

CIVIL AVIATION TRIBUNAL

BETWEEN:

John Brian Magill, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, S.C., c. A-2, s. 6.9, 37(1)

Airworthiness Manual, s. 571, 571.10(2), 566.02

Canadian Aviation Regulations, SOR/96-433, s. 571.10(1), 571.11, 605.85

**Weight and Balance Report, Maintenance Release, Duty of Care, Centre of Gravity
Location**

**Review Determination
Pierre J. Beauchamp**

Decision: December 7, 1998

The Minister did prove on a balance of probabilities that the Applicant, Mr. Magill, certified as released for return to service an aircraft, to wit, Embraer EMB 110 P1, bearing Canadian registration marks C-GVRO while the empty weight, weight and balance report contained an inaccurate centre of gravity location. The suspension for seven days of the Canadian aviation document, aircraft maintenance engineer licence, held by the Applicant is confirmed. Said suspension will begin on the fifteenth day following service of this determination.

A **Review Hearing** on the above matter was held Tuesday, August 25, 1998 at 10:00 a.m. at the Federal Court of Canada, Winnipeg, Manitoba.

BACKGROUND

In 1996, Northeastern Aircraft Ltd. was contacted by Sowind Air Ltd. to carry out an Inspect, Test, Repair as Necessary (ITRAN) inspection on an Embraer EMB 110 P1 aircraft, which had been imported from the USA which, when certified, was to be put in service in a mix of passenger, passenger cargo and all cargo commuter operation.

The aircraft was certified and a new Certificate of Registration issued. The aircraft remained in service for almost a year when it was later destroyed in an accident.

On a review by the Minister of the documentation that had been submitted for the issue of its new Certificate of Registration and Certificate of Airworthiness, it appeared that the aircraft's Weight and Balance Report, which had been filed in support of the application, contained data which was in error. The Minister alleges that these erroneous figures resulted in an inaccurate Weight and Balance Report being submitted for the issue of a new Certificate of Airworthiness.

That allegation formed the basis of the Notice of Suspension dated June 4, 1998 issued to Mr. John Brian Magill, which stated, in part:

Pursuant to section 6.9 of the *Aeronautics Act*, the Minister of Transport has decided to suspend the above indicated Canadian aviation document on the grounds that you have contravened the following provision(s):

Canadian Aviation Regulation 571.10(1) in that, on or about November 22, 1996, at or near St. Andrews, Manitoba, you did sign a maintenance release required pursuant to Section 605.85 of the Canadian Aviation Regulations when the standards of airworthiness applicable to the maintenance performed and stated in Chapter 571 of the Airworthiness Manual had not been complied with, more specifically, you certified as released for return to service an aircraft, to wit, an Embraer EMB 110P1, bearing Canadian registration marks C-GVRO while the empty weight, weight and balance report contained an inaccurate centre of gravity location.

Mr. Magill petitioned the Tribunal for, and was granted, a stay of suspension on June 19, 1998.

EVIDENCE

The Minister first called **Mr. Dennis Turney** who testified under direct examination that he was an aircraft maintenance engineer holding an M2 licence and the director of maintenance for Sowind Air Ltd. When his company imported an Embraer EMB 110 in 1996, he was not qualified to release it, so the work required on the aircraft for the import was subcontracted to Northeastern Aircraft Ltd., and some of Sowind's staff worked on it under the supervision of Mr. John Magill. He also testified that he had done some of the work at item 89 of the work report for the import of Embraer 110 C-GVRO, that is, the weight and balance of said aircraft and had signed the said Weight and Balance Report (Exhibit M-2).

Under cross-examination by Mr. Tweed, counsel for the Applicant, Mr. Turney testified that there was "no contest" that the figures entered on the Weight and Balance Report did not "add up" and that he was the one who had done the calculations to determine the moment arm and the percentage of the mean aerodynamic chord (MAC).

He related how he had started weighing the aircraft by doing a weight on wheels but that he could not keep the aircraft on the weighing pads so that the scales were switched over to the jack points.

