

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

2431-9154 Québec Inc., Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 7.7

Canadian Aviation Regulations 703.86

**Review Determination
Suzanne Racine**

Decision: January 10, 2008

Citation: *2431-9154 Québec Inc. v. Canada (Minister of Transport)*, 2008 TATCE 2 (review)

Heard at Sept-Îles, Quebec, on November 8, 2007

Held: Based on circumstances specific to this matter, the \$5 000 penalty assessed by the Minister of Transport is reduced to \$2 500. The total amount of the penalty, i.e. \$2 500, is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of the service of this determination.

1. BACKGROUND

[1] On April 2, 2007, the Minister of Transport served the applicant, 2431-9154 Québec Inc., doing business as Sept-Îles Aviation Enr., with a notice of assessment of penalty in the amount of \$5 000, pursuant to section 7.7(1) of the *Aeronautics Act*, R.S.C. 1985, c. A-2 (Act), for allegedly contravening section 703.86 of the *Canadian Aviation Regulations*, SOR/96-433 (CARs).

[2] The Minister alleges that the applicant did the following:

[translation]

You have contravened section 703.86 of the *Canadian Aviation Regulations*.

On or about November 20, 2006, at approximately 12:00 UTC, in the vicinity of Rivière aux Saumons, Quebec, as an air operator you operated an aircraft with passengers on board in IFR flight with fewer than two pilots, failing to comply with the *Commercial Air Service Standards*, namely that the pilot, Christophe Vallantin, had not passed a single-pilot proficiency check.

Penalty: \$5 000

[3] The applicant admits the facts alleged above. However, it is contesting the penalty of \$5 000, which it considers to be excessive, and is asking that it be reduced.

II. LAW

[4] Section 7.7(1) of the Act provides as follows:

7.7 (1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision.

[5] Section 703.86 of the CARs reads as follows:

703.86 No air operator shall operate an aircraft with passengers on board in IFR flight with fewer than two pilots unless the air operator

(a) is authorized to do so in its air operator certificate; and

(b) complies with the [*Commercial Air Service Standards*](#).

[6] Section 723.86 of the *Commercial Air Service Standards* (Standards) reads as follows:

Single Pilot IFR Requirements

The standard for the operation of an aeroplane with passengers on board in IFR flight without a second-in-command is:

(1) the pilot shall have a minimum of 1000 hours of flight time which shall include, if the type to be flown is multi-engined, 100 hours on multi-engined aeroplanes. In addition, the pilot shall have 50 hours of simulated or actual flight in IMC, and a total of 50 hours flight time on the aeroplane type;

(2) the Pilot Proficiency Check shall be in the aeroplane type flown or if applicable in one of the types grouped for Pilot Proficiency Check renewals and shall include the following:

- (a) knowledge of the auto-pilot operations and limitations;
 - (b) performance of normal and emergency procedures without assistance;
 - (c) passenger briefing with respect to emergency evacuation; and
 - (d) demonstration of the use of the auto-pilot during appropriate phases of flight;
- (3) flight in pressurized aeroplanes shall be conducted at or below FL 250; and
- (4) a pilot's single pilot proficiency, if still valid, is transferable between air operators which have an Air Operator Certificate authority to conduct such operations and utilize the same type and model of aeroplane.

III. MINISTER'S SUBMISSIONS

[7] The Minister argues that there are no mitigating circumstances warranting a reduction of the penalty assessed. The penalty corresponds to the minimum penalty established in the table of sanctions for a first contravention of section 703.86 of the CARs.

[8] The Minister recommends that the Tribunal follow this table in order to ensure that air operators who commit similar offences obtain similar sanctions. Air operators are responsible for the actions of their personnel. They cannot allege that a pilot's decision was made without their knowledge to absolve themselves from responsibility.

IV. APPLICANT'S SUBMISSIONS

[9] The applicant is asking the Tribunal to take the following factors into account to reduce the amount of the sanction:

- Mr. Vallantin misinterpreted the requirements for making a single-pilot IFR flight (instrument flight rules), specifically in regard to the prior number of hours of flight time required of the pilot (exhibit R-1);
- Mr. Vallantin believed that he satisfied the requirements. He therefore decided to make this IFR flight in order to benefit from radar cover, given that there were many aircraft in the vicinity of Rivière aux Saumons during the hunting season;
- the applicant was unaware of Mr. Vallantin's decision;
- Mr. Vallantin was not at all obliged to make this IFR flight, but he did so for safety reasons; and

- Mr. Vallantin has been working for the applicant since 2002.

V. REASONS

[10] The appeal decision *Canada (Minister of Transport) v. Wyer*, [1988], CAT file no. O-0075-33, [1988] C.A.T.D. no. 123 (QL), is the reference for principles which must guide the assessment of an appropriate sanction. Aside from denunciation, deterrence, rehabilitation and the Minister's enforcement recommendations, this matter indicates that to be fair, the penalty should be assessed by balancing the promotion of compliance in the interest of aviation safety, protection of the public and aggravating or mitigating circumstances in regard to the matter.

[11] We believe, first, that consideration must be given to the fact that the applicant admitted all of the facts of the offence alleged under section 703.86 of the CARs and section 723.86 of the Standards. Mr. Vallantin's error in interpreting section 723.86 of the Standards, prompted by his concern for safety, does not indicate that aviation safety was compromised on November 20, 2006, in Rivière aux Saumons.

[12] Indeed, we must also take into account the fact that the applicant is responsible for ensuring its pilots' strict compliance with the applicable regulations and the Standards. While these are useful for determining the application of similar sanctions in regard to similar offences, the Tribunal is not bound by the sanctions and penalties recommended by Transport Canada.

VI. DETERMINATION

[13] Considering the particular circumstances of this matter, the Tribunal reduces the \$5 000 penalty assessed by Minister to \$2 500.

January 10, 2008

Suzanne Racine

Member