

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport, Applicant**

- and -

**Awood Air Ltd., Respondent**

**LEGISLATION:**

*ANO VII*, No. 3, s. 9

**Operation in contravention of operating specifications**

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**Review Determination**  
**John J. Eberhard, Q.C.**

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**Decision: December 5, 1990**

**Heard:** Thunder Bay, Ontario, November 28, 1990

*That Awood Air Ltd. did contravene the provisions noted above, and the decision of a \$500 monetary penalty by the Minister is hereby confirmed. Said penalty is due on or before January 25, 1991, payable to the Receiver General for Canada and mailed to the Civil Aviation Tribunal at the above address.*

The Review Hearing convened at 09:00 hours at the Fort William Post Office Building, 221 North Archibald Street, 2nd Floor Board Room, in the city of Thunder Bay, Ontario, on November 28, 1990.

This Review Hearing was conducted in accordance with the provisions of section 6.7 to 8.2 of the *Aeronautics Act*. The Notice of Assessment of Monetary Penalty was forwarded to Awood Air Ltd. on June 8, 1990, alleging a contravention of *Air Navigation Order*, Series VII, No. 3, paragraph 9. It is alleged that the corporation allowed its Beechcraft 100 aircraft to be flown in contravention of the conditions of its operating certificate on the days alleged. The flights are alleged to have taken place on June 21 and 22, 1989, and on November 5 and 21, 1989.

The Notice of Assessment of Monetary Penalty reads, in part, 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): *Air Navigation Order*, Series VIII, No. 3, paragraph 9, in that, on the 21 and 22 of June, 1989, at or near Thunder Bay, Ontario, you did operate a Beechcraft 100, bearing Canadian registration marks C-GASW, on a series of commercial instrument flight rules flights when only one pilot was qualified to fly the aircraft, a violation of General Condition No. 2 of your operating certificate;

Further: you have contravened *Air Navigation Order*, Series VII, No. 3, paragraph 9, in that between November 5 and 21, 1989, at or near Thunder Bay, Ontario, you did operate a Beechcraft 100, bearing Canadian registration C-GASW, on a series of commercial instrument flight rules flights when only one pilot was qualified to fly the aircraft, a violation of General Condition No. 2 of your operating certificate, thereby committing an offence under section 7.3(3) of the *Aeronautics Act* of Canada.

At the commencement of the hearing, certain admissions were made on the consent of both parties as a result of their preliminary conference. They were as follows:

1. The flights that were alleged did indeed take place on the dates alleged (June 21 and 22; November 5 and 21, 1989).
2. It was agreed that the subject aircraft was a Beechcraft 100, registration no. C-GASW.
3. The pilot in the right seat, one Sammy Sciscioni, had not, as of the time of the flights, completed his proficiency check ride or the required training. Between June, 1989, and November 21, 1989, he was not a qualified IFR pilot.
4. The subject flights were commercial air transport flights pursuant to instrument flight rules (IFR).
5. Single-pilot IFR authority was granted to Awood Air Ltd., on April 5, 1990, for the Beechcraft 100.

At the commencement of the hearing, the parties agreed to allow (on consent) certain changes to the Notice of Assessment of Monetary Penalty. The amendments were as follows:

- a) *Air Navigation Order*, Series VIII, in court, number one was amended to Series VII.
- b) Section 7.3(3) of the *Aeronautics Act* of Canada was amended to 7.6(2).

Mr. Pratt, for the Minister, called Donald W. McDonald as his first and only witness. Mr. McDonald, at the relevant time, was Regional Manager, Air Carrier (Operations) Section, whose duties included making recommendations in connection with the issuance of operating certificates. He testified to the issuance of Certificate No. 6307, which was filed as an exhibit.

That operating certificate was issued to Awood Air Ltd. and had several amendments. An amendment on April 5, 1990, specified that authorization was given to the company to permit a Beechcraft 100 to be flown IFR without a second-in-command. That was the first date Transport Canada acknowledged, by way of a specific amendment, to the operations specifications that this particular aircraft could be operated in this manner by this company.

*Air Navigation Order*, VII, No. 3, section 39(3) reads as follows:

"No air carrier shall operate a multi-engine aeroplane under IFR in an air transport operation unless the flight crew includes at least two pilots, one of whom shall be designated by the air carrier as pilot-in-command and the other as second-in-command, except where the director has authorized, in the operations specifications, operation of the airplane without a second-in-command".

