

CIVIL AVIATION TRIBUNAL

BETWEEN:

Ellis Hale Bottenfield, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, as am., s. 826(1)

Journey Log Entries

Review Determination
Gordon R. Mitchell

Decision: November 25, 1993

I concur with the Ministers decision for a 7 day suspension in this matter and that it begin on Dec 24, 1993 midnight.

The Review Hearing on the above entitled matter was held Thursday, November 25, 1993 at 10:00 hours, at the Pickle Lake Hotel, in the Town of Pickle Lake, Ontario.

BACKGROUND

Mr. Bottenfield received a 7-day suspension for having contravened subsection 826(1) of the Air Regulations. The Notice of Suspension reads as follows:

"Air Regulation 826(1) in that at approximately 0905 hours CST on 02 April 1993 at or near Sioux Lookout, Ontario, being the owner of a DHC-3 DeHavilland aircraft bearing Registration Marks C-FFIJ, you did unlawfully fail to maintain for the said aircraft an aircraft journey log and, more specifically, after landing at Sioux Lookout, Ontario with a defective radio, the particulars of the defective radio were not entered in the journey log as is directed in Air Navigation Order Series VIII, Number 2."

Subsection 826(1) of the Air Regulations states the following:

"Every owner of an aircraft, other than an ultra-light aeroplane, registered under these Regulations shall maintain for that aircraft an aircraft journey log and an aircraft technical log."

At a pre-hearing conference, the Minister's representative and Mr. Bottenfield agreed that affidavit evidence would be admitted. Two affidavits were later submitted as Exhibits M-5 and M-6.

The following documents were entered as Exhibits:

Exhibit M-1 - A copy of the Certificate of Registration for DeHavilland aircraft DHC-3, Registration Marks C-FFIJ.

Exhibit M-2 - A copy of a page from the Aircraft Journey Log for DHC-3 aircraft registered C-FFIJ, dated 2/4/93.

Exhibit M-3 - A copy of the work order No. 4937 from Skyline Aviation & Avionics Ltd., covering a radio repair for Winisk Air.

Exhibit M-4 - A copy of pages 3-5 to 3-8 of Winisk Air's Operations Manual.

Exhibit M-5 - A letter from RCMP Inspector L.J. Baker of the Prince Rupert Detachment dated October 15, 1993, with the affidavit by Frank Aquino attached.

Exhibit M-6 - An Affidavit by Stephen Dale Gerber with a copy of an Occurrence Report for C-FFIJ.

Mr. Hanson, the Minister's witness, related details of the flight to Sioux Lookout. In Exhibit M-2, Daily Flight Report for C-FFIJ dated 2/4/93, Mr. Bottenfield is shown as Captain and Mr. Aquino as 1st Officer, with no passengers on board. It was noted that the Daily Flight Report has no entries in the section for listing defects, on the bottom left.

Mr. Aquino, in his signed Affidavit, states in part: "FIJ was en route from PKL to Sioux, knowing that are (sic) radio was transmitting only, we called Sioux FSS 10 miles out, told them are (sic) position and intentions and that we would have a close eye for conflicting traffic."

Mr. Stephen Dale Gerber's Affidavit shows in part: "I was on shift at the Sioux Lookout FSS when an aircraft landed on runway 34 at 0849 local without making any radio contact with the FSS. When the aircraft taxied in, it was identified as a DHC-3 with markings C-FFIJ." An Air Traffic Services Aircraft Occurrence Report on the incident is attached to this Affidavit.

Mr. Bottenfield, Captain of the aircraft for the flight in question, testified on his own behalf. He said: "I am not arguing that the radio was defective. I am not arguing that there was no entry made in the log book."

CONCLUSION

The evidence presented at this Hearing leaves no doubt in my mind about the condition of the radio. During C-FFIJ's flight from Pickle Lake to Sioux Lookout on April 2, 1993, the radio was defective.

The issue now centres on the fact that no log book entry was made for the defective radio. The pilot, Mr. Bottenfield, has agreed to this fact, a fact that is evident from the log book.

DETERMINATION

I CONCUR WITH THE MINISTER'S DECISION TO SUSPEND MR. BOTTENFIELD'S LICENCE FOR A 7-DAY PERIOD. SAID SUSPENSION WILL BEGIN DECEMBER 24, 1993 AT MIDNIGHT.