

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport, Appellant**

- and -

**Francis Clayton Pilgrim, Respondent**

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 6.3(1)(d), 7.3(1)(d)

Air Regulation s.826(1)

*C.R.C.*, c. 2, s. 826(1)

Section 219 of the Regulations

section 52(1)(7) of the Constitution Act

section 6.7 of the Aeronautics Act

section 7.3(1) of the Aeronautics Act

Section 7.4 of the Aeronautics Act

section 8 of the Charter of Rights and Freedoms

section 826(1) of the Air Regulations

Sections 443 to 447 of the Criminal Code

sections 7.6(1)

**Obstruction, Entries in logbook**

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**Appeal decision**

**G. Richard, John J. Eberhard, Q.C., Zita Brunet**

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**Decision: May 2, 1989**

**Heard:** Ottawa, Ontario, March 13, 1989

*We find that the Tribunal member should have accepted the evidence obtained during the investigation.*

*We hereby direct that the matter be referred back to the Tribunal of the first instance with a direction to accept the evidence resulting from the inspection of the logbooks for the purpose of providing an opportunity to the Respondent to answer the allegation.*

The Minister appeals the decision of J.J. Collins, member of the Civil Aviation Tribunal delivered orally on October 6th, 1988. The owner of a Cessna aircraft 170B, C-GOZT, was assessed a monetary penalty pursuant to section 826(1) of the *Air Regulations* by a way of a notice dated July 15th, 1988. The Notice of Assessment reads in part as follows:

"Pursuant to section 6.7 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: *Air Regulations* section 826(1), in that between November 11th, 1987, and March 5th, 1988, a Cessna 170B, C-GOZT, registered in your name was flown from St. Augustine, Quebec, to Main Brook, Nfld. No entry for that flight was entered in the aircraft journey log."

Evidence was tendered on behalf of the Minister at the hearing, following which counsel for Pilgrim submitted to the member that evidence obtained as a result of the entry into his client's aircraft by the inspector was not authorized by way of a search warrant and, as a result, not admissible. The member in his judgment said as follows:

"Under cross-examination by Mr. Whalen, Mr. Carter (inspector) stated he did not contact the aircraft owner or obtain a search warrant. Since section 7.6 gives authority to inspect and seize, Mr. Whalen agreed that section 7.6 gave Mr. Carter the right to inspect but not to search and since he must have searched the aircraft in order to find the logbook, a warrant was needed. Since no warrant was obtained, the evidence presented contravenes section 8 of the *Charter of Rights and Freedoms* and therefore was not admissible, and since the only evidence presented was obtained in this manner, the case could not proceed.

It is my determination that the documents supporting the Minister's decision were obtained without the benefit of a search warrant, contradictory to section 8 of the *Charter of Rights and Freedoms*, and therefore not admissible. The Minister's decision in this matter is not confirmed."

The procedure as to the admissibility of evidence was in the nature of what is some times called a "nonsuit". That is, if the evidence is found not to have been admissible and there is no other evidence which would substantiate the allegations, the onus upon the Minister has not been met and as a result, the Respondent need not be put to his election as to whether or not to call any evidence. This is just such a case. The member dismissed the allegation as a result of his finding that there was no evidence which was properly admissible upon which he could confirm the Minister's decision.

The Minister appeals on two grounds:

1. The Tribunal member erred in excluding the evidence obtained during the investigation;
2. The Tribunal member erred in not making a determination on the facts of the case.

In respect of the first, the facts of the occurrence are of some significance. Those facts are as follows:

Howard Carter is a civil aviation inspector whose duties in part are to enforce the provisions of the *Aeronautics Act* and regulations by making inspections of Canadian registered aircraft. On March 5th, 1988, he was in Main Brook, Nfld., on a routine surveillance trip for purposes of determining the level of compliance with the legislation by making routine inspections of aircraft. He found the subject aircraft near a fixed-base operation known as Bell View Aviation. The aircraft was located on a snow-covered dock.

