

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Rodney Victor Thatcher**, Applicant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Aeronautics Act*, s. 6.9.

*Aviation Regulations*, SOR/96-433, s. 404.03

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**Review Determination**  
**Sandra Lloyd**

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**Decision: May 10, 2001**

*The Minister's allegation is dismissed and the suspension of Mr. Thatcher's commercial pilot licence cancelled.*

A **Review Hearing** on the above matter was held Monday, April 9, 2001 at 10:00 hours at the Fairmont Hotel in Vancouver, British Columbia concerning the suspension of the commercial pilot licence-aeroplane of the Applicant, Mr. Rodney Victor Thatcher.

**BACKGROUND**

On November 21, 2000 Transport Canada issued a Notice of Suspension to the Applicant which read, in part, as follows:

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):

Count 1

Canadian Aviation Regulation, Section 404.03, in that at approximately 16:30 hours local time on or about the 19<sup>th</sup> day of June, 2000, at or near Hotnarko Lake

in the Province of British Columbia, you exercised the privileges of a Commercial Pilots License when you did not hold a valid medical certificate of a category that was appropriate for that license as specified in Section 404.10.

Penalty: Twenty-one (21) day suspension of Commercial Pilots License.

By letter dated November 28, 2000 from his solicitor, the Applicant requested a Review Hearing of this matter. The suspension ran from December 22, 2000 to January 11, 2001 and the Applicant had not requested a stay of suspension.

The hearing of this matter was originally set down for March 20, 2001. The date and location had been agreed to by the parties. However, upon Notice of Application by the Respondent Minister of Transport dated March 15, 2001 the hearing was adjourned and was rescheduled for April 9, 2001. I previously gave written reasons dated March 26, 2001 with respect to the Respondent's application of March 15.

## **BURDEN OF PROOF**

The Respondent Minister of Transport has the burden of proving, on a balance of probabilities, each element of the alleged offence: 1) that on or about the 19<sup>th</sup> day of June, 2000, the Applicant exercised the privileges of a commercial pilot licence; and 2) that at that time he did not hold a valid medical certificate of a category that was appropriate for that licence.

## **THE LAW**

Subsection 6.9(1) of the *Aeronautics Act*:

6. 9 (1) Where the Minister decides to suspend or cancel a Canadian aviation document on the grounds that the holder of the document or the owner or operator of any aircraft, airport or other facility in respect of which the document was issued has contravened any provision of this Part or any regulation or order made under this Part, the Minister shall by personal service or by registered or certified mail sent to the holder, owner or operator, as the case may be, at his latest known address notify the holder, owner or operator of that decision and of the effective date of the suspension or cancellation, but no suspension or cancellation shall take effect earlier than the date that is thirty days after the notice under this subsection is served or sent.

Subsection 37(1) of the *Aeronautics Act*:

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.

Section 404.03 of the *Canadian Aviation Regulations* (CARs):

404.03 No person shall exercise or attempt to exercise the privileges of a permit, licence or rating unless the person holds a valid medical certificate of a category that is appropriate for that permit, licence or rating, as specified in section 404.10.

Subsection 404.10(1) of the CARs:

404.10 (1) A Category 1 medical certificate is required for the following licences:

(a) commercial pilot licence-aeroplane or helicopter; and

(b) airline transport pilot licence-aeroplane or helicopter.

## **EVIDENCE**

The Minister called two witnesses. The first was Dr. Alistair Anderson. Dr. Anderson is a licensed physician and a Civil Aviation Medical Examiner (CAME). Dr. Anderson's evidence was that he gave Mr. Thatcher an aviation medical examination on November 16, 1999, and that Mr. Thatcher was assessed as fit, Category 1. His evidence also showed that he next gave the Applicant an aviation medical examination on July 5, 2000. The CAME report which Dr. Anderson prepared in that examination stated that Mr. Thatcher's last previous medical had been done on November 16, 1999.

Counsel for Mr. Thatcher suggested that the date written on Mr. Thatcher's medical certificate was December 16, 1999, not November 16, 1999 as stated on the CAME reports. Dr. Anderson admitted this was possible. However, the medical certificate was not available in evidence.

The second witness was Mr. Randall Phillips, a Transport Canada enforcement investigator, assigned to investigate an aviation accident which occurred in June, 2000. Mr. Phillips testified that when he assumed conduct of that file, information contained therein showed, among other things, the time and date of the accident, the aircraft registration and the pilot's name as being Mr. Thatcher. Mr. Phillips said that he then checked the computer data base "Distributed Air Personnel Licensing System" (DAPLS) and it indicated to him that Mr. Thatcher's commercial licence medical certificate had expired as of June 1, 2000. Mr. Phillips then obtained Mr. Thatcher's personal file and found that Mr. Thatcher's last medical examination was November 16, 1999. From that he calculated that Mr. Thatcher's commercial medical certificate would have expired on June 1, 2000, as such medical is valid for six months from the first of the month following the medical examination.

Two pages of information obtained from the computer data base by Mr. Phillips, which showed that Mr. Thatcher's medical certificate had expired, were entered as Exhibit M-6. Counsel for Mr. Thatcher objected to the acceptance of this document as proof of the facts contained therein. I allowed the exhibit to be entered as proof that Mr. Phillips had obtained such document in the course of his investigation.

In the further course of his investigation, Mr. Phillips flew to Anahim Lake where he said he learned that Mr. Thatcher rents aeroplanes from Avnorth Aviation to fly patrons to his Pine Point Resort. Mr. Phillips said he met and talked with a Lois Bowman at Avnorth Aviation in Anahim Lake. He said that Ms. Bowman provided him with a copy of a rental invoice showing what they charged Mr. Thatcher. However, the word "Cancelled" was handwritten across the document. A copy of the invoice was entered as Exhibit M-7.

