

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

Hélicoptères Panorama Ltée, Appellant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 7.7

Canadian Aviation Regulations, SOR/96-433, ss. 571.02(1), 571.03, 605.84(1), 605.93(1), 605.94(1) and 706.02

Imprecise Entries in the Technical Records, Failure to Follow MCM Procedures, Imprecise Entries in Journey Log

Appeal decision

Faye H. Smith, Howard M. Bruce, Jean-Marc Fortier

Decision: September 5, 2007

Citation: *Hélicoptères Panorama Ltée v. Canada (Minister of Transport)*, 2007 TATCE 22 (appeal)

[Official English translation]

Held: For the reasons stated below, we dismiss the appeal on all counts. We confirm the monetary penalties for counts 1, 2, 3, 4, 5, 6, 11, 12, 13 and 14. We reduce the monetary penalty of \$1 250 to \$500 for counts 7, 8, 9, and 10. The total monetary penalty of \$33 250 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 15 days of service of this determination.

I. BACKGROUND

[1] This is an appeal from a determination by Michel G. Boulianne following a review hearing held from December 6 to 8, 2005, at Alma, Quebec.

[2] Further to a complaint by one of the appellant's employees, the respondent obtained a search warrant for various technical and administrative documents of the appellant. Copies of the following documents were obtained following the execution of the warrant on December 9, 2004:

- technical booklets;
- flight reports;
- pilots' weekly reports;
- maintenance reports; and
- client invoices and other related documents.

[3] At the review hearing, the Tribunal examined an impressive amount of documentary evidence, exhibits M-1 to M-30 and exhibits D-1 and D-2. The member heard testimony from the following persons:

- Guy Hamel, civil aviation safety inspector, Transport Canada;
- Yves Thibodeau, civil aviation safety inspector, Transport Canada;
- Steve Michaud, appellant's employee from June 2004 to June 2005;
- Jimmy Émond, appellant's employee during the period in question; and
- Paul Charest, pilot.

[4] After considering the evidence and hearing the parties' arguments, the review member confirmed the Minister's decision regarding the contraventions and the monetary penalties assessed against the appellant.

[5] In particular, the following contraventions and monetary penalties were confirmed for the offences described below:

[translation]

1. On or about December 9, 2004, in the vicinity of Alma Airport, you performed maintenance work on the helicopter registered as C-GVED without using methods, techniques, practices, parts and materials that were in accordance with recognized industry practices at the time the maintenance work was performed, to wit, the installation of an antenna on the left skid fastened by means of metal clamps covered in duct tape, in contravention of subsection 571.02(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

2. On or about December 9, 2004, in the vicinity of Alma Airport, while you were performing maintenance work on the helicopter registered as C-GVED, namely, the installation of an antenna on the left skid, you failed to ensure that the details required by Chapter 571 of the Airworthiness Manual were entered in the helicopter's technical record in respect of the task performed, in contravention of section 571.03 of the *Canadian Aviation Regulations*.

Penalty: \$1 250

3. Between August 9, 2004, and November 11, 2004, at or in the vicinity of Micoua, Quebec, you permitted to be conducted 88 [amended to 8 at the review hearing] take-offs of the helicopter registered as C-GBKH that was in your legal custody and control when the aircraft did not meet the requirements of airworthiness directive CF-2004-05R1, in contravention of subsection 605.84(1) of the *Canadian Aviation Regulations*.

Penalty: \$12 500

4. From June 9, 2004, to September 27, 2004, you made 50 inaccurate entries in the journey log of the helicopter registered as C-GBKX, to wit, flights were conducted by a pilot other than the one entered and signatures were forged, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

5. From June 7, 2004, to September 6, 2004, the air time of 12 flights or series of flights and the cumulative air time were not entered in the journey log of the aircraft registered as C-GBKX by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

6. From August 9, 2004, to October 7, 2004, you made 11 inaccurate entries in the journey log of the helicopter registered as C-GBKH, to wit, 4 signatures were forged and the difference between the air time and the flight time is excessive for 8 entries, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