And I had a lot of paper going and transposing a lot of figures, so I obviously put some wrong numbers somewhere.^[1]

Using data obtained from another operator for an approximation of the difference in distance between the jack points and the main wheel axles, to the datum, and using calculations derived from these figures and the weights recorded in the Weight and Balance Report, Mr. Turney related under the skilful questioning of Mr. Tweed that the centre of gravity obtained from this method was close to the original (American) centre of gravity as well as the one which had been recorded in the filed aircraft Weight and Balance Report.

Finally under redirect examination by Mr. Hiscock, Mr. Turney testified that he had received no formal training in calculating weight and balance on aircraft that are required to use a MAC for calculation, as opposed to inches aft of the datum. He further stated that the only weight and balance that flight crews operating that aircraft could have used to calculate their passenger loads and their cargo and freight or any combination thereof would have come from said Weight and Balance Report.

He also stated that the aircraft flew approximately 1200 hours in various configurations before it was destroyed in an accident.

Mr. Dittbrenner was next called to give evidence. He is an investigator with the Aviation Enforcement Branch of Transport Canada, a rated aircraft maintenance engineer with M2, M3 and M4 endorsements and 21 years of experience in the industry with turbine experience on Merlin-Metros, Beechcraft 90, 100 and 200 as well as Twin Otters and Cessna Citations.

He testified that following an aircraft mishap involving the Embraer in question at Little Grand Rapids in the winter of 1997, while carrying out an investigation on the mishap, he came across an inconsistency in the Weight and Balance Report.

Mr. Dittbrenner also testified, using an excerpt from the aircraft journey log (Exhibit M-5), that Mr. Magill had signed an entry dated November 22, 1996 which states: "I.R.A.N.^[2] inspection complete as per work report on file. Aircraft serviceable for test flight." He stated that this entry constitutes a release of that aircraft, which aircraft was later released for service by the captain on completion of its last test flight on December 8, 1996.

He further testified that he had carried out his own calculations using the weights indicated in the Weight and Balance Report filed and, using the figures therein contained, he could never arrive at the 9.1% of MAC figure that was mentioned in the report.

His own calculations derived from the figures filed established the centre of gravity location at 37.9% of MAC which is "off the graph", the aircraft operating manual stipulating a range of centre of gravity between 4 and 31% of MAC.

Mr. Dittbrenner then testified, quoting section 571.11 of the *Canadian Aviation Regulations* (CARs) and sections 566 and 571 of the *Airworthiness Manual*, that the licence rating required to certify or sign the release of the Embraer 110 P1 in question was an M4 and that an M2 holder could not do so.

Furthermore, no person could sign a maintenance release or permit anyone whom the person supervised to sign a maintenance release unless the applicable standards of airworthiness had been complied with (subsection 571.10(1) of the CARs). He also stated that a Weight and Balance Report was a requirement before a Certificate of Airworthiness could be obtained, and that Mr. Turney was not qualified to release that Weight and Balance Report because he lacked the proper endorsement. Mr. Magill in this case should have signed the Weight and Balance Report, but Mr. Magill did, in fact, release the aircraft for flight by his logbook entry of November 22, 1996.

Under cross-examination Mr. Dittbrenner reiterated the responsibility of the certifying engineer to ensure that the applicable standards have been met and that the documentation submitted is correct; in the present case, the centre of gravity based on the data that had been entered by Mr. Turney in the Weight and Balance Report was incorrect.

ARGUMENT—for the Respondent

The Minister submitted that the evidence provided established on a balance of probabilities that Mr. Magill released an aircraft for flight with a Weight and Balance Report which was in error. Mr. Magill and his company Northeastern Aircraft Ltd. had taken on the certification work on the said Embraer 110 P1 (Bandeirante) which had been imported from the USA because Sowind Air Ltd. and its director of maintenance, Mr. Turney, did not have the appropriate qualifications to carry out the required ITRAN inspection.

