

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Patrick Robert Kalist, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, s. 521(b)

Pattern of Traffic

Review Determination
Gordon R. Mitchell

Decision: February 2, 1995

I dismiss the Minister's allegation and grant full relief from the Minister's monetary penalty.

The Review Hearing on the above matter was held Tuesday, January 10, 1995 at the Sioux Lookout Public Library, in the Town of Sioux Lookout, Ontario.

BACKGROUND

The Notice of Assessment of Monetary Penalty issued to Mr. Kalist 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 provisions:

Air Regulation 521 (b) in that, at approximately 1751 hours on September 2, 1994 at or near Sioux Lookout, Ontario, being the pilot-in-command of a Beech 99 aircraft bearing Registration Marks C-FKCG, you did operate the aircraft in the vicinity of an aerodrome and did unlawfully fail to conform with or avoid the pattern of traffic formed by other aircraft in operation by reason of the fact that

you elected to land on runway 16 while another aircraft was in the traffic pattern for runway 34."

THE LAW

Paragraph 521(b) reads as follows:

"521. The pilot-in-command of an aircraft operated on or in the vicinity of an aerodrome shall

(...)

(b) conform with or avoid the pattern of traffic formed by other aircraft in operation;"

OVERVIEW

The alleged infraction is said to have taken place during the following scenario:

Sabourin Air's Beech 99 C-FKCG, crewed by Captain Kalist and First Officer Mark Simon, was 20 miles back inbound for Sioux Lookout. An advisory by the FSS for runway 16 was received and confirmed.

Captain Greg Van Langenhove and First Officer Stephen Beer, aboard Bearskin Beech 99 C-GDSL operating as Bearskin Flight 324 which was 20 minutes late, were preparing to depart Sioux Lookout and elected to go on runway 34.

The Sabourin crew heard the radio transmissions. They advised they were 4 miles back and stated for the benefit of the Bearskin flight "You guys got time there if you hurry."

The weather as reported by the FSS, Sioux Lookout at this time was, "it's scattered condition right now at about 1500 to 2000 feet and it's been that way for the past two hours. Visibility at the surface is 12 to 15 miles."

The Bearskin aircraft proceeded to take off on runway 34, while the Sabourin aircraft continued on a slant final for runway 16. At this time both crews had the other in sight, and they met and passed at approximately the clear-cut for the runway. The separation varies considerably during the testimony!

EVIDENCE

The Minister's first witness, **Inspector Richard Gagnon**, entered the following Exhibits:

M-1 A copy of the Certificate of Registration of Aircraft for Sabourin Air's Beech 99, C-FKCG.

M-2 A copy of the page from Sabourin Air's Aircraft Journey Log for aircraft Beech 99, C-FKCG. The flight referred to at this Review Hearing is marked with an asterisk.

M-3 A copy of the page from Bearskin Lake Air Service's journey log for Beech 99, C-GDSL. The flight referred to for this aircraft is marked with an asterisk.

M-4 A tape and transcript headed: Incident Between C-FKCG and BLS324.

M-5 A tape and transcript entitled: Warned Statement of Patrick Robert Kalist.

David Smethurst was the second witness for the Minister. He was the assistant FSS operator on the day in question. At the time of the alleged incident, he was doing the weather and was called upstairs by Allan Penfold.

Allan Penfold, the Minister's third witness, explained the incident from his viewpoint and stated that the separation was approximately 100 feet. Mr. Penfold was the FSS operator on the day of the alleged incident.

Stephen David Beer, the Minister's fourth witness, advised that he was a First Officer with Bearskin Lake Air Service Ltd. and was a crew member on Bearskin Flight 324. He explained the events up to and including their take-off. After take-off, they made a very shallow turn to their right, which, he stated when questioned, was not to avoid a collision, but simply to add a little additional separation. He estimated that the pass was at an altitude of approximately 200 to 300 feet.

On cross-examination, First Officer Beer said that they had the Sabourin aircraft in sight and that it was not hindering their take-off, and that Sabourin's slant final was obviously done to avoid conflicting with Bearskin Flight 324.

Greg Van Langenhove, the Minister's fifth witness was the Captain of Bearskin Lake Air Service Flight 324 on the day of the alleged infraction. His testimony generally agreed with that of First Officer Beer. He saw Sabourin on a slant final and elected to proceed to take off, after rotation. The Captain stated that the Sabourin aircraft was at his ten o'clock position, and they passed with about 500 feet separation at an altitude of 200 to 300 feet. Captain Van Langenhove stated that, after they passed, the Sabourin aircraft continued on approach to runway 16. He said he felt the action was not professional from a passenger's viewpoint, but that it did not compromise safety!

In cross-examination, it was again made clear that each crew had the other in sight during the manoeuvres of Bearskin Air and Sabourin Air, when the alleged incident took place.

Inspector Gagnon was recalled by the Minister. He testified that he had had a conversation with Captain Kalist and that he had taped the conversation and had advised Captain Kalist that it was being taped (Exhibit M-5). This warned statement of Patrick Robert Kalist is shown as having been taken on October 3, 1994, at 11:30 a.m.

In cross-examination, Inspector Gagnon explained in detail why he thought paragraph 521(b) of the *Air Regulations* applied.