7. From October 3, 2004, to November 10, 2004, the air time of 3 [amended to 2 at the review hearing] flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-GBKH by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

8. From July 12, 2004, to August 23, 2004, you made 5 inaccurate entries in the journey log of the helicopter registered as C-GHJG, to wit, the difference between the air time and the flight time is excessive, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

9. From July 31, 2004, to October 23, 2004, the air time of 2 flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-GHJG by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

10. From September 1, 2004, to September 8, 2004, you made 4 inaccurate entries in the journey log of the helicopter registered as C-GVED, to wit, the difference between the air time and the flight time is excessive, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

11. From June 16, 2004, to August 29, 2004, you made 9 inaccurate entries in the journey log of the helicopter registered as C-FGAV, to wit, 5 flights were made by a pilot other than the one entered, 2 signatures were forged and the difference between the air time and the flight time is excessive for 4 other flights, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

12. From June 21, 2004, to September 26, 2004, the air time of 16 flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-FGAV by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

13. On or about July 5 or 12, 2004, in the vicinity of Micoua, Quebec, Hélicoptères Panorama Ltée operated the aircraft registered as C-FGAV when maintenance of that aircraft had not been performed in accordance with paragraph 4.3.1 of the maintenance control manual (MCM) of Hélicoptères Panorama Ltée, to wit, an oil filter switched to by-pass and operation continued with no corrective action for the rest of the week, in contravention of section 706.02 of the *Canadian Aviation Regulations*.

Penalty: \$5 000

14. On or about August 14, 2004, and on or about August 28, 2004, in the vicinity of Micoua, Quebec, Hélicoptères Panorama Ltée operated an aircraft registered as C-GBKH when maintenance of that aircraft had not been performed

in accordance with paragraph 4.3.1 of the maintenance control manual (MCM) of Hélicoptères Panorama Ltée, to wit, the aircraft had experienced a number of engine failures and operation continued without these events being entered in the technical logs, in contravention of section 706.02 of the *Canadian Aviation Regulations*.

Penalty: \$5 000

II. GROUNDS FOR APPEAL

[6] On January 12, 2007, the appellant, through its representative, filed a request for appeal with the Tribunal, limited to the following ground:

[translation]

Les Hélicoptères Panorama wishes to appeal the determination in file no. Q-3154-41 (TATC). Member Michel G. Boulianne grossly ignored the legislation and the case law on this subject.

III. FACTS

[7] Following the execution of a search warrant on December 9, 2004, the respondent obtained copies of many relevant documents regarding the appellant's operations, in particular, the technical records, flight reports, pilots' weekly reports, maintenance and servicing reports, client invoices and other related documents as well as the flight logs for each helicopter with flight times, flight times based on ground movement, flight times in the air from the time the helicopter leaves the ground, technical records and the airframe log on the structure of each craft. Moreover, according to the testimony of Messrs. Hamel and Thibodeau, once on site, they noted that a helicopter was preparing to take off with an antenna installed on its left skid fastened with metal clamps covered in duct tape. The helicopter's flight record made no reference to the installation of this antenna or a supplemental type certificate and the helicopter's flight log did not have any entry regarding the installation of an antenna.

[8] The events observed on December 9, 2004 and the review of the large amount of documentation obtained through the search warrant led to the charges that are the subject of this appeal.

IV. APPELLANT'S SUBMISSIONS

[9] At the hearing, the appellant elaborated on the grounds giving rise to the appeal. The appellant's first ground is that the review member erred in making a determination against it when the Minister had failed to raise section 8.4 of the *Aeronautics Act*, R.S.C. 1985, c. A-2, in the various charges. In fact, according to the appellant, this is a case of mistaken identity because the acts the appellant is accused of were allegedly performed by physical persons, the appellant's employees. It submits that it cannot be held liable for these acts.

[10] As a second ground, the appellant submits that the charges are vague and ambiguous to the point of not knowing what it is accused of and therefore not being able to present a full answer and defence.