The Minister argued that in so doing Mr. Magill became responsible for the work done on the aircraft and for the substantiating documentation filed to obtain a new Certificate of Airworthiness and Certificate of Registration. Furthermore, it had been established that Mr. Turney had carried out the weighing of the aircraft and the completion of the Weight and Balance Report for the aircraft, for which he had neither qualification nor training and which led to the aircraft being released by Mr. Magill with an erroneous and dangerous centre of gravity position.

The case presenting officer argued that Mr. Magill should have checked the figures and made the release on the Weight and Balance Report himself, and finally, that the reason the Weight and Balance Report was in error was not the issue. The facts showed that the Weight and Balance Report was in error, and that Mr. Magill was responsible for such proper determination as the certifying or releasing licensed engineer.

ARGUMENT—for the Applicant

Counsel for Mr. Magill raised a number of issues:

Firstly that there was no evidentiary trail, i.e., no department stamp, or initials that would corroborate that the Weight and Balance Report that was submitted with the ITRAN documentation was the one that was filed at the Review Hearing.

Secondly that the Minister failed also in not picking up the error of the Weight and Balance Report signed by Mr. Turney before issuing the Certificate of Airworthiness. Finally, that although there is no disputing the fact that the calculations do not "add up," the evidence showed that Mr. Turney had probably transposed the wrong numbers off the working papers but that the actual centre of gravity of the aircraft located at 9.1% of MAC, or 255.2 inches aft of datum was likely correct, that is, that it was not the report but the actual location of the centre of gravity that was at issue.

THE LAW

Section 571.10 of the CARs provides:

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*.

(...)

(4) Where a person signs a maintenance release in respect of maintenance performed on an aircraft, the satisfactory completion of which cannot be verified by inspection or testing of the aircraft on the ground, the maintenance release shall be made conditional on the satisfactory completion of a test flight carried out pursuant to subsections 605.85(2) and (3), by the inclusion of the phrase "subject to satisfactory test flight".

Section 605.85 of the CARs provides furthermore:

(...)

(2) Where a maintenance release is conditional on the satisfactory completion of a test flight pursuant to subsection 571.10(4), the aircraft may be operated for the purpose of the test flight if no person is carried on board other than flight crew members and persons necessary for the purpose of making observations that are essential to the test flight.

(3) Following a test flight conducted pursuant to subsection (2), the pilot-in-command shall enter the results of the test flight in the journey log and, where the entry indicates that the results of the test flight are satisfactory, that entry completes the maintenance release required by subsection (1).

(...)

Section 571.11 of the CARs stipulates:

571.11 (1) Except as provided in subsections (2) and (4), no person other than the holder of an aircraft maintenance engineer (AME) licence issued ..., specifying a rating appropriate to the aeronautical product being maintained, shall sign a maintenance release in accordance with Chapter 571 of the *Airworthiness Manual*.

(...)

(3) ..., no person shall sign a maintenance release in respect of maintenance performed on an aeroplane ... or on an aircraft operated pursuant to Part VII, ... unless the person is authorized to sign

(a) in accordance with a maintenance policy manual (MPM) ... with a rating of a category appropriate to the work performed;

(...)

(5) Where a maintenance release is signed by a person in respect of work performed by another person who is not qualified to sign a maintenance release, the person signing the maintenance release must personally observe the work to the extent necessary to ensure that it is performed in accordance with the requirements of any applicable standards of airworthiness and, specifically, the requirements of sections 571.02 and 571.10.

Some stipulations of Chapter 571 of the *Airworthiness Manual* must also be considered in the present case.

Subsection 571.10(2) of the *Airworthiness Manual* stipulates:

(2) Maintenance Release Record Keeping

(a) ...

(...)

(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.

Section 566.02 of the *Airworthiness Manual* stipulates:

(1) Pursuant to CAR 571.11, only an individual with a valid and appropriately rated AME licence can sign a maintenance release for any maintenance performed

on aeronautical products of the types indicated on the licence, and may exercise other privileges as specified in the *Airworthiness Manual*.