Counsel for Mr. Thatcher objected to the acceptance of the invoice as evidence on the basis that it was hearsay evidence and of no probative value. I allowed the invoice to be entered as an exhibit subject to the weight I would give it.

Mr. Phillips also testified that he called the RCMP in Anahim Lake who had investigated the aviation accident in question. The RCMP faxed Mr. Phillips the names of the surviving passengers. Mr. Phillips gave evidence that he called two people named in the fax, Mr. Nance and Mr. Pastega, who told him they were passengers on the aeroplane and the pilot's name was Rod. Mr. Phillips asked for proof of their arrangement with Mr. Thatcher with respect to the flight. They said they could send him a brochure and a copy of a receipt for a deposit.

Counsel for the Minister attempted to enter as evidence, through the witness Mr. Phillips, two sets of documents. The documents included correspondence between third parties, a copy of a brochure, an excerpt from a Pine Point Resort website, and a copy of a receipt for a deposit. These documents were sought to be entered as proof of the facts they contained and as evidence of arrangements between Mr. Pastega and Mr. Nance and Pine Point Resort.

Counsel for Mr. Thatcher objected to the acceptance of these documents as evidence of the facts contained therein because they were hearsay and of no probative value. He argued, among other things, that although this Tribunal is not governed by the formal rules of evidence, natural justice required that Mr. Thatcher be able to test the veracity of the facts put before the Tribunal. This could not be done with respect to these documents because the persons who had personal knowledge of the facts in the documents were not witnesses. He protested that the Minister had at this hearing attempted to adduce hearsay upon hearsay, and he asked that I refuse to admit the documents into evidence.

Counsel for the Minister of Transport submitted that it was impossible to produce the witnesses Nance and Pastega, as they did not wish to cooperate and were not compellable by this Tribunal (they reside in Oregon). He said that it was not in the interest of those witnesses to appear, for insurance reasons. He pointed out that when the original hearing date of this matter was set down, the witnesses were willing to cooperate, but the situation had since changed. He provided a copy of a letter dated March 27, 2001 from local counsel for Mr. Nance and Mr. Pastega. That letter stated that neither Mr. Nance nor Mr. Pastega were personally involved in making the arrangements for the fly fishing trip with Pine Point Resort or Rod Thatcher, and that both gentlemen advised that they do not wish to participate in these proceedings.

Counsel for the Minister also pointed out that the reason that time was considered to be of the essence with respect to having this matter heard was because of Mr. Thatcher's alleged prejudice arising from any delay in hearing this matter. He argued that the documents should be allowed as

some evidence of the facts contained therein and referred to section 37 of the *Aeronautics Act*, which provides that this Tribunal is not bound by any formal rules of evidence.

Although hearsay evidence is often allowed by this Tribunal, I found that in the interests of fairness and natural justice I should not allow this evidence in the circumstances of this review hearing. The fact ultimately sought to be proved by hearsay evidence alone was a critical fact, that is, one of the essential elements that the Respondent needed to prove with respect to the alleged offence: that the Applicant had exercised the privileges of his commercial pilot licence at the relevant time. Much of the evidence sought to be entered was at least "double hearsay". Further, the letter from local counsel for Mr. Nance and Mr. Pastega stated that they had not personally been involved in making the arrangements for their trip. The Respondent Minister had already been given an adjournment that gave additional time to arrange the attendance of other witnesses. In my view the proposed hearsay documentary evidence was not acceptable evidence in the circumstances.

The Minister submitted no other evidence.

## MOTION

Counsel for the Applicant, Mr. Thatcher, declined to call witnesses. He argued that the Minister had not proven the requisite elements of the offence set out in the Notice of Suspension. He argued, among other things, that there was no evidence that the Applicant was exercising the privileges of his commercial pilot licence on the date in question. He also pointed out that the licence number stated on the Notice of Suspension did not match Mr. Thatcher's licence number as stated in the CAME reports and on the DAPLS printout. He asked that the matter be dismissed for lack of evidence.

Counsel for Mr. Thatcher provided copies of two administrative law decisions of the Ontario High Court of Justice, Divisional Court: *Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)*<sup>[1]</sup> and *Re Bernstein and College of Physicians and Surgeons of Ontario*.<sup>[2]</sup>

Counsel for the Minister made no submissions opposing the Applicant's motion.

In *Re Bernstein*, O'Leary J. stated the following:

The important thing to remember is that in civil cases there is no precise formula as to the standard of proof required to establish a fact.

In all cases, before reaching a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred, and whether the tribunal is so satisfied will depend on the totality of the circumstances including the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding.

Counsel for Mr. Thatcher made it abundantly clear throughout the proceedings in this matter that serious consequences flow to Mr. Thatcher from my findings in this matter. The burden is on the

Minister to prove the allegations and my decision in this matter must be based on reliable, weighty evidence presented at the hearing. The evidence available at this hearing did not meet the standard of quality and quantity required to uphold the Minister's allegation in the circumstances.

## **RULING**

I find on the evidence of Dr. Anderson that the Minister has proved, on a balance of probabilities, that Mr. Thatcher did not hold a valid commercial pilot medical certificate on June 19, 2000. However, I find there is insufficient evidence that the Applicant was exercising the privileges of a commercial pilot licence on that date. Therefore, I have granted the Applicant's motion to dismiss for lack of evidence.

## **DETERMINATION**

**The Minister's allegation is dismissed and the suspension of Mr. Thatcher's commercial pilot licence cancelled.**

Sandra K. Lloyd  
Member  
Civil Aviation Tribunal

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<sup>[1]</sup> 65 O.R. (2d) 526, [1988] O.J. No. 1351.

<sup>[2]</sup> 15 O.R. (2d) 447 (1977).