[11] As for the third ground for appeal, the appellant submits that section 706.02 of the *Canadian Aviation Regulations*, SOR/96-433 (CARs), does not apply to the acts in question and, to be valid, the charges should have been laid under section 605.86(1) of the CARs.

[12] Lastly, with respect to counts 1 and 2, the appellant submits that nothing in the evidence shows that the antenna was a component of the aircraft and it could have also been a load.

V. MINISTER'S SUBMISSIONS

[13] The Minister submits that the review determination is reasonable based on the evidence presented to the Tribunal. Additionally, according to the Minister, the charges are not vague but are rather precise and permit the appellant to know what the charges are against it and to prepare an adequate defence.

VI. DISCUSSION

[14] First, regarding the facts and evidence in this case, it is important to note the case law and principles that guide the Tribunal. In terms of the finding of fact, *Moore v. Canada (Minister of Transport)*, [1991], appeal decision, CAT file no. C-0138-33, [1991] C.A.T.D. no. 5 (QL) at 5, confirms the principle under which an appeal tribunal should not interfere with the findings of fact made by the hearing officer. In this decision, the appeal panel cites and applies the following criterion:

I am satisfied that a finding of fact by the hearing officer should only be overturned on one of the two grounds. The first is an entire absence of evidence to support it, which raises a question of law, (*R. v. Corbett*, 25 C.R.N.S. 296). The second is, notwithstanding that there is some evidence concerning the finding, it is nonetheless unreasonable and incapable of being supported by the evidence. Apart from these limited instances, an appeal tribunal, hearing an appeal on the record should not interfere with the fact findings of the hearing officer.

This distinction may be subtle, but it is vital both to the preservation of the integrity of the appeal process and the safeguarding of the fundamental rights of the individual.

[15] We feel that these findings of fact by the review member were entirely reasonable, supported by extensive documentary evidence and testimony he found credible. Moreover, on a number of occasions, the appellant admitted many facts that supported the Minister's claims. Since the findings of the review member were not patently unreasonable, it is not relevant to review his determination regarding the facts in this case.

[16] We must therefore examine the grounds for appeal raised by the appellant to determine whether the review member's findings are unreasonable. In *Long v. Canada (Minister of Transport)*, [2004], appeal decision, TATC file no. O-2824-02, [2004] C.T.A.T.D. no. 20 (QL), the Tribunal stated the following regarding the standard of review and the Tribunal's appeal procedures:

¶ 45 As the *Aeronautics Act* and its subordinate legislation are generally concerned with aviation safety we do not think that a decision which may have safety consequences should have to be patently unreasonable, i.e., clearly irrational before it may be found wanting.

¶ 46 We find that the standard of review as between the determination at first instance and that on appeal in Transportation Appeal Tribunal of Canada proceedings is whether the findings are "unreasonable".

A. Application of section 8.4 of the *Aeronautics Act*

[17] The appellant claims that there was "mistaken identity" in this case because the acts described in the charges were all committed by physical persons and the appellant as a legal person cannot be held liable. Moreover, it claims that, according to the case law, the Minister should have relied on and proceeded under section 8.4 of the Act to establish the appellant's liability.

[18] It is therefore important to clarify the true purpose of section 8.4 of the Act. The Tribunal first relies on *Desrochers v. Canada (Minister of Transport)*, [2000], appeal decision, CAT file no. Q-1881-33, [2003] C.A.T.D. no. 40 (QL). The Tribunal clearly defines the purpose and effect of section 8.4:

¶ 46 As we have already ruled in *Lindbergh's Air Service* cited earlier, the real purpose of section 8.4 of the *Aeronautics Act* is to offer means of imposing some form of coercion against the owner of an aircraft and encouraging the owner to give its employees or operators enough incentive to follow the requirements set by the owner. In short, this provision can largely be explained by the need to ensure that owners or operators exercise a maximum of supervision over their pilots in order to guarantee the utmost professionalism in the interest of public safety. . . .

