

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

William Dean McHugh and Lindsay Air Park, Respondent

LEGISLATION:

Air Navigation Orders, Part II, Chapter IV, s. 6.1.5

Air Navigation Orders, Series II, No. 4, s. 3

Air Regulations, C.R.C. 1978, c. 2, s. 221

Certification of aircraft as airworthy, Airworthiness

Appeal decision

James W. Snow, Robert J. Rushford, Q.C., Zita Brunet

Decision: May 15, 1989

Heard: North York, Ontario, May 9 1989

For the reasons given, the appeal is dismissed.

Appeal Hearing on the above Application heard by the Civil Aviation Tribunal, at the Civil Aviation Tribunal Office, 4711 Yonge Street, 7th Floor, Suite 702, in the city of North York, Ontario, on the 9th day of May 1989 at 10:00 hours.

Two notices of assessment of monetary penalty were issued by Transport Canada, one against Lindsay Air Park and one against William Dean McHugh. The Notice relating to Lindsay Air Park is as follows:

"... section 221 of the *Air Regulations* whereby William Dean McHugh, as an employee of Lindsay Air Park, and as a licensed aircraft engineer, on the 26th day of June 1987, did certify Bellanca 7GCBC, bearing registration CF-HAT, as airworthy, when Airworthiness Directive AD-80-21-06 had not been complied with."

The Notice relating to William Dean McHugh is as follows:

"... section 221 of the *Air Regulations* whereby on the 26th day of June 1987, you, as a licensed aircraft engineer, did certify Bellanca 7GCBC, bearing registration CF-HAT, as airworthy, when Airworthiness Directive AD-80-21-06 had not been complied with."

Section 221 of the *Air Regulations* reads as follows:

No person shall certify an aeronautical product or a component as airworthy or serviceable, or certify an aircraft as released for return to service, unless the applicable standards of airworthiness have been complied with.

Both allegations were heard together at both the initial hearing and at the appeal.

The facts in this case are as follows:

William D. McHugh is a licensed aircraft engineer employed by the corporate Respondent Lindsay Air Park. On June 26, 1987, the Respondent McHugh certified a Bellanca CF-HAT as airworthy. At the time of certification, there was in force an Airworthiness Directive 80-21-06, which applied to the aircraft in question. This particular airworthiness directive requires a visual inspection for cracking or deterioration of the baffle installation with the muffler core and body assemblies, with the muffler removed from the aircraft.

Prior to the certification on June 26, 1987, in fact during the months of March and April 1987, considerable work had been done on the aircraft by the Respondent McHugh and at that time the complete exhaust system had been removed and both mufflers were inspected and no cracking or deterioration was found. McHugh had researched the outstanding airworthiness directive for the aircraft in question and had ensured that the airworthiness directives were complied with. McHugh had completed a "snag sheet" (Exhibit D-1), which he signed showing Airworthiness Directive 80-21-06 had been complied with and the components found serviceable.

The aircraft in question was due for a condition and conformity inspection (CCI) later in the year and arrangements had been made with the owner that the CCI would be done by the Respondent McHugh prior to June 30, 1987. When the 100-hour inspection was in fact done prior to June 30, 1987, a "Champion Service Manual Inspection Report" (Exhibit D-2) was completed by McHugh to which is attached a snag sheet (Exhibit D-3), showing that McHugh had previously complied with Airworthiness Directive 80-21-06. This particular airworthiness directive requires compliance at intervals not to exceed 100 hours' time in service or 12 months from the last inspection, whichever first occurs.

The aircraft had flown less than 100 hours and only two months had passed since the inspection relating to Airworthiness Directive 80-21-06 had been carried out. McHugh had in fact complied with Airworthiness Directive 80-21-06 when he certified the aircraft as airworthy on June 26, 1987.

The problem in this case arose as a result of McHugh's failure to record in the aircraft technical log the fact that Airworthiness Directive 80-21-06 had been complied with.

Section 6.1.5 of Part II, Chapter IV of the *Air Navigation Orders* is mandatory in this respect and reads as follows:

6.1.5 Compliance with an airworthiness directive shall be recorded in the appropriate section of the aircraft technical log.

The required aircraft condition and conformity inspection (CCI) report was submitted to the Department of Transport by McHugh who did not record in the appropriate section that Airworthiness Directive 80-21-06 had been complied with. Investigation by the Department also disclosed that no entry had been made in the aircraft technical log as required by *Air Navigation Order* 6.1.5. (Exhibit M-10).

McHugh's failure to make the required entry in the technical log and to properly complete the CCI report resulted in monetary penalties, previously referred to, being assessed against both McHugh and Lindsay Air Park.

The Minister takes the position that Airworthiness Directive 80-21-06 was not complied with because it was not recorded in the technical log. In fact, Mr. Williams argued that "the absence of the signature and appropriate documentation is all that is required to prove a violation of *Air Regulation* 221".

The question of whether or not Airworthiness Directive 80-21-06 was complied with is a question of fact to be determined on the evidence. Compliance or non-compliance does not hinge on an entry in a logbook or the lack of an entry. The evidence of McHugh qualifies the lack of the entry he was required to make and the Tribunal accepts his evidence that he did in fact comply with Airworthiness Directive 80-21-06.

McHugh may very well have contravened section 6.1.5 of Part II, Chapter IV of the *Air Navigation Orders*; however, that issue is not before us at this hearing.

Having concluded that Airworthiness Directive 80-21-06 was complied with disposes of the alleged contravention against the Respondent Lindsay Air Park.

We therefore confirm the decision of the hearing officer and dismiss both appeals.