It was apparently unlocked and no one, including either the owner or the FBO, was present. The inspector testified that he entered the aircraft for the purpose of making a routine investigation (Transcript, pages 10, 43, 46). The relevant testimony includes the following passage from page 45 of the transcript:

Q. How did you obtain the documents without searching?

A. The logbook was there and I opened it.

Q. So your entry, your allowance to entry, allowed you to look around.

A. Yes.

Q. And in looking around, you don't consider that to be searching the aircraft?

A. No.

Q. What were you looking at when you entered the aircraft?

A. The general condition of the aircraft and the documentation which the pilot carried on board.

Q. Did you attempt to find the documentation? Did you enter the aircraft for the purposes of finding the documentation?

A. For the purpose of inspecting the aircraft and the documents that were required to be on board.

The journey log was taken from the aircraft and photocopies made nearby. The log was returned. During the course of the inspection of the logbook, the inspector discovered that no entry had been made that would explain the presence of the aircraft in Newfoundland. That is, there was no reference, as required, in the log to the movement of the aircraft from St. Augustine to Main Brook. In addition, the inspector reviewed the certificate of registration found on board the aircraft, which indicated that Mr. Pilgrim was the registered owner. This confirmed corroborative information from Department records showing Pilgrim to be the owner of C-GOZT.

The inspector informed the Tribunal that he seized the documentation from the aircraft pursuant to the provisions of the *Aeronautics Act* and that he took the logs to a place where they could be photocopied because he perceived irregularities that would "bear further investigation". Among other things, he noted that for a number of flights on one page of the log, there were no air times

or flight times recorded as required, nor was there a total of flight time, record of weights or total weights found in the log, as is required by the regulations.

On the basis of evidence secured upon the inspection of the logbook, Pilgrim was charged as the registered owner of the aircraft as permitted by section 7.3(1) of the *Aeronautics Act*. On the issue of the admissibility of the documentary evidence seized from the aircraft, this Tribunal has reviewed the evidence, considered the provisions of the Act and regulations and listened attentively to submissions made by counsel.

Section 7.6(1), being that part of the *Aeronautics Act* dealing with powers to enter, seize and detain, reads as follows:

Subject to subsection (4), the Minister may

(a) enter any aircraft ... for purposes of making inspections relating to the enforcement of this Part;

(b) enter any place for the purposes of an investigation of matters concerning aviation safety;

(c) seize anything found in any place referred to in paragraph (a) or (b) that the Minister believes on reasonable grounds will afford evidence with respect to an offence under this Part or the causes or contributing factors pertaining to an investigation referred to in paragraph (b); ...

And section 7.6(2):

Sections 443 to 447 of the *Criminal Code* (now sections 487–492) apply in respect of any offence committed or suspected to have been committed under this Part.

The facts in this case suggest that as of the moment when the inspector entered the subject aircraft, there were no reasonable and probable grounds for him to believe that any offence had been committed. Accordingly, section 7.6(2) is not applicable.

We are satisfied that 7.6(1) authorizes the inspector to enter the aircraft as he did, make inspections relating to the enforcement of the Act and seize anything found therein that affords evidence in respect of an enforceable offence. We accept that the inspector was making a routine inspection and that the unlocked aircraft was accessible to him without the use of any force or untoward behaviour. In other words, a routine inspection includes inspection of the logs required by the Act and regulations to be carried on board the aircraft. Accordingly, within the scheme of insuring compliance with the regulatory requirements of the *Aeronautics Act*, authority has been specifically provided to inspectors in the circumstances described, to do just as he did. Our view would have been different had the aircraft been locked or permission for entry been denied by the owner, pilot or other person in authority in respect of that aircraft. In those circumstances, however the Minister is granted other powers including those found in the regulations.

Regulation 8.5(1) requires that no person shall fly an aircraft unless there is carried on board a certificate of registration and a journey log relating to the aircraft. Accordingly, as part of an inspection, an inspector would be interested in determining whether or not that regulation had been complied with.

In addition, *Air Navigation Orders*, Series VIII, No. 2 (December 10th, 1969) being an order cited as the "Aircraft Journey Log Order", requires that certain particulars be entered in an aircraft journey log. Among other things is to be found reference to the point of departure and destination for each flight and the time up, down, and weight of persons on board. An inspector would logically be entitled to make inspections relating to those particulars in a journey log for purposes of regulatory enforcement.

