

**TRANSPORTATION APPEAL TRIBUNAL OF CANADA**

BETWEEN:

**David Murray Robertson, Applicant**

- and -

**Minister of Transport, Respondent**

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, 6.71

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**Appeal decision**

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**Decision:**

Citation: *Robertson v. Canada (Minister of Transport)*, 2008 TATCE 13 (review)

Heard at Edmonton, Alberta, on October 31 and November 1, 2007

**Held:** The decision to refuse to issue Captain David Murray Robertson's pilot proficiency check is referred back to the Minister for reconsideration.

**TATC file nos: W-3343-27 (Jaakko Jarmo Thurlin)**

**W-3344-27 (David Murray Robertson)**

## **I. BACKGROUND**

[1] On February 26, 2007, the Minister of Transport issued a refusal to issue with regards to a pilot proficiency check (PPC) flight test on a Cessna Citation 550, for which Captain Jaakko Jarmo Thurlin and Captain David Murray Robertson were the crew members. The reason was that they did not meet the required standard with regards to the procedures used to deal with a flap failure. Captain Thurlin was the pilot flying (PF), and Captain Robertson was the pilot not flying (PNF).

[2] Inspector Pat Cowman conducted the check ride on behalf of Transport Canada, and the simulator was operated by an employee of FlightSafety International. The simulator seemed to have been operating normally.

[3] This simulator check flight was done in three separate flights. The first two seemed to have gone well. However, the third flight which was a VFR circuit is where things seemed to have gone wrong. A flap failure was programmed into the simulator which caused the flaps to remain fully retracted for the remainder of the flight. The fact that the flaps were not as selected was not noticed by the crew until the landing flap was called for by Captain Thurlin. The flight was continued, and a normal landing was made.

## II. LAW

[4] Section 6.71(1) of the *Aeronautics Act*, R.S.C. 1985, c. A-2, reads as follows:

**6.71** (1) The Minister may refuse to issue or amend a Canadian aviation document on the grounds that

(a) the applicant is incompetent;

(b) the applicant or any aircraft, aerodrome, airport or other facility in respect of which the application is made does not meet the qualifications or fulfil the conditions necessary for the issuance or amendment of the document; or

(c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the applicant or of any principal of the applicant, as defined in regulations made under paragraph (3)(a), warrant the refusal.

[5] The *Approved Check Pilot Manual*, 8<sup>th</sup> ed., February 2006, TP 6533 (ACP Manual; exhibit A-1) provides the following:

9.8.9 In the event of an unsatisfactory performance, the ACP must advise the pilot(s) of the following:

...

(c) the ACP must offer to provide a copy of the Flight Test Report Form to the candidate(s); and

...

9.10.1 An ACP shall carry out the following administrative procedures after failure of a PPC by:

...

(b) ensuring that grades and evaluation of the failed flight check are recorded in the individual's training and flight check records. A PPC report shall be completed for each flight check,

including any terminated during pre-flight preparation, or before all air exercises are completed, and the candidate is to be offered a copy of the report;

...

#### 10.3.4 Basic Standard (2)

(a) Deviations from the qualification standards occur, which may include momentary excursions beyond prescribed limits but these are recognized and corrected in a timely manner.

(b) A sequence shall be rated **Basic Standard (2)** where

(i) performance includes deviations that detract from the overall performance, but are recognized and corrected within an acceptable time frame,

(ii) aircraft handling is performed with limited proficiency and/or includes momentary deviations from specified limits,

(iii) technical skills and knowledge reveal limited technical proficiency and/or depth of knowledge,

(iv) behaviour indicates lapses in situational awareness that are identified and corrected by the crew,

(v) flight management skills are effective, but slightly below standard. Some items are only addressed when challenged or prompted by other crewmembers,

(vi) safety of flight is not compromised. Risk is poorly mitigated.

### **III. EVIDENCE**

#### **A. Minister of Transport**

(1) *Robert Lamoureux*

[6] Mr. Lamoureux, Director of Flight Operations for Alta Flights (Charters) Inc. (Alta Flights), was qualified as an expert witness. Captain Robertson had called Mr. Lamoureux after the check ride had been completed, and Mr. Lamoureux advised the crew to make notes.

[7] Although he did not agree with the assessment of the check ride, Mr. Lamoureux spoke favorably about his and Alta Flights' relationship with Inspector Cowman as their principal operations inspector. Over the years, there had been disagreements and difficulties, but they had been worked out. Mr. Lamoureux referred to a letter he sent to Transport Canada showing that there was a good relationship between Alta Flights and Transport Canada staff with respect to the administrative issues involved with a growing company (exhibit M-7).

