

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Stephane Leblanc, Respondent

LEGISLATION:

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

Air Regulations, C.R.C. 1978, c.2, s. 534(2)(b)

Low Altitude Flight, Civil Liability Of The Owner Of The Aircraft

**Review Determination
Suzanne Jobin**

Decision: December 10, 1996

TRANSLATION

The Tribunal must confirm the decision of the Minister of Transport to the effect that the Respondent contravened paragraph 534(2)(b) of the Air Regulations. The \$1,000 monetary penalty provided for this contravention, payable to the Receiver General for Canada, must be received by the Civil Aviation Tribunal within fifteen days of service of this Determination.

The Review Hearing on the above matter was held Wednesday, November 27, 1996 at 10:00 hours, in the offices of the International Trade Tribunal, in the city of Ottawa, Ontario.

BACKGROUND

On January 22, 1996, Transport Canada sent the Respondent a Notice of Assessment of Monetary Penalty, in which the Minister of Transport alleged that Stephane Leblanc had contravened paragraph 534(2)(b) of the *Air Regulations*.

According to the Notice, the contravention occurred on or about September 5, 1995, at about 17:30 UTC, when an aircraft registered as C-GBPR flew over dwellings at an altitude less than

500 feet above the highest obstacle within a radius of 500 feet from the aircraft. This contravention allegedly occurred near Casselman, Ontario.

A monetary penalty of \$1,000 was subsequently assessed against the Respondent as the registered owner of the aircraft. On the deadline for the stated payment, Transport Canada reported that payment had not been received. The Minister of Transport therefore brought the matter before the Civil Aviation Tribunal, pursuant to subsection 7.8(2) of the *Aeronautics Act*.

THE LAW

Section 7.7 of the *Aeronautics Act* provides as follows:

7.7 (1) Where the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister shall notify the person of the allegations against the person in such form as the Governor in Council may by regulation prescribe, specifying in the notice, in addition to any other information that may be so prescribed,

(a) subject to any regulations made under paragraph 7.6(1)(b), the amount that is determined by the Minister, in accordance with such guidelines as the Minister may make for the purpose, to be the amount that must be paid to the Minister by the person as the penalty for the contravention in the event that the person does not wish to appear before a member of the Tribunal to make representations in respect of the allegations; and

(b) the time, being not less than thirty days after the date the notice is served or sent, at or before which and the place at which the amount is required to be paid in the event referred to in paragraph (a).

(2) A notice under subsection (1) shall be served personally or by ordinary mail sent to the latest known address of the person to whom the notice relates.

Subsection 8.4(1) of the same Act stipulates:

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.

Paragraph 534(2) of the *Air Regulations* provides, in part:

(2) Except as provided in subsections (4), (5) and (6), or except in accordance with an authorization issued by the Minister, unless he is taking off, landing or attempting to land, no person shall fly an aircraft

(a) over the built-up area of any city, town or other settlement or over any open air assembly of persons except at an altitude that will permit, in the event of an emergency, the landing of the aircraft without creating a hazard to persons or property on the surface of the earth, and such altitude shall not in any case be less than 1,000 feet above the highest obstacle within a radius of 2,000 feet from the aircraft; or

(b) elsewhere than over the built-up area of any city, town or other settlement or over any open air assembly of persons at an altitude less than 500 feet above the highest obstacle within a radius of 500 feet from the aircraft.

THE FACTS

Margaret Wilson lives near Casselman, Ontario. She owns a ranch of some 130 acres in the area. On September 5, 1995 at about 13:30 hours local time, Ms. Wilson saw an aircraft, with registration C-GBPR, flying over her property at an altitude less than 200 feet. She reported the incident to the appropriate authorities.

Ms. Elliott, an inspector responsible for regulatory compliance at Transport Canada, was put in charge of the investigation. She contacted one of the two registered owners of the aircraft to determine who had been the pilot-in-command of the aircraft on September 5, 1995.

Ms. Elliott was unable to determine from her investigation the identity of the pilot-in-command. She therefore recommended that the Minister proceed against one of the two owners of the aircraft, namely Mr. Leblanc, as she had been unable to reach the other owner, Mr. Yves Lefebvre.

These facts are not disputed.

DISCUSSION

Transport Canada maintains that Mr. Leblanc, as owner of the aircraft registered as C-GBPR, is responsible for the alleged offence. In the circumstances, the representative of the Minister of Transport maintains that the Respondent's arguments invoking the defence provided in subsection 8.4(1) of the Act cannot be allowed.

The Applicant claims the Respondent had to prove that he exercised all due diligence to ensure that the aircraft he owns was safe at all times. He also had to prove that the aircraft was in the possession of a person other than the owner or owners without their consent.

On this point, the Minister's representative argues that the Respondent should have notified the police or, at the very least, reported the incident to the competent authorities. As Mr. Leblanc did nothing, he cannot invoke the defence provided in the *Aeronautics Act*.

In this context, Transport Canada is asking the Tribunal to uphold the Minister's decision and to confirm the assessed monetary penalty.

The Respondent claims that he did not authorize the unidentified pilot to use, on September 5, 1995, the aircraft of which he is a co-owner. He argues that, while he knows the name of the other registered co-owner of the aircraft, he has never met Mr. Lefebvre and does not know where he lives.

He explained that he did not know precisely where the aircraft was on the date of the alleged offence. He is therefore asking the Tribunal to allow him to invoke the defence provided in subsection 8.4(1) of the Act. Should it not so allow, he is asking the Tribunal to reduce the assessed monetary penalty.

DETERMINATION

Messrs. Stephane Leblanc and Yves Lefebvre are both owners of the aircraft registered as C-GBPR. As co-owners, they are jointly and severally responsible for the aircraft. The fact that the two registered owners do not know each other and have never met in no way alters their respective responsibility.

Mr. Leblanc cannot free himself of his responsibility by claiming that the aircraft was not in his possession or under his control on September 5, 1995. His assumption that the aircraft may have been under the control of the other owner is not relevant. The Respondent was responsible for the aircraft at all times.

His claim that he did not give his consent is insufficient and does not satisfy the requirements of subsection 8.4(1) of the Act.

To invoke such a defence, the Respondent had to prove that all due diligence was exercised to prevent the use of the aircraft by unauthorized individuals.

The Respondent also had to prove that the aircraft had been used without the consent of either of its registered owners.

In the case before us here, the Respondent presented no evidence to show that such diligence had been exercised. He did not prove that the aircraft had been spirited away or that Mr. Lefebvre had not consented to its use on September 5, 1995. According to the evidence presented, this unauthorized use was never reported.

Furthermore, the Respondent cannot invoke the defence of due diligence provided in section 8.5 of the Act, as he did not prove he exercised all due diligence to comply with the Act and its provisions.

The *Aeronautics Act*, specifically subsection 8.4(1), is clear and specifically recognizes the responsibility of the owner or owners for the wrongful acts of a third party.

The evidence presented by Transport Canada, specifically the testimony