

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Joseph André Yvon Lavergne, Respondent

LEGISLATION:

Aeronautics Act, R.S.C., 1985, c. A-2, ss 7.7, 8.4(1)

Air Regulations, C.R.C. 1978, c.2, ss 210(1)a, 826(1)

Journey Log Entries, Certificate Of Airworthiness

**Review Determination
Suzanne Jobin**

Decision: July 19, 1996

The Respondent did contravene the above provisions. I confirm the penalty of \$100 imposed by the Minister on the first offence. However, on the second offence, I will reduce the penalty from \$1,500 to \$1,000. A total penalty of \$1,100 against the Respondent is therefore payable to the order of the Receiver General for Canada and shall be received by the Civil Aviation Tribunal at the above address within fifteen (15) days of service of this Determination.

A **Review Hearing** on the above matter was held July 10, 1996 at 10:00 hours in Hearing Room No. 3 of the Canadian International Trade Tribunal, in the city of Ottawa, Ontario.

BACKGROUND

The Respondent was assessed a monetary penalty by Notice dated March 1, 1996. Mr. Lavergne had allegedly neglected to enter required information in the journey log of the aircraft registered as C-FYPF. In addition, Mr. Lavergne allegedly caused the aircraft to operate in Canada when the Certificate of Airworthiness was not in force.

The Notice of Assessment of Monetary Penalty reads in part as follows:

Pursuant to section 7.7 of the *Aeronautics Act*, the Minister of Transport has decided to assess a monetary penalty on the grounds that you have contravened the following provision(s):

Schedule A – Annexe A

Offence 1:

the *Air Regulations* s.826(1), in that on or about April 14 and 15, 1995, you, as the owner of a Piper PA28-140 aircraft, registered C-FYPF, did not maintain for that aircraft a journey log pursuant to the *Aircraft Journey Log Order*, (Air Navigation Order Series VIII, No.2), s.3. Specifically, maintenance was performed on the aircraft that involved installation of radio equipment, this was not entered into the log.

Offence 2:

the *Air Regulations*, s.210(1)(a), in that a Piper PA28-140 aircraft, registered C-FYPF, was flown during the period of approximately April 17, 1995 through May 6, 1995, on 15 separate flights as detailed in the aircraft journey log and in the following counts, when the certificate of airworthiness was not in force. The certificate of airworthiness was not in force because a maintenance release was not completed following maintenance performed on or about April 14 and 15, 1995.

Pursuant to the *Aeronautics Act*, s.8.4(1), you, as the registered owner of the aircraft identified in the cited offence, are liable to the penalty assessed for the violations detailed in said offence.

The monetary penalty is assessed as follows:

Offence 1: \$ 100

Offence 2:

Count 1: \$ 100

Count 2: \$ 100

Count 3: \$ 100

Count 4: \$ 100

Count 5: \$ 100

Count 6: \$ 100

Count 7: \$ 100

Count 8: \$ 100

Count 9: \$ 100

Count 10: \$ 100

Count 11: \$ 100

Count 12: \$ 100

Count 13: \$ 100

Count 14: \$ 100

Count 15: \$ 100

Total Assessment \$1600

THE LAW

Subsection 826(1) of the *Air Regulations* provides the following:

Every owner of an aircraft, other than an ultra-light aeroplane, registered under these Regulations shall maintain for that aircraft an aircraft journey log and an aircraft technical log.

Paragraph 210(1)(a) of the same Regulations states the following:

No person shall fly or attempt to fly an aircraft, other than a hang glider or an ultra-light aeroplane, unless there is in force in respect of that aircraft

(a) a certificate of airworthiness issued under this Part or under the laws of the country in which the aircraft is registered,

(...)

and unless all conditions upon which the certificate of airworthiness, the flight permit or the validation for flight was issued are complied with.

Paragraph 3(b) and section 5 of the Air Navigation Order, Series II, No. 4, *Certificate of Airworthiness Order* stipulates the following:

3. Every certificate of airworthiness issued in respect of an aircraft is issued on condition that

(...)

(b) an entry will be made in the Aircraft Journey Log of the aircraft by an authorized person, certifying that the aircraft is

(i) airworthy, or

(ii) released for return to service,

whichever is applicable, at the times and in accordance with the procedures set out therefor in the Airworthiness Manual or in the Engineering and Inspection Manual.

5. Notwithstanding anything in this Order, a certificate of airworthiness issued in respect of an aircraft is not in force at any time when either of the conditions set out in paragraph 3(a) or (b) fails to be satisfied in respect of that aircraft.

