

CIVIL AVIATION TRIBUNAL

BETWEEN:

Ramzi V. Espanioli, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, as am., s. 409(a)
Series IV, No. 2, S. 14(2) of the Air Navigation Orders

ANO Series IV, No. 2, s. 14(2)

Review Determination
Ed J. Jenson

Decision: June 2, 1992

THE MINISTER'S DECISION IS UPHELD. THE SUSPENSION OF THIRTY (30) DAYS FOR COUNT NO. 1 AND TEN (10) DAYS FOR COUNT NO. 2 FOR A TOTAL OF FORTY (40) DAYS IS CONFIRMED.

THE SUSPENSION SHALL COMMENCE AT 24:00 HOURS ON JULY 12, 1992 AND SHALL END AT 24:00 HOURS ON AUGUST 21, 1992.

The Review Hearing on the above application was held at the Sam Livingston Building, 510 - 12th Avenue S.W., Ground Floor Boardroom, in the city of Calgary, Alberta on Wednesday, April 22, 1992 at 09:00 hours.

BACKGROUND

By Notice of Suspension of January 28, 1992, Ramzi Espanioli's private pilot licence was suspended from March 5, 1992 to April 13, 1992, on the following alleged grounds:

"Count #1 - Section 409(a) of the *Air Regulations* - 30 days - in that on or about 6 August 1991 at approximately 2243 hours UTC, at or near Calgary, Alberta you

did act as a crew member of an aircraft, specifically Cessna 172, Canadian registration C-GTJS, within eight hours after the consumption of an alcoholic beverage, to wit: beer.

"Count #2 - Air Navigation Order Series IV, No. 2, 14(2) - 10 days - in that on or about 25 August 1991 between Calgary, Alberta and Beiseker, Alberta you, being the holder of Canadian private pilot licence P368133, did exercise the privileges of that licence by night when the licence was not endorsed for night flight."

Ramzi Espanioli requested a stay of suspension by the Civil Aviation Tribunal and a Review Hearing. The stay was granted February 18, 1992.

EVIDENCE

In a Pre-Hearing Conference, Mr. McFarlane and Mr. Espanioli reviewed and discussed an evidence book which was compiled by Inspector Plonka. The contents of the book are:

Tab 1 - Notice of Suspension, Informal Conference and acknowledgement of receipt of a registered item.

Tab 2 - Calgary Flight Training Centre flight authorization sheet dated August 6, 1991.

Tab 3 - Transport Canada aircraft movement history for GTJS - Calgary International Airport.

Tab 4 - Account Summary for Ramzi Espanioli by Calgary Flight Training Centre.

Tab 5 - Calgary Flight Training Centre flight authorization sheet dated August 25, 1991.

Tab 6 - Flight Voucher for Ramzi Espanioli by Calgary Flight Training Centre dated January 8, 1992.

Tab 7 - Certified sunrise and sunset times for the Calgary, Alberta area.

Tab 8 - Certificate stating that no document authorizing an endorsement of Licence No. P368133 for night flying privileges was issued by or on behalf of the Minister of Transport to Ramzi Espanioli until September 22, 1991.

Tab 9 - Flight crew licence - application for endorsement of a rating.

All items were accepted by Mr. Espanioli without dispute.

Inspector M.A. Plonka for Transport Canada was called as the Minister's first witness. She had been assigned a file to investigate Ramzi Espanioli after a complaint from Calgary Flight Training Centre. During her investigation a document book was compiled consisting of items secured throughout the investigation. This document book was submitted as Exhibit M-1.

Tab 2 - In the Calgary Flight Training Centre flight authorization sheet, the evidence indicated Mr. Espanioli did go flying August 6, 1991 from 16:10 to 21:45 hours local time in Cessna 172 registration C-GTJS.

Tab 3 - The Calgary Tower computerized printout of aircraft movements indicated that Cessna 172 registration C-GTJS departed Calgary August 6, 1991 at 22:43 hours UTC for Edmonton and returned from Edmonton August 6, 1991 at 03:36 hours UTC.

Tab 5 - This pertains to the events around August 25, 1991. The Calgary Flight Training Centre flight authorization sheet signed out by Mr. Espanioli indicated that he rented aircraft C-GVLO and went flying with a passenger named Clancy from 19:45 hours to 22:40 hours local time.