As it happens, upon a review of the journey log, the entry by the inspector into this particular aircraft indeed was purposeful in that enforcement of the Act would be generated by this inspection. Since the legislation specifically provides for seizure of these items, we don't see the brief removal of the log for purposes of making copies outside the contemplation of the legislators when this section was drafted.

On a review of the regulations generally, it appears that the regulatory scheme envisions the necessity of an inspection of aircraft records and the general enforcement of the Act for purposes of ensuring compliance. Section 219 of the regulations requires:

... that every operator shall permit a person authorized by the Minister, when required by that person, to have access to and to inspect and examine all parts of the premises, aircraft, equipment and records used in such operations, and to make such inquiries as he deems necessary for the purpose of this Part.

That regulation clearly deals with the requirement to ensure that owners and pilots comply with the reasonable demands of an inspector. Indeed, section 6.3(1)(d) makes it an offence for a person who wilfully obstructs any person who is performing duties under the legislation. Should a pilot, when requested by an inspector for example, refuse entry, the aviator could well be charged with an offence under the obstruction section. Clearly, in the interest of aviation safety, this imports the requirement for the utmost cooperation to be given to inspectors doing investigations in the course of their duty.

In circumstances where the access to an aircraft cannot be gained, the legislation provides for alternative means of conducting the investigation. *Air Regulation 807* provides that the owner or operator of any aircraft shall, upon reasonable notice given to him by the Minister, make available such aircraft for inspection in accordance with the notice. Section 808 goes further and provides that an owner or operator who maintains a logbook, shall upon demand, produce for inspection the logbook or other document and indeed surrender it to the Minister. In circumstances where it would be inappropriate for the Minister through its inspectors to enter an aircraft and seize documents, he can rely on the provisions of these sections of the *Air Regulations* to avoid entry and seizure, which is not contemplated by section 7.6(1).

Read in combination, the provisions of the *Air Regulations*, the absolute duty to cooperate in the interests of air safety in the Act, and the specific statutory authority provided for entry and seizure during the course of inspections, leads us to conclude that the evidence obtained by Inspector Carter was secured in accordance with the provisions of the Act and accordingly admissible.

While the argument of Mr. Whalen was essentially pursuant to section 8 of the *Charter of Rights* with a remedy being sought pursuant to section 24, we have not found it necessary to comment on section 7.6(1) in the context of section 52(1)(7) of the *Constitution Act, 1982*. Indeed, Mr. Whalen confirmed that his application was not in the nature of a request to impugn the enactment. Neither have we considered his application in the context of section 24(2) and in particular we have not reviewed the application in the context of the Supreme Court of Canada decision in *Regina v. Collins* (56) C.R. (3rd) 193. Here, there has been no *Charter* breach. Since we have found that there has been no activity by the Minister in contravention of the authority granted by the *Aeronautics Act*, it is unnecessary to determine whether the evidence so obtained might be inadmissible on the grounds that its admission in the proceedings would bring the administration of justice into disrepute. Accordingly, we find

that the Tribunal member should have accepted the evidence obtained during the investigation.

It is necessary to consider now the second request in the appeal, namely, that the Tribunal member erred in not making a determination on the facts of the case.

Having granted the original motion, it was not necessary for the member to put Pilgrim to his election as to whether or not to call evidence. Given that the logbook entries are admissible, there is now a *prima facie* case to be met. Section 7.4 of the *Aeronautics Act* provides that 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. Pilgrim must now be provided an opportunity to elect to call evidence and the opportunity to respond to the issues raised by the Minister.

Accordingly, we hereby direct that the matter be referred back to the Tribunal of the first instance with a direction to accept the evidence resulting from the inspection of the logbooks for the purpose of providing an opportunity to the Respondent to answer the allegation. As the parties were advised at the Appeal Hearing that in view of Mr. Collins' earlier retirement as a Tribunal member, it would be necessary to appoint a different member should the need arise as a result of our decision on the appeal, we specifically authorize a different single member of the Civil Aviation Tribunal to hear the balance of the evidence with the assistance of the transcript as prepared.