*Air Navigation Order*, VIII, No. 3, section 9 reads as follows:

"No air carrier shall conduct an air transport operation in violation or contravention of the operations specifications and conditions forming part of his operating certificate".

The closest thing to any authorization for a Beechcraft 100 was, by way of correspondence, directed to Awood Air Ltd. on February 22, 1989, which reads, in part, as follows (Exhibit M-4):

"Pending issue of formal document, this constitutes temporary amendment, valid until April 23, 1989, to Operating Certificate No. 6307 by the addition of Beech A-100 under types of aircraft authorized for passengers at night or under IFR".

That letter was signed by the acting regional director, Aviation Regulation, Central Region of Transport Canada.

It was not until the Amendment No. 4 to *Operations Specifications* noted above on April 5, 1990, that this particular aircraft was permitted to be operated IFR without second-in-command.

Mr. Robin Lacey testified for Awood Air Ltd. Mr. Lacey is the operations manager but, at the relevant time, was the chief pilot. In January, 1989, he was given a pilot proficiency ride on the Beechcraft 100. No other pilot was qualified on the Beechcraft 100 in the company at that time. He indicated that on several occasions, he contacted Transport Canada by telephone to inquire as to whether or not a single-pilot IFR authority had been granted to the company. At least two of these calls were confirmed by Mr. McDonald, who testified that his review of the file revealed telephone calls on March 22 and March 23, 1990. As a result of these contacts, Mr. McDonald was able to confirm that officials at Transport Canada intended to process the request in the usual way and, as expected, within three or four weeks (April 5, 1990, to be exact) single pilot authorization was granted by the Ottawa office.

Although Mr. Lacey's evidence was unsupported by any documentation, he expressed a sense of frustration in his dealings with Transport Canada in having this authority issued. At one point, he

testified that he had sent a letter to the Department asking for authorization, but was unable to produce the letter. No formal request or application of any kind by Awood Air Ltd. was brought to the attention of the Tribunal.

At one point in his evidence, he stated that he believed the authority had been approved verbally as a result of a request for temporary authority from a person by the name of Maragic in February of 1989. However, there was no witness produced or other details given that would support this contention. He also indicated that the pilot in the right seat was flying the aircraft in June, 1989, so as to "gain experience". The operations manager testified that he was under the impression that this would be "okay".

Of most importance, Mr. Lacey acknowledged that in order to legally fly the aircraft, he was aware that single-pilot IFR authorization would have to be granted in writing by way of the amendment to the operating certificate.

Clearly, Awood Air Ltd., through Mr. Lacey, was aware that lawful authority to operate the aircraft on the days alleged had not been granted.

In summation, Mr. Lacey argued that he had been trying to get approval for approximately one year for this amendment. He expressed frustration as a result of the time it took to get the operating certificate changed. He also complained about an error in the operations manual which was not relevant to the matter at hand.

In summation, Mr. Pratt, on behalf of the Minister, urged the Tribunal that there was no justification for the aircraft being flown without two qualified pilots prior to the time of the amendment to the operating certificate.

I have no difficulty in accepting the submission of Mr. Pratt. It is clear that each of the elements of the offences have been made out by way of admissions on the consent of both parties and the evidence provided by both parties. Clearly, the regulatory scheme promulgated by the *Air Navigation Orders* issued under the regulations of the *Aeronautics Act* could not possibly be monitored or enforced if important operating documents (such as the operating certificate containing general conditions as well as operating specifications by way of amendments) were to be handled by the hundreds of people in the transportation community on a verbal basis. In addition, any breach of an operating certificate must be strictly enforced and applied in a uniform manner which is known to all operators.

As confirmed by Mr. Lacey himself, it was clear that Awood Air Ltd. was operating this particular aircraft on the days in question in a manner which was inconsistent with the conditions of the certificate. Accordingly, the Respondent was clearly in contravention of the designated provision.

Having heard the Minister in connection with the penalty, I see no reason to modify the assessment made in the original notice of monetary penalty. Two hundred and fifty dollars for each count of an offence of this kind would appear to be, if anything, lenient. Accordingly, the total assessment of \$500 dollars is hereby confirmed.