[19] The purpose of section 8.4 of the Act and its effect allow the Minister to impose vicarious liability on the owner even if a third party, such as a pilot, can also be proceeded against.

[20] In this case, the appellant cannot claim there is confusion because section 8.4 of the Act is not mentioned in the various charges. The charges are worded clearly enough to determine the extent to which the appellant is liable for the acts it is accused of committing.

[21] We therefore dismiss the first ground for appeal.

B. Vague and imprecise charges

[22] The appellant also states that all the charges are vague and imprecise to the point that it cannot be sure what it is being accused of. Without knowing what is being alleged, the appellant submits it does not have the opportunity to present full answer and defence against all the charges.

[23] With respect, we cannot agree with such a position. In fact, we find that the charges are precise enough to allow a company that maintained its books and records in a strict and ordered fashion to easily find the discrepancies that led to the charges. Moreover, the Tribunal maintains that for many of the charges, there were false entries and not simply errors made in good faith.

[24] The appellant submits that these imprecisions prevented it from making full answer and defence. The appellant would have had to present testimony or evidence in support of this argument. In fact, the appellant did not submit any evidence at the review hearing to show to the Tribunal how the charges were vague and imprecise and what prejudice resulted.

[25] The Tribunal dismisses the second ground for appeal.

C. Application of section 706.02 of the CARs

[26] As for counts 13 and 14, the appellant submits that section 706.02 of the CARs does not allow for charges to be laid regarding the acts attributed to the appellant.

[27] In the Tribunal's opinion, the wording of section 706.02 of the CARs is clear, stating it is forbidden to use an aircraft unless maintenance performed on it was done in accordance with a maintenance control system.

[28] The facts noted by the review member regarding these two charges are clear and unambiguous, leading the Tribunal to find that it was not improper for the review member to find there was a contravention of section 706.02 of the CARs.

[29] The third ground for appeal is also dismissed.

D. Counts 1 and 2

[30] As for counts 1 and 2, the appellant claims that nothing in the evidence shows that the antenna was a component of the aircraft. It claims that the antenna could easily have been a load.

[31] The Tribunal must ask if the finding of fact by the review member is reasonable. Mr. Thibodeau's testimony (transcript at 38-39 (December 6, 2005)) indicates there was a wire from the antenna that went into the helicopter where it was attached to a device.

[32] We find that nothing in the evidence leads us to find that the review member's determination on these two counts was unreasonable. On the contrary, according to the Tribunal,

it is completely reasonable to claim that an antenna connected by a wire to a device inside the helicopter is not a load, but rather a component of the aircraft.

[33] We dismiss the fourth ground for appeal.

VII. PENALTIES

[34] We support the Minister's arguments that public safety is its main concern and that penalties imposed are deterrent measures designed to prevent the appellant from re-offending and to protect pilots and the public in general.

[35] It is also important to note that some offences in this case occurred with the company's knowledge and were carried out through the president, director of operations and chief pilot, André Martel. In some cases, there were blatantly false entries and forged signatures.

[36] We feel, however, that the offences under counts 7, 8, 9 and 10 concern, at least partially, differences and inaccuracies in flight time and air time. The appellant claims that it is sometimes difficult to accurately establish the air time and the flight time, especially in cases where the helicopter conducts many take-offs and landings in the same day.

[37] Without overturning the findings of the review member in terms of the seriousness of these breaches and the necessity for the appellant to be more stringent with its bookkeeping, we reduce the monetary penalties of \$1 250 to \$500 for counts 7, 8, 9 and 10.

VIII. DECISION

[38] For all these reasons, we dismiss the appeal on all counts. Regarding the penalties:

- we maintain the monetary penalties imposed for counts 1, 2, 3, 4, 5, 6, 11, 12, 13 and 14; and
- we reduce the monetary penalty of \$1 250 to \$500 for counts 7, 8, 9, and 10.

September 5, 2007

Reasons for appeal decision:

Howard M. Bruce, Member

Concurred by:

Faye Smith, Chairperson

Jean-Marc Fortier, Member