(2) *Pat Cowman*

[8] Inspector Cowman spoke at length about the crew not using proper standard operating procedures (SOPs) throughout the check ride. In the Comments - General Assessment section of the flight test reports (exhibits M-10 and M-11), he wrote "use of SOPs not per company documents and resulted in CRM issues".

[9] Under direct examination, he indicated the following with regards to the use of SOPs: "As far as performance goes nothing that was really outside the parameter of a normal check ride, but certainly not consistent with good CRM and good use of SOPs" (transcript at 62).

[10] Inspector Cowman's version of the portion of the check ride which caused the failure is as follows: the crew was to fly a visual flight rules (VFR) circuit and the simulator was programmed to not allow the flaps to extend.

[11] On the downwind leg Captain Thurlin called for approach flaps. Captain Robertson selected the flaps and called "approach flaps set". Captain Thurlin confirmed the flap setting. However, the flap indicator had not moved. While the approach checklist was being done, the flaps were called for a second time and confirmed again by Captain Thurlin. The gear down call was made and done. At this point, Captain Robertson saw a light flash on and back off. He called some kind of hydraulic problem and ran a hydraulic failure checklist, could not find anything wrong, put the abnormal checklist away and continued with the normal checklist. At this point, they went through the flaps a third time and both crew members missed the flaps again. When Captain Thurlin called for flaps land, Captain Robertson noticed that the flaps had never left the fully retracted position. Inspector Cowman recalled this event taking place at an altitude too low to safely continue the flight. Captain Thurlin made the decision to pick up speed a bit and land without checking performance issues or recalculating the runway length required.

[12] Inspector Cowman at this point decided that the ride was failed. He took issue with the following items:

- at the point where the crew finally noticed the flap failure, they were too low with not enough time to safely continue;
- they should have done a missed approach and the flap fail checklist, which would have sorted out the VREF (reference landing approach speed, all engines operating) and runway length problems;
- the crew had misidentified a yellow light, which they tried to solve with an abnormal hydraulic checklist. According to Inspector Cowman, the hydraulic system was operating normally; and
- the SOPs were not followed with regards to the flap selections made by the crew.

*(3) Mark Fraser*

[13] Inspector Mark Fraser testified that in all his dealings with Inspector Cowman, he had found him to be professional, fair, but firm.

## **B. Applicant**

*(1) Timothy Klohn*

[14] Captain Timothy Klohn spoke at length about various simulators and their flight characteristics. He also testified about his check ride on the same simulator, conducted by Inspector Cowman on the day preceding the check ride in question. He indicated that although Inspector Cowman did take issue with many of the procedures used by the crew, at the end of the day the discussions that had taken place had been gentlemanly.

*(2) David Murray Robertson*

[15] The check ride seemed to have been normal until just after take-off on the VFR circuit. The clearance for this exercise was to climb runway heading and maintain 2 000 feet. The next instruction was a right turn to 030 degrees. At this point, Captain Robertson acting as PNF was doing the approach and landing checklists. Captain Thurlin acting as PF called for flaps approach and at the same time, air traffic control (ATC) asked for a turn to heading 210. While all this was happening, Captain Robertson noticed the hydraulic low level light on the panel and referred to the hydraulic low level checklist. He advised Captain Thurlin of the situation and that it could affect the speed brakes, flaps, thrust reversers, and landing gear. Captain Thurlin immediately asked for gear down. The landing gear was extended and confirmed down. Shortly thereafter, Captain Thurlin asked for full flaps, and it is at this point that Captain Robertson realized that the flaps were still at 0. Captain Thurlin then asked for the flaps inoperative checklist. This abnormal checklist takes the crew through all the necessary items to prepare the aircraft for the approach and landing with the reduced flap setting, including the new VREF and landing distance. Captain Robertson estimated the checklist was completed at six or seven miles from the threshold of the landing runway and at an altitude of 2 000 feet.

[16] Although Captain Robertson disagreed with the assessment of the ride, he did not have issues with the way the ride was conducted. He agreed that the post-flight briefing was reasonable and normal.

*(3) Jaakko Jarmo Thurlin*

[17] Captain Thurlin's description of the flight was basically the same as Captain Robertson's. He agreed that it was the hydraulic low level light that was on. His concern at this point was to get the gear down before he lost all the fluid. The decision to continue the approach while doing the flaps inoperative checklist was twofold. He thought that he had enough time to complete the checklist and indicated that it was done prior to leaving 2 000 feet. He also had concerns with a fire hazard because of lack of fluid in the hydraulic system.

[18] Captain Thurlin indicated that he did not have any issues with Inspector Cowman, except that he was somewhat offended because of the failure of the ride. He felt that as a crew they had completed the flap failure checklist in time to do a normal landing.