Appendix C of Chapter 571 of the *Airworthiness Manual* stipulates:

(1) Weight and Balance Reports

(...)

(b) Weight & Balance reports shall be certified by signing a maintenance release.

Finally Appendix C of the *Airworthiness Manual Chapter 566 — Aircraft Maintenance Engineer (AME) Licensing and Training* stipulates the types of ratings required to release different aeronautical products. The tables at this appendix establish that an M2 licence holder is authorized to release "all gliders and piston powered aeroplanes of 5700 kg MTOW and below," plus certain aircraft which do not include the Bandeirante (EMB 110 P1) in question. This aircraft would fall under group M4, which includes "all gliders and turbo-propeller-powered aeroplanes not listed in any other group."

DISCUSSION

The Minister has the burden to prove, on a balance of probabilities, all the elements of the offence to make out his case.

Since the allegation is that Mr. Magill certified an Embraer Bandeirante for return to service "while the empty weight, weight and balance report contained an inaccurate centre of gravity location", it may be useful in this discussion to review some of the basic principles and terms that are relevant and underlie the practice of aircraft weight and balance determination.

Weight and balance control consists of the mathematical proof of the correct weight, balance and loading of an aircraft within certified limits. The completion of a Weight and Balance Report is a three-part process, each step of which must be meticulously completed.

Firstly the aircraft weight must be determined by either using scales under the aircraft wheels or using scales installed at the jack points. Secondly, using the data obtained from the scales and using the appropriate data and formulae which vary depending on whether the aircraft was weighed from jack points or scales at the wheels, the centre of gravity is determined and then a further step is completed to calculate the centre of gravity as a percentage of MAC. Finally the completion of the Weight and Balance Report must be carried out.

Each of these steps is critical, and an uncorrected error or omission at any stage of the process with a corresponding wrongful centre of gravity location determination may affect the flight characteristics of an aircraft.

Having heard the testimony of Mr. Turney, it appears that at the very least, he did not apply to the procedure all the attention it requires:

Q In your opinion, what happened when you did this calculation?

A In my opinion, when I was doing these calculations I had a million interruptions. I had all kinds of pieces of paper going and I may have transposed the wrong — once I had come up with a C of G and then I started copying them onto the proper forms, I must have been peeling off the wrong numbers.¹³¹

To simplify, the determination of the centre of gravity is basically a two-step process. The first step involves the weighing of the aircraft using in this case either of two methods—the weighing on ground scales or the weighing from jack points. The second step involves the mathematical determination, first of the location of centre of gravity from datum, then for an aircraft of this type its location as a percentage of MAC. Finally it entails the appropriate filling of the Weight and Balance Report from the aircraft weighing form.

This part is also an intrinsic and essential part of the process because it is that report of the empty weight centre of gravity of the aircraft which will be used a) for its certification b) by users of the aircraft (flight crews, load agents, maintenance personnel) until its next weighing, or a new centre of gravity determination due to configuration changes etc.

I am satisfied, having heard the testimony and observed the witnesses, that the Minister established that Mr. Turney:

- a) did not hold the appropriate licence endorsements to sign and release the aircraft Weight and Balance Report; and
- b) did not bring to the determination of the Embraer's weight and balance
 - (i) either the necessary knowledge for an accurate calculation of either its centre of gravity location as a number in relation to datum or as a percentage of MAC and/or
 - (ii) the required attention to the weighing and mathematical proof of the data required for this appropriate determination.

Though the weighing may have been done correctly, i.e., the raising of the aircraft either on wheel scales or on weight scales at the jack points, the completion of an accurate Weight and Balance Report requires more than accurate weighing; it requires accurate mathematical proof of weight and balance and centre of gravity determination. This clearly was not carried out appropriately by Mr. Turney.

The participation of the Applicant, Mr. Magill, in this process was not established at the Review Hearing, though I am satisfied that he was ultimately responsible as the signing or releasing authority for the Certificate of Airworthiness application and the documentation submitted in support of it (including the log book certification or release) for the submission of an accurate aircraft Weight and Balance Report.