Mark Simon, First Officer on Sabourin aircraft C-FKCG, was called as a witness by Captain Kalist, the Respondent.

He related the facts as he saw them during the incident. He indicated that they, Captain Kalist and he, had heard the Bearskin Flight 324 call at the top of the hill stating to Flight Service that they intended going on runway 34.

When questioned, Mr. Simon further stated that, in his opinion, the safety of the other aircraft was not jeopardized by their actions.

Captain Kalist was sworn in and gave his presentation of the facts relating to the issue in question as he saw them. He related that they had called 20 miles back and were told that 16 was the active runway. They heard Bearskin 324 elect to go on runway 34, and Captain Kalist called back and said that if the Bearskin aircraft hurried they would have time to go. The Sabourin crew then called final for runway 16, intending a slant final. Captain Kalist said that they were in a configuration to land or overshoot. Bearskin's departure path was clear, and after take-off they made a shallow turn to their right. Captain Kalist said that, when the two aircraft met, there was plenty of separation in his estimation.

Captain Kalist presented the following Exhibits:

D-6 A copy of sections of the *Air Regulations*, with the following underlined by him:

"529. Where an aircraft is in flight or manoeuvring on the ground or water, the pilot-in-command shall give way to other aircraft landing or about to land.

531. No person shall take off or attempt to take off in an aircraft until such time as there is no apparent risk of collision with any other aircraft.

532. Where the pilot-in-command of an aircraft is aware that another aircraft is compelled to land, he shall give way to that other aircraft."

D-7 A copy of A.I.P. Canada page RAC 4-19, with the following parts underlined:

"4.5.7VFR Communication Procedures at Aerodromes With MFs and ATFs

(a) *Radio-Equipped Aircraft*

The following procedures shall be followed by pilots or radio-equipped aircraft at uncontrolled aerodromes with MFs and should also be followed by pilots at aerodromes with ATFs:

(...)

(ii) *Departure*

(...)

(B) ascertain by radio on the MF or ATF and by visual observation that no other aircraft or vehicle is likely to come into contact with the aircraft during takeoff; and

(...)

(iii) *Arrival*

(A) report position, altitude, arrival procedure intentions and estimated time of landing *well* prior to entering the specified area (5 to 10 NM)

(...)

(C) report joining the circuit pattern giving position in the pattern;

(D) report established on final approach; and"

D-8 A letter from Randy Vitt, Standby Investigator for the Transportation Safety Board of Canada (TSB) to Mr. Pat Kalist informing him that a CADORS (Civil Aviation Daily Occurrence Reporting System) had been received regarding the alleged incident between Bearskin Flight 324 and Sabourin aircraft C-FKCG. Mr. Vitt advises that the TSB did not conduct an investigation into the occurrence.

D-9 Four letters of reference regarding Patrick Kalist from individuals who know and work with him.

CONCLUSION

The fact that the Sioux Lookout airport is uncontrolled is the major reason for this alleged incident. At a controlled airport, this would not likely have happened. The tower at a controlled airport would have instructed Bearskin Flight 324 to hold until the Sabourin aircraft inbound on runway 16, the active runway at the start, had landed and was clear.

Sioux Lookout airport being uncontrolled led Allan Penfold to state, when asked if Sabourin was advised of the change from runway 16 to 34 whether he could have instructed Sabourin to go around, "I could have suggested that he break off and go to 34, beyond that I would be verging on a control function."

Captain Van Langenhove elected to take off from runway 34 while knowing that the Sabourin flight was inbound on runway 16. His action changed the active runway from 16 to 34. The fact that he was 20 minutes behind schedule is not a realistic reason for this, even if it was a shorter distance to taxi to 34.

Captain Kalist acknowledged and said "You can go if you hurry." In accommodating the Bearskin aircraft, he set himself up as the scapegoat in this episode and later finds he is being charged under paragraph 521(b) of the *Air Regulations*.

Captain Van Langenhove, in the Bearskin aircraft Flight 324, departed on runway 34. Captain Kalist, in the Sabourin aircraft, continued his slant final approach for runway 16. The two aircraft met and cleared at approximately the clear-cut at the end of the runway and at an altitude of approximately 200 to 300 feet. Another estimate was given as 400 to 500 feet.

The crews of the two aircraft were not alarmed. Captain Van Langenhove estimated the separation as 500 feet, and he was certainly in the best location to judge this.

The report from the FSS operator was that the aircraft met and passed within 100 feet of each other. His observation point was approximately three quarters to one mile from where the alleged incident took place. One's perception varies greatly with the increase in distance.

I do not condone this type of operation, but realism must enter the picture. The crews involved are not likely to be part of such a situation again.

Stronger winds on that day would have dictated that the active runway would remain unchanged. However, the winds were light, hence the scenario of changing active runways.

Allan Penfold filed a CADORS on this alleged incident, on the instructions of Inspector Gagnon.

A letter from Randy Vitt, Standby Investigator, indicates that the CADORS received by the TSB was not investigated.

I was impressed by the professional attitude of the crews of both aircraft under trying circumstances and appreciate their straightforward testimony given at the Review Hearing.

DETERMINATION

I dismiss the Minister's allegation and grant full relief from the Minister's monetary penalty.

Gordon R. Mitchell
Member
Civil Aviation Tribunal