Upon examination of the Minister's Exhibit M-5, he agrees that he did not comply with the regulations pertaining to flight training under these circumstances, and indicates that he was never taught these regulations previously.

Mr. Evans is an experienced instructor and has known and trained Mr. Spehr for several years. If he failed, during that period of time, to teach his student the rules regarding solo training flights, then this reflects poorly upon the quality of the flight training received by his student. Mr. Spehr, on the other hand, has had ample time to undertake ground training, and should be, by this time, fully aware of these, and other, regulations under which he must perform his flying duties. There can be no excuse for a pilot with 35 hours of solo flight to be uninformed. At the very least, Mr. Spehr was aware that he had to contact a flight instructor before undertaking solo flying, and there is no convincing evidence that he did so on August 19, 2000.

Indeed, the evidence indicates otherwise, and thus, I find that Mr. Spehr contravened paragraph 401.03(1)(a) of the CARs, and that the Minister's assessed penalty of \$500.00 is appropriate.

Dr. Samuel Birenbaum
Member
Civil Aviation Tribunal