The primary purpose of aircraft weight and balance control is safety, and the Minister must be able to rely on the holders of certifying authority to fulfil their duties and obligations that are the apurage of the privilege (read endorsements) they hold. Only in this way can our aviation system operate safely.

In the present case, for whatever reasons, the Applicant, Mr. Magill, failed to ensure that the centre of gravity mentioned in the Weight and Balance Report signed under his authority by Mr. Turney contained accurate data; his lack of supervision and/or intervention in the process to prevent such an error going unnoticed brought about his liability under the Act.

The elements of the offence having been established, we now turn to the question of the defence raised.

On the question of the evidentiary trail, we are satisfied that the Weight and Balance Report filed at the Review Hearing under Exhibit M-2 is admissible evidence, and makes proof of its content.

As often stated in previous Civil Aviation Tribunal determinations, this Tribunal, as an administrative tribunal, is master of its own procedure, and parties who appear in front of it are not held to the same strict standards with regards to evidence as in more formal settings.

Section 37 of the *Aeronautics Act* states:

37. (1) subject to subsection (5), the Tribunal or a member thereof is not bound by any legal or technical rules of evidence in conducting any matter that comes before it or the member and all such matters shall be dealt with by the Tribunal or member as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

On this question, in a recent Civil Aviation Tribunal determination in the matter of *Minister of Transport v. James Jeffrey Rowan*^[4], Mr. Allister Ogilvie, Vice-Chairperson of the Tribunal stated:

This view is similarly expressed in *Administrative Law in Canada*^[5] where it is stated:

Unless expressly prescribed, the rules of evidence applied in court proceedings do not apply to proceedings before an administrative tribunal. This is, in part, because tribunal members, being lay people, are not schooled in the rules of evidence and are expected to apply common sense to their consideration of evidence. It also reflects the public interest mandate of many tribunals.

That is not to say that no rules apply regarding evidence. The constraints on evidence found in the Act, are that it must be fair and within the bounds of natural justice.

With this in mind, we are satisfied that the document submitted as Minister's Exhibit M-2 entitled Weight and Balance Report was an exact copy of the original submitted as part of the substantiating documentation filed with the Minister in support of the application for the issue of a Certificate of Airworthiness and Certificate of Registration for the Embraer EMB 110 P1, C-GVRO.

As a matter of fact, this document was put into the record at the request of the Applicant's counsel, who used it in his cross-examination of Mr. Turney. No objections were raised as to its authenticity or admissibility at the time, and the Tribunal has no reason to doubt its accuracy or validity.

Furthermore, Mr. Turney acknowledged the document and his signature on it:

BY MR. HISCOCK:

Q Did you sign off the Weight and Balance Report for the Embraer 110P1?

A Yes, I did.

MR. HISCOCK: Okay. I have no further questions of this witness, Mr. Member.

THE CHAIRPERSON: Thank you. Mr. Tweed?

MR. TWEED: Yes, sir.

CROSS-EXAMINATION BY MR. TWEED:

(...)

Q The weight and balance that you just referred to is the -- did you present a copy of that document to him?

MR. HISCOCK: Not yet. I will.

BY MR. TWEED:

Q This appears to be the weight and balance that is in question that I have here and I'm showing you the fourth page. Is that your signature on the bottom of that?

A Yes, it is.

Q And that is the document that Mr. Hiscock was referring you to a moment ago?

A I assume. He never showed, but --

MR. TWEED: Did you intend to submit this document?

MR. HISCOCK: Yes, I will submit it through another witness.

BY MR. TWEED:

Q Through another witness, okay.

This document that we looked at --

MR. HISCOCK: If it would be more beneficial to you, I could submit it through this witness, if you wish to --

MR. TWEED: Do you have a copy of this document?

THE CHAIRPERSON: No, I don't.

MR. TWEED: It may be a little easier for the hearing officer.

