

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

L & R Aircraft Repairs, Respondent

LEGISLATION:

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

Canadian Aviation Regulations, SOR/96-433, s. 571.10(1)

Appeal decision

Allister W. Ogilvie, E. David Dover, Samuel J. Birenbaum

Decision: December 23, 2003

We dismiss the appeal and uphold the penalty of \$1,250.00. That amount is payable to the Receiver General for Canada and must be received by the Tribunal within fifteen days of service of this decision.

An appeal hearing on the above matter was held Wednesday, October 8, 2003 at 10:00 hours at the Law Courts Building, in Whitehorse, Yukon.

BACKGROUND

L & R Aircraft Repairs [hereinafter L & R] is a small approved maintenance organization (AMO) located near Watson Lake in the Yukon Territory. The AMO came to the attention of Transport Canada regarding a Cessna 185 aircraft, C-FILD. A dispute over the quality of maintenance provided had arisen and the aircraft owner had complained to Transport Canada.

After a review of the circumstances Transport Canada's inspectors alleged that the technical records for the aircraft were deficient in some aspects. A Notice of Assessment of Monetary Penalty was issued which read in part:

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):

On or about the 17th day of June 2001, at or near Watson Lake, Yukon, you did sign a maintenance release, on an aircraft, to wit a Cessna 180, Canadian registration C-FILD, required pursuant to section 605.85 of the Canadian Aviation Regulations, when the maintenance release did not meet the applicable requirements specified in section 571.10 of the Airworthiness Manual, more specifically, you failed to document maintenance performed on engine mounts, circuit breakers, failed to document part numbers and serial numbers for a throttle cable change, and float change, and failed to document outstanding defects into the Journey Logbook, all occurrences are a violation of section 571.10(1) of the Canadian Aviation Regulations.

MONETARY PENALTY – \$ 2,500.00

A hearing of the matter was held in Watson Lake on October 24, 2002 before a single Tribunal Member. He found that the Minister had proven two of the four allegations; not recording specific part numbers for a throttle cable and float barrels; failing to record deferred maintenance in the journey log book. Consequently he reduced the penalty from \$2,500.00 to \$1,250.00.

L & R were not satisfied with the determination and therefore applied for an appeal hearing which was heard before three members on October 8, 2003 in Whitehorse Yukon.

GROUND OF APPEAL

1. The Minister did not establish, in concluding that L & R "... failed to provide sufficiently detailed information in their Journey log entry", what legal standard is to be used to determine the minimum entry that constitutes "sufficiently detailed information". L & R disputed the interpretation of AWM 571.10(2)(b) which was put forward by the crown witness and which the CAT member accepted without demonstrating that this was a correct interpretation.
2. The Minister did not establish that there is an additional requirement to enter outstanding work in the Journey Log if the requirements of AWM 571.03(1)(g) are met by the recording of such work in an open work list.

Two further grounds of appeal were added in the presentation at the hearing:

3. Denial of Natural Justice, rejection of expert testimony.
4. Pre-existing bias in favour of Transport Canada.

SUBMISSIONS OF THE PARTIES

Appellant

Ground #1

The Appellant states that the crux of the matter regarding part and serial numbers lies in the interpretation of the *Airworthiness Manual* (AWM) paragraph 571.10(2)(b) which specifies the information required. They say that Transport Canada's witness's interpretation is that each of the parts installed requires a part number and serial number, whereas their interpretation is that the only product that must be identified to that standard is the aeronautical product, the total assembly of which is being released. In this case it was aircraft ILD which was released.

They submit that support for that position is found in the final clause of subparagraph (i) which states, "unless the release is being made in an established Technical Record that contains this information". The regulation does not stipulate in which technical record the release may be made. If it were to be made in an established technical record such as the journey log or technical log for an engine or propeller, for example, the applicable six parameters would be included in the data box in the front page of the log. If made in some other technical record then data necessary to identify the limits of the release would have to be entered.

It was submitted that such a principle applies to any aeronautical product being released whether it be a complete aircraft or any of the components. In each case the product identification number for the component being released must contain the six product identification numbers specified in the regulation.

If on the other hand as the Minister's witness argues, the standard with its six parameters is intended to apply to every part including nuts, bolts and washers then there would be no limit to what must be recorded.