#### **IV. DISCUSSION**

[19] The flight crew and Inspector Cowman both agreed that initially the crew had missed the fact that the flaps had failed. This was a very busy portion of the flight, landing checklists were being done, the captain had called for flaps, and at the same time, ATC had issued an instruction. While all this is quite realistic, it would be easy to miss something in the short-term and the crew should be given some latitude at this point. The crew indicated that once they noticed the flaps at 0, they completed the flap inoperative checklist, which among other things had them recalculate the VREF to 115 knots and the new landing distance required, which was roughly 6 000 feet. Once in this checklist, they were able to complete the flight because it was designed for the crew to complete the landing without referring to the normal landing checklist. This checklist according to the crew was completed prior to descending out of 2 000 feet and about six or seven miles from the runway.

[20] Inspector Cowman on the other hand insisted that the flap inoperative checklist was never done and that the VREF was never recalculated, yet he could not indicate what speed was being flown at this point in the check ride. The aircraft must be flown at an indicated airspeed at or above this new VREF in order to stay above the proper margin from the stall speed. This is very important evidence. The fact that he could not indicate the speed leaves doubt in my mind as to Inspector Cowman's version of this portion of the check ride.

[21] Captains Thurlin and Robertson both testified that they saw the hydraulic low level light and that, according to the checklist for this problem, the four systems operating on hydraulics might not operate normally. Captain Thurlin had the gear extended at this point, his reasoning being in case they were losing fluid he would like to extend the gear by the normal system.

[22] Inspector Cowman also saw a hydraulic light, but seemed to have difficulty indicating which light it was. He made the following statements: "I can't say specifically which light came on. I know it was just the hydraulic light that flickered on and went back out" (transcript at 68 and 69); "I said I saw a light come on for a second and go off. Mr. Robertson identified it as the hydraulic light, and I assumed it was because of the position where it was and the light flickering on" (transcript at 94); and "I assume it's the hydraulic light based on what Mr. Robertson said. When I saw it I just saw a momentarily flash on, and it was in the approximate position for a

hydraulic light" (transcript at 118). After having indicated on numerous occasions that he was not sure and assumed which hydraulic light was involved, Inspector Cowman was in no position to challenge a crew for running a checklist for a light they claimed to have seen, referred to the checklist, and put the gear down as a precautionary procedure.

[23] Much is said by Inspector Cowman about the SOPs used on this check ride. On the flight test reports (exhibits M-10 and M-11), general assessment referring to the flap fail exercise, he wrote "use of SOPs not per company documents and resulted in CRM issues".

[24] His interpretation of the SOPs for flap selection is as follows:

Once the request is made for the flaps by the flying pilot the non flying pilot usually selects the flaps, verifies that they've actually positioned the appropriate checkpoint and then there's a cross-reference check by the pilot flying. He should look over visually and observe that the actual position indicator had moved and that the hand was in the correct position and then confirm it.

(transcript at 64 and 65)

[25] In the landing section of Alta Flights SOPs, under "FLAPS", it states "Check indicator to verify position" (exhibit A-2 at 42). It does not assign this procedure to any particular crew member. Weak as this may be, it does not reflect the procedure insisted on by Inspector Cowman. His statement of "SOPs not per company documents" cannot be sustained.

[26] In summary, because Inspector Cowman could not provide the Tribunal with some of the basic facts of this portion of the check ride, I find Captains Thurlin's and Robertson's versions more complete. The events that took place on the flap failure portion of the check ride, although poorly mitigated, would not have compromised the safety of flight. The flap failure, although missed initially, was recognized and corrected by the crew within an acceptable time frame, and thus this exercise should have been given a basic standard (2).

[27] As far as the issue with the hydraulic light, Inspector Cowman's testimony did not convince me that he was certain of what he saw. His notes (exhibit M-12) are very basic as they do not mention the hydraulic light and would not have been of much assistance in completing the flight test reports at a later date. They did not provide any information as to the hydraulic light issue at the hearing. Proper SOPs should be developed and when used will solve most of these problems with regards to specific crew duties in both normal and abnormal phases of flight.

[28] Both Captains Thurlin and Robertson indicated that a copy of the failed flight test report was not offered to them at the completion of the debriefing. Inspector Cowman did not follow the proper administrative procedures after failure of a PPC as set out in the ACP Manual.

## **V. DETERMINATION**

[29] For these reasons, the decisions to refuse to issue Captains Thurlin's and Robertson's PPCs are referred back to the Minister for reconsideration.

March 4, 2008

Richard F. Willems

Member