MR. HISCOCK: I will enter it as an exhibit from the Minister at this point and then maybe it will be simpler.

MR. TWEED: May I look at it just briefly before you give it to the witness?

MR. HISCOCK: Sure can.

MR. TWEED Thank you.

BY MR. HISCOCK (CONTINUED):

Q Mr. Turney, is this the Weight and Balance Report you did on the Embraer?

A Yes, it is.

Q It has two pages to it. There is -- that is the document?

A That's the document.

MR. HISCOCK: I would ask this be introduced as Minister's Exhibit No. 2. ^[6]

And finally, on this question of admissibility and authenticity, some light may be shed on this, by analogy, by section 30 of the *Canada Evidence Act* which provides:

30. (1) Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.

This section has been interpreted in the case of *R. v. Penno*^[7], where it was held that an inventory sheet made contemporaneously by employees with personal knowledge of the matters then being recorded and under a duty to make the record is admissible through the employees and "*prima facie* proof of the truth of its contents" at common law or in the alternative is admissible as a business record under this section.

We are therefore satisfied that the Weight and Balance Report submitted as Minister's Exhibit M-2 is admissible evidence and was "*prima facie* proof of the truth of its contents".

The Applicant then raised the question that, although the inscriptions in the said Weight and Balance Report are wrong, the actual weight and balance was probably right.

BY MR. TWEED (CONTINUED):

Q Mr. Turney, I don't believe there is any contest that the figures that are entered in that document don't add up?

A That's correct.^[8]

The Applicant submitted through the use of corrected data (Exhibits D-1, D-2, D-3) that had the correct figures and mathematical formulae been applied correctly to the actual weights measured at the time of weighing the aircraft, the weight and balance and centre of gravity would have properly fallen within its permitted range, and in fact not differed greatly from the one inscribed (9.1 % of MAC) in the report, and that in conclusion, the actual weight and balance and centre of gravity were in fact correct, although incorrectly transcribed.

Although that could possibly be the case, with due respect to the Minister's position which does not agree with this submission, this elaboration did not suffice in alleviating the responsibility of the releasing authority (Mr. Magill) to ensure that the proper data was entered in the Weight and Balance Report nor was it sufficient to counteract the fact of the erroneous inscriptions entered in Exhibit M-2.

The allegation which served as the basis for the suspension is that Mr. Magill had "released for return to service an aircraft ... while the empty weight, weight and balance report contained an inaccurate centre of gravity location."

A cursory review of the concept of centre of gravity location (c.g.) may be useful. On this, I defer to an American text book, *Airframe and Powerplant Mechanics, General Handbook*^[9] which states:

The theory of weight and balance is extremely simple. It is that of the familiar lever that is in equilibrium or balance when it rests on the fulcrum in a level position. The influence of weight is directly dependent upon its distance from the fulcrum... Similarly, an aircraft is balanced if it remains level when suspended from an imaginary point. This point is the location of its ideal c.g.

Weight and balance control consists of mathematical proof of the correct weight, balance, and loading within specified limits...

and

The c.g. of an aircraft is a point about which the nose-heavy and tail-heavy moments are exactly equal in magnitude... The empty weight c.g. ... is the c.g. of an aircraft in its empty weight condition. It is an essential part of the weight and balance record of the aircraft. It has no usefulness in itself, but serves as a basis for other computations...

The determination of the centre of gravity location as seen above therefore required the application of the appropriate mathematical formulae to the data gathered at the weighing of the aircraft and obtained from the aircraft flight manual.

The fact that using different data (the distance between jack points and wheel axles) and appropriate corrections, one could possibly arrive at an appropriate centre of gravity location while using the weights mentioned in the Weight and Balance Report (M-2), is not the issue. On this question, this member accepts the submission of the Minister that, **why** the Weight and Balance Report is in error is not the point; the fact is that the Weight and Balance Report **was** in error. On this, I refer to section 28 of the *Aeronautics Act*:

28. In any action or proceeding under this Act, an entry in any record required under this Act to be kept is, **in the absence of evidence to the contrary**, proof of the matters stated therein as against the person who made the entry or was required to keep the record... (emphasis added).