The terms "authorized person" and "maintenance" are defined in this same Order as follows:

"authorized person" means

(a) a person who holds a valid aircraft maintenance engineer licence, issued pursuant to section 404 of the *Air Regulations*, authorizing him to certify that an aircraft is airworthy or released for return to service, or

(b) a representative of a company or any other person who is authorized under the Airworthiness Manual or the Engineering and Inspection Manual to certify that an aircraft is airworthy or released for return to service;

"maintenance" means the act of

(a) maintaining an aircraft including components and appliances thereof in an airworthy condition, or

(b) restoring an aircraft including components and appliances thereof to an airworthy condition,

and includes servicing, repairing, modifying, overhauling, inspecting and determining the airworthy condition of the aircraft including components and appliances thereof.

THE FACTS

Mr. Lavergne is the owner of a Piper PA28-140 aircraft, registered C-FYPF. On or about April 14 and April 15, 1995, the Respondent asked Mr. Larsen, an aircraft maintenance engineer working for Transport Canada in Ottawa, to reinstall his unserviceable aircraft radio. They

agreed on a fixed price, and Mr. Larsen carried out the work. Once the work completed, Mr. Lavergne refused to pay the agreed price, and Mr. Larsen declined to fill out the journey log or to certify that the aircraft was airworthy. The aircraft was nevertheless flown 15 times during the months of April and May. On May 21, a maintenance release was completed by an AMO for the work performed previously by Mr. Larsen.

ARGUMENTS

Transport Canada maintains that the evidence submitted has shown that the Respondent, as the owner of the Piper PA28-140 aircraft registered C-FYPF, is liable to the penalty assessed for the violations of subsection 826(1) and paragraph 210(1)(a) of the *Air Regulations*.

Transport Canada's position is that there is no justification whatsoever for any of the acts resulting in the contraventions cited. Mr. Lavergne knew very well that the maintenance performed on his aircraft on or about April 14 and 15, 1995 was not entered in the journey log as required by the applicable regulations. He also knew that, because of the failure to complete a maintenance release, the certificate of airworthiness for the aircraft was not valid at the time of the infractions. Consequently, the Applicant requests that the Tribunal confirm the Minister's decision.

Mr. Lavergne argues that the problems related to the radio equipment have no impact on the airworthiness of his aircraft. Moreover, he maintains that he did not know, at the time, that the repairs had to be entered in the journey log and that such an omission would render his airworthiness certificate void.

Finally he points out that he had no intention of contravening Transport Canada regulations. For the above reasons, the Respondent requests that the Minister's decision be overturned.

DISCUSSION

Transport Canada had to prove at the Review Hearing that the Respondent was the owner of the aircraft registered C-FYPF. The Applicant also had to prove, on a balance of probabilities, that the alleged contraventions had occurred. Upon doing so, the evidentiary burden was shifted to the Respondent.

Subsection 8.4(1) and section 8.5 of the *Aeronautics Act* provide for vicarious liability in the following terms:

8.4(1) The registered owner of an aircraft may be proceeded against in respect of and found to have committed an offence under this Part in relation to the aircraft for which another person is subject to be proceeded against unless, at the time of the offence, the aircraft was in the possession of a person other than the owner without the owner's consent and, where found to have committed the offence, the owner is liable to the penalty provided as punishment therefor.

8.5 No person shall be found to have contravened a provision of this Part or of any regulation or order made under this Part if the person exercised all due diligence to prevent the contravention.

To fall under those sections of the law, the Respondent had to prove on a balance of probabilities that, at the time of the offences, the aircraft was in the possession of a person other than him without his consent or that all due diligence was exercised to prevent the contraventions.

CONCLUSION

After reviewing the evidence submitted by the parties, the Tribunal believes that Transport Canada has met its burden of proof. The Respondent did not present any evidence allowing the application of the above legislative dispositions.

It is clear that the installation of radio equipment had to be entered in the aircraft log and that such an omission would invalidate the airworthiness certificate. As stated in the *Air Regulations*, those requirements are mandatory and leave no latitude for discretion.

Once Mr. Larsen had refused to complete a maintenance release for the work performed, it was the Respondent's duty to see that an authorized person certify that the work performed was in accordance with the applicable standard of airworthiness. Such action should have been taken immediately before resuming flying.

The fact that the Respondent did not know the applicable regulations or that he did not intend to contravene those regulations is not pertinent in assessing the liability in this case. The stated offences are offences of strict liability where there is no need for the prosecution to prove mens rea.

DETERMINATION

The administrative penalty of \$100 imposed by the Minister on the first offence is justified. However, on the second offence, given the nature of the aircraft movements, I will reduce the penalty from \$1,500 to \$1,000 for a total penalty of \$1,100.

Suzanne Jobin
Member
Civil Aviation Tribunal