

CIVIL AVIATION TRIBUNAL

BETWEEN:

Guy Marcoux, Appellant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 6.9
Air Regulations, C.R.C. 1978, c. 2, s. 520(1)

Negligent Or Reckless Operation Of An Aircraft, Interpretation Of The Terms

Appeal decision

Faye H. Smith, Jacques Blouin, Suzanne Jobin

Decision: May 22, 1996

TRANSLATION

We allow the appeal. The minister's decision to impose a suspension on the appellant is reversed.

An Appeal Hearing on the above matter was held Friday, May 3, 1996, at 10:00 hours in the offices of the Régie du bâtiment du Québec, in the city of Sept-Iles, Quebec.

BACKGROUND

On November 28, 1994, the Minister of Transport issued Mr. Guy Marcoux a Notice of Suspension, which reads, in part, as follows:

Pursuant to section 6.9 of the *Aeronautics Act*, the Minister of Transport has decided to suspend your Canadian aviation document referred to above on the grounds that you have contravened subsection 520(1) of the *Air Regulations*.

On September 7, 1994, at Blanc Sablon, Quebec, while you were pilot-in-command of flight GIO 707, the aircraft was operated in such a reckless manner as to endanger the life or property of the persons on board flight ARN 803 headed for runway 05.

The Minister imposed a 14-day suspension for the contravention.

Subsection 520(1) of the *Air Regulations* stipulates that:

520. (1) No aircraft shall be operated in such a negligent or reckless manner as to endanger or be likely to endanger the life or property of any person.

A Review Hearing on this matter was held in Sept-Iles on November 2, 1995, before Pierre Rivest. In his decision, the member of the Tribunal confirmed the Minister's position to the effect that Guy Marcoux had contravened subsection 520(1) of the *Air Regulations*. Mr. Marcoux's pilot licence had been suspended pursuant to section 6.9 of the *Aeronautics Act*. Mr. Rivest did, however, reduce the suspension to three days.

Mr. Marcoux appealed this decision on the following grounds:

(a) Member Pierre Rivest erred in penalizing the Applicant for confusion caused by an error of the Sept-Iles FSS, which translated "**virage à droite**" by "**left turn**";

(b) Member Pierre Rivest also erred in assigning responsibility to the Applicant for a situation that was also attributable to the crew of the DASH-8;

(c) Member Pierre Rivest erred in finding that it was the Applicant's decision to take off from runway 23 that was the primary cause of the incident;

(d) Finally, Member Pierre Rivest erred in law by giving an erroneous interpretation to the term "**reckless manner**" ("**imprudence**") used in subsection 520(1) of the *Air Regulations*;

(e) Member Pierre Rivest also erred in law by not requiring that the allegation be proven beyond a reasonable doubt and by not giving Guy Marcoux the benefit of reasonable doubt that must be applied in such instances.

In conclusion, the Appellant asks that the Review Determination be overturned.

Transport Canada, for its part, maintains that the Minister has met the burden of proof, and asks the Tribunal to uphold the decision of the first instance.

DISCUSSION

At issue, then, is whether the panel member who presided at the hearing of the first instance erred in ruling that on September 7, 1994, the Applicant operated an aircraft in a reckless manner.

Transport Canada had to prove not only that the aircraft had been operated in a reckless manner, but also that the conduct in question had endangered the life or property of others. The Appellant had no obligation to prove that the alleged offence did not take place.

In the Notice of Suspension, Transport Canada referred only to a contravention pursuant to subsection 520(1) of the *Air Regulations*, alleging no other contraventions of specific legislative or regulatory provisions.

The appeal is based largely on a matter of legal interpretation. According to the Appellant, Member Rivest erred in law by giving an erroneous interpretation to the term "imprudence" (in French). According to his claims, the Tribunal should give this term its English interpretation, not the French interpretation Member Rivest gave it in his decision.

The Civil Aviation Tribunal has ruled several times on this matter, and has concluded that the meaning to be given the term "imprudence" in this context should be that given the English term "reckless."

In *Earl McFarland and Minister of Transport*, (December 20, 1988 – CAT File A-0045-02), the Appeal Tribunal relied on the definition given by the *Concise Oxford Dictionary*, which defines the term "recklessness" as "lacking caution regardless of consequences", while the Respondent defined this term as "willingly assuming obvious risk."

In *Norbert A. Selbstaedt and Minister of Transport* (August 18, 1988 – CAT File C-0081-02), the Tribunal used the following definition of "recklessness", found in *Black's Law Dictionary*, 5th edition:

Rashness; heedlessness; wanton conduct. The state of mind accompanying an act, which either pays no regard to its probably or possibly injurious consequences, or which, though foreseeing such consequences, persists in spite of such knowledge. Recklessness is a stronger term than mere or ordinary negligence, and to be reckless, the conduct must be such as to evince disregard of or indifference to consequences, under circumstances involving danger to life or safety of others, although no harm was intended.

Although we are not bound by these determinations, in the opinion of the Appeal Tribunal the meaning to be given the term "imprudence" (in French) is indeed that previously accepted by the Tribunal. In his determination, Member Rivest obviously based his decision on an erroneous interpretation of the term "reckless". In the circumstances, and in view of the foregoing, the Tribunal does not consider it appropriate to address each and every ground invoked for the appeal.

DETERMINATION

After having examined the evidence on the record and considered all the arguments of the parties, we conclude that the Minister of Transport has not proven that Guy Marcoux operated his aircraft in a reckless manner on September 7, 1994.

We therefore allow the Appeal. The Minister's decision to impose a suspension on the Appellant is reversed.

Reasons for Appeal Determination:

Suzanne Jobin, Member

Concurring:

Faye Smith, Chairperson

Jacques Blouin, Member