The submission of the Applicant using data from a similar aircraft and corrections to the weight and balance from the removal of equipment (seats, flight recorder, etc.) does not succeed in reversing the onus of establishing "proof to the contrary".

The data submitted, although interesting as a comparison, does not bring with it the degree of accuracy and certainty required to satisfy the burden placed on the Applicant by the Act in the present circumstances.

Furthermore, under subsection 571.10(1) of the CARs, Mr. Magill was responsible for ensuring that the standards of airworthiness had been complied with when releasing the aircraft, and that included the weight and balance determination and report. Further under subsection 571.11(5):

(5) Where a maintenance release is signed by a person in respect of work performed by another person who is not qualified to sign a maintenance release, the person signing the maintenance release must personally observe the work to the extent necessary to ensure that it is performed in accordance with the requirements of any applicable standards of airworthiness and, specifically, the requirements of sections 571.02 and 571.10.

This, the Applicant obviously failed to do.

Finally, the Minister established through the testimony of Mr. Turney that this aircraft was eventually destroyed in an accident, and Mr. Dittbrenner testified that it was as a follow-up investigation, that the errors which appear in the Weight and Balance Report were detected.

Counsel for the Applicant urged this member not to take into account any reference to the accident or its potential cause, in that the evidence presented at the Review Hearing cannot be deemed to be conclusive as to what caused or may have caused the accident. On this point, I am in full agreement with counsel for the Applicant.

I refer the parties to an earlier determination of this Tribunal in the case of *Peter J. Lubig v. Minister of Transport*^[10] where Mr. Eberhard stated:

Accordingly, while the occurrence at Regina and the implications of the flight from Calgary to Regina were of interest in establishing the basis upon which the subsequent investigation took place, I am mindful that they are relevant for that purpose only and that the case before this Tribunal must be decided exclusively upon the evidence presented by Transport Canada ...

Therefore, in this case, while the mention of the accident at Little Grand Rapids in the winter of 1997 is of interest in establishing the basis upon which the investigation that led to the present action by the Minister took place, I am "mindful" that it is relevant for that purpose only, and that there certainly has not been any evidence adduced in front of me linking in any way these events.

In closing, after reviewing past cases dealing with similar allegations, I reiterate the comments of Mr. Eberhard in the aforementioned case:

In balancing the need for consistency in the enforcement of breaches of Air Regulations and the need for personal and general deterrence, I see no reason to interfere with the period of suspension ...

I therefore uphold the Minister's suspension of Mr. Magill's licence for a period of seven days.

DETERMINATION

The Minister did prove on a balance of probabilities that the Applicant, Mr. Magill, certified as released for return to service an aircraft, to wit, Embraer EMB 110 P1, bearing Canadian registration marks C-GVRO while the empty weight, weight and balance report contained an inaccurate centre of gravity location. The suspension for seven days of the Canadian aviation document, aircraft maintenance engineer licence, held by the Applicant is confirmed.

Pierre J. Beauchamp
Member
Civil Aviation Tribunal

^[1] Transcript of the Review Hearing, at page 18.

^[2] IRAN (Inspection and Repair as Necessary).

^[3] Transcript of the Review Hearing, at page 23.

^[4] CAT File No. A-1500-33.

^[5] Sara Blake, *Administrative Law in Canada*, 2d ed., (Toronto and Vancouver: Butterworths, 1997) at 50.

^[6] Transcript of the Review Hearing, at pages 12-15.

^[7] (1977), 35 C.C.C. (2d) 266.

^[8] Transcript of the Review Hearing, at page 15.

^[9] *Airframe and Power Plant Mechanics General Handbook*, U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, First Revision 1976; see Chapter 3, Aircraft Weight and Balance, at 53, 54, 56.

^[10] CAT File No. C-0105-02, Review Determination.