Tab 7 - The sunrise and sunset table for the Calgary area issued by atmospheric environment services indicates that sunset on August 25, 1991 was 20:39 making official darkness 30 minutes later to be 21:09.

Tab 8 - A certificate from the Secretary of the Department of Transport proved that Mr. Espanioli's Licence No. P368133 was not endorsed for night flying privileges.

Tab 9 - The flight crew licence application for endorsement of a rating was certified September 22, 1991 by the Department of Transport.

The Minister's second witness, **A.J. Takacs**, who is the chief flying instructor for Calgary Flight Training Centre, testified that on the afternoon of August 6, 1991 he was advised that Mr. Espanioli was in the staff room drinking a beer. Mr. Takacs investigated the matter and confirmed

Mr. Espanioli was indeed drinking a beer.

Mr. A. H. Niers, a flying instructor for Calgary Flight Training Centre, was called by the Minister as the third witness. Mr. Niers testified he saw Mr. Espanioli drinking a beer at approximately 2:00 P.M. August 6, 1991 in the staff room of the Calgary Flight Training Centre. He asked

Mr. Espanioli to pour the balance out in the sink and then reported the incident to the chief flying instructor, A.J. Takacs.

In the evening of August 25, 1991, Mr. Niers was flying back from Saskatchewan and overheard Mr. Espanioli talking on an aircraft radio reporting over Beiseker, Alberta. When

Mr. Niers arrived at Calgary he checked out the Flight Centre's authorization sheet and confirmed Mr. Espanioli was out flying. It was after dark when Mr. Niers landed in Calgary. Mr. Espanioli landed somewhat later and had a passenger on board the aircraft with him.

The Minister called his fourth witness, **Ms. Carrie Haberlin**, a flight instructor for Calgary Flight Training Centre. She testified that Mr. Espanioli had asked her to sign him out on the

evening of August 25, 1991 to go flying in a Cessna 172. When asked by Ms. Haberlin if he had a night endorsement, his reply was in the affirmative. Ms. Haberlin also testified that Mr. Espanioli was taking a passenger with him.

Mr. Ramzi Espanioli called his first witness, **Mr. R. M. Baxter**. Mr. Baxter testified that on August 6, 1991 between 4:00 and 5:00 PM, Mr. Espanioli arrived in Edmonton to pick him up. Mr. Espanioli told Mr. Baxter he had consumed some beer and appeared concerned so Mr. Baxter flew the aircraft back to Calgary.

Mr. Espanioli testified that he liked to set good examples. He said he was not in the habit of drinking and most of the time he was a designated driver after a party. He testified that on August 6, 1991 he did consume alcohol but not a lot, possibly an ounce. He stated that at the time the weather was not good, and he did not think he would be flying. Later the weather improved, and he decided to go to Edmonton to pick up Mr. Baxter.

Regarding the incident of night flying, on August 25, 1991, Mr. Espanioli testified he thought the night endorsement to his licence was valid. It was reasonable then to go to Beiseker with a passenger on board and practice landings.

Mr. Espanioli called **Mr. Marc N. M. Hull** as his second witness. Mr. Hull is a flying instructor for Calgary Flight Training Centre. Mr. Espanioli asked Mr. Hull for a character reference. Mr. Hull's reply was "although Mr. Espanioli thinks he knows a lot, his intentions are usually good and I don't think he purposely committed the offense".

With the Minister's cross-examination of Mr. Hull, it was revealed that on August 25, 1991 Mr. Espanioli was not authorized to go to Beiseker to practice, but to go to the Springbank airport which was the designated night practice area. It was also revealed that further instruction for the night endorsement had been given to Mr. Espanioli by Mr. Hull after August 25, 1991.

CONCLUSION

The facts were established in both Count No. 1 and Count No. 2, that Air Navigation Orders and Air Regulations were not complied with by Mr. Ramzi Espanioli. By his own admission he was aware of the wrong doing, but the activities did take place.

In the result, I confirm the Minister's decision to suspend the private pilot licence of Mr. Espanioli for Count No. 1, a period of 30 days and Count No. 2, a period of 10 days, for a total of 40 days.

Ed J. Jenson
Member
Civil Aviation Tribunal