The Minister's interpretation of the standard in question is therefore not compatible with the requirement specified. Notwithstanding the failure of the Minister's witness to demonstrate that L & R were required by regulation to enter part numbers of the engine mounts, float barrels and throttle cable as an accompaniment to the maintenance release, the hearing Member found the log entry to be insufficient. Therefore his conclusion was reached in error.

Ground #2

Entry of Defects

The Appellant argues that there is no legal basis for the charge. Although the Minister's witness stated that the recording of outstanding defects in a journey log was a requirement, it was never established where that requirement came from. It is not found in section 571.10 nor did the Minister's witness nor the Member provide the authority.

The Member summarized the outstanding defects to be items 1 through 6 on the Additional Work sheets, Exhibit M-8. By inclusion of those items on the Additional Work list the company

was then in compliance with the standard of section 571.03 of the AWM, Recording of Maintenance and Elementary Work.

Paragraph (g) allows that where a task is partially complete, a general description of any outstanding work can be recorded on open work lists, inspection sheets or job cards. L & R were in compliance as the outstanding work was on additional work sheets. Therefore the conclusion reached by the hearing Member was in error.

Additional Grounds

Ground #3

Denial of natural justice – rejection of expert witness

Mr. David Hilchie, a Transport Canada inspector with Maintenance and Manufacturing, the division that deals with aircraft maintenance, was denied the opportunity of testifying as an expert witness. The grounds for denying him as an expert were not made clear at the hearing nor were they explained in the Review Determination.

As the grounds for the denial of the right to have him testify was not justified and supported by reasoning, then the Tribunal process was not carried out in accordance with the principles of fairness and natural justice and the case therefore should be dismissed.

Ground #4

Pre-existing bias in favour of Transport Canada

The following statement is found in the Review Determination at the "Background" summary: "Transport Canada's inspection of C-FILD revealed several significant discrepancies pertinent to the aircraft's technical records."

This statement makes an unwarranted assumption as these are *alleged* discrepancies. This statement made in a background summary shows a pre-existing bias in favour of the Minister of Transport's case.

Respondent

Ground #1

The Minister submits that the maintenance release did not meet the regulatory requirement because the maintenance release did not include the part numbers of the engine mounts, float barrels and throttle cable. Although there were entries relating to the installation of an engine, throttle cable and float barrels, there were no part numbers in the technical record.

Ground #2

The Minister contends that the maintenance release in question did not meet the requirements of subparagraph 571.10(2)(a)(ii) of the AWM because the person signing the release did not ensure that the technical record, in which the release was signed, was correct in respect of the status of outstanding tasks.

Outstanding tasks were identified on Exhibit M-5, the "Additional Work" sheet. It was submitted that such sheets do not constitute a technical record as they do not conform to section 605.92 of the *Canadian Aviation Regulations* (CARs), nor were the sheets attached to Exhibit M-2, the aircraft journey log.

DISCUSSION

The following provisions apply in this circumstance:

Subsection 571.10(1) of the CARs:

571.10 (1) No person shall sign a maintenance release required pursuant to section 605.85 or permit anyone whom the person supervises to sign a maintenance release, unless the standards of airworthiness applicable to the maintenance performed and stated in Chapter 571 of the *Airworthiness Manual* have been complied with and the maintenance release meets the applicable requirements specified in section 571.10 of the *Airworthiness Manual*.

Section 571.10 of the AWM, Maintenance Release:

(1) [not applicable here]

(2) Maintenance Release Record Keeping

(a) A maintenance release applies only to the particular maintenance task or tasks to which it relates. Therefore:

(i) it is acceptable to sign a maintenance release in respect of a single task or group of tasks, even if other work is outstanding on the aircraft, provided that the wording of the entry leaves no doubt as to the scope of work being certified; and

(ii) it is the responsibility of the person signing a maintenance release to ensure that the technical record is correct in respect of the status of any outstanding task.

(b) Each maintenance release must include the following information:

(i) product identification (aircraft registration marking, nomenclature, type/model number, name of manufacturer, part number, and serial number), unless the

release is being made in an established Technical Record that contains this information;

(ii) a brief description of the work performed, including applicable reference data, when the reference data is not included in the maintenance publications of the manufacturer, and the work order number.

Section 101.01 of the CARs:

"maintenance release" means a certification made following the maintenance of an aeronautical product, indicating that the maintenance was performed in accordance with the applicable provisions of these Regulations and the standards of airworthiness;

Subsection 3(1) of the *Aeronautics Act*:

"aeronautical product" means any aircraft, aircraft engine, aircraft propeller or aircraft appliance or part of the component parts of any of those things, including any computer system and software;

The *Gage Canadian Dictionary* defines: "nomenclature" "a system of names or terms used in a particular field."

Ground #1 — dismissed

The issue to be decided is whether the maintenance release of June 17, 2001 met the requirements of section 571.10 of the AWM, more particularly whether the maintenance release was sufficient to meet the requirements at paragraph 2(b). It stipulates that each maintenance release must include the following information:

(i) product identification (aircraft registration marking, nomenclature, type/model number, name of manufacturer, part number, and serial number), unless the release is being made in an established Technical Record that contains this information;

The Appellant states in its factum that the product identification for the component being released must contain the six product identification parameters specified. That would seem to be the interpretation taken by the Minister's witness as well (transcript p. 45-49), but the point was not specifically raised in the Minister's factum.

We have come to the conclusion that what "must" be included is the product identification, but that does not necessarily mean all six parameters. Those parameters in brackets are examples of the types of information that are to be utilized to identify the product, in the particular circumstance. This case illustrates that point and it can also be shown by analysis.

In the case at hand the Member notes that the throttle cable does not have a serial number by design of the original manufacturer. Hence a serial number simply cannot be entered for that particular part. However its part number and or nomenclature (description) could have been utilized to identify the product.

As can be seen from the definitions, an aeronautical product can range from an aircraft to aircraft parts and components. A maintenance release is the certification following maintenance of an aeronautical product.

The aircraft or airframe can be identified by more than one of the parameters listed such as: registration marking, manufacturer name, type, model and serial number. Some parameters do not fit. For instance what would be the part number or nomenclature of this aircraft?

However a single component or part may not be identified in conjunction with an aircraft registration. That can be seen by the requirements for entry in technical records other than a journey log, pursuant to section 605.96 of the CARs, Schedule II. In column I, Particulars to Be Entered, it stipulates: "Manufacturer's name, type, model designation and serial number and, *in the case of an airframe, the aircraft nationality and registration marks*" [emphasis added]. The aircraft nationality and registration marks do not apply to the components, if alone, such as the engine or propeller.

It can be seen that all six parameters of paragraph 571.10(2)(b) of the AWM are not always applicable but what "must" be done is to identify the product sufficiently.

The hearing Member has found that there was not sufficient identification made in the release regarding the throttle cables and float barrels as their part numbers were not part of the release. We find that his determination is within the ambit of the section and therefore not in error. We dismiss this ground of appeal.

The Appellant had raised the issue of whether each and every product, i.e., nuts, bolts, washers, cotter pins, etc. all of which have AN stock numbers need to be identified. That is a question that is not before us as we are confined to parameters of the allegation which does not include those items. We do agree that such a question should be clarified and further note that this case shows a lack of continuity regarding requirements on behalf of Transport Canada. The Appellant's witness was not acting in his capacity as a Transport Canada inspector, but his evidence was based upon his experience as an inspector. It contradicted that of the Respondent's witness, another Transport Canada inspector. Thus, all the contradictory evidence on the record is supplied by Transport Canada's employees.

Ground #2 — dismissed

The outstanding tasks being referred to in this ground were items 1 through 6 on the Additional Work sheets, M-5 in their original form, M-8 wherein the handwriting is deciphered.

We find that the standard to section 571.10 does indicate a requirement to enter outstanding tasks. Subparagraph 571.10(2)(a)(ii) of the AWM states that : "it is the responsibility of the

person signing a maintenance release to ensure that the *technical record* is correct in respect of the status of *any outstanding task*." [emphasis added]

The Appellant's factum consistently argues that there is no basis for a requirement for a posting in the *journey log*. However section 605.92 of the CARs addressing technical records provides at paragraph (1)(a) that a journey log is a technical record.

The Appellant's reliance that being in conformance with paragraph 571.03(g) of the AWM somehow alleviates the problem is misplaced. The issue here is conformity with section 571.10, maintenance release. The standard to section 571.03 of the AWM in its information note states: "*This regulation is applicable to the making of an entry into a technical record, which is distinct from the maintenance release addressed by section 571.10 of the CARs.*"

An analysis of paragraph (g) upon which the Appellant relies also reveals its inapplicability. They rely on a description of the outstanding work being found on open work lists, etc., which we take to be the same as the "Additional Work" sheets at issue here. But the opening words of paragraph (g) state: "*where a task is partially completed, a general description of any outstanding work [...].*" [emphasis added].

In this instance we are talking of a deferred task in the sense that the task never started as compared to partially completed tasks. As an example from M-8, #3 some loose rivets wing top – deferred to next inspection; # 4 exhaust Y's poor shape – probably need replace next inspection. We find it clear that those are tasks to be tackled on the next inspection rather than being partially completed ones.

The Appellant also brought up whether outstanding work could be a defect. Our review of the regulatory interpretation sections did not reveal given definitions for terms utilized here. We do not find that anything turns on the inexactitude of terminology used. The allegation utilized "outstanding defects". Section 571.10 of the AWM uses both "work is outstanding" and "outstanding task." The Member used both "outstanding defects" and "deferred defects". As noted from M-8 #3 there were loose rivets that L & R "deferred" to the inspection. That notation was found on a sheet entitled "Additional Work". We find that whether loose rivets and similar notations in M-8 were additional work or outstanding tasks or deferred defects is but a matter of semantics.

We conclude that the requirement to document outstanding tasks in a technical record, in this instance the journey log, is found in the standards of subparagraph 571.10(2)(a)(ii) of the AWM. As that was not done, the Member was not in error in finding a contravention. This ground is dismissed.

Ground #3 — dismissed

L & R wished to have Mr. David Hilchie qualified as an expert to give evidence on its behalf. The hearing Member decided not to allow him to testify as an expert witness. Unfortunately he does not give any reasons for this decision in his determination. We on the Appeal Panel are able to refer to the transcript for the Member's reasoning.

The Member was satisfied that Mr. Hilchie was qualified to be an expert but after objection by the Minister and discussion with the parties the Member decided that he did not need the assistance of expert testimony in the area to which Mr. Hilchie was to speak. The Member's method for handling the situation was raised with the parties and at that time neither one found it to be a problem which makes this ground of appeal all the more surprising (transcript p. 107-108).

The decision as to whether a witness may be qualified as an expert is at the discretion of the hearing Member, based on his assessment of whether he needs the assistance of expert testimony and, if so, on his finding as to the expert's qualifications.

Mr. Cumming, for L & R, had stated that his witness was to speak to the area of maintenance and regulation. But, it has been recognized that the application of the law (regulations) to the facts is a matter for argument rather than evidence.^[1]

Although he was not qualified as an expert witness, Mr. Hilchie nonetheless did give his evidence.

Not having given reasons for the denial of a witness to provide expert testimony does give the appearance of arbitrariness. However as the decision is within the discretion of the Member, we do not see it as a breach of natural justice that would cause us to dismiss the case.

Ground #4 — dismissed

The Appellant submits that the failure to use the words "alleged " to describe the "discrepancies" addressed in the Background summary shows a pre-existing bias in favour of Transport Canada.

We take the premise of the argument to be that as it is "Background" then it has not yet been established whether or not an actual discrepancy had existed. However we note that the Review Determination is written as a whole and at the time of the writing the Member had reached the conclusion that the discrepancy did exist. The headings in the determination are for ease of reference for all who may read it. They are not intended to divide the determination into pre and post decision time lines.

We hold that a reasonable person viewing this circumstance objectively would not think it likely that the Member would or did favour the Minister's position over that of L & R.

We find this ground of appeal to be unfounded and dismiss it.

CONCLUSION

We dismiss the appeal and uphold the penalty.

Reasons for Appeal Decision by:

Mr. Allister Ogilvie, Vice-Chairperson

Concurred:

Dr. Samuel Birenbaum, Member

Mr. E. David Dover, Member

[\[1\]](#) *Minister of Transport v. Stage Air Limited*, CAT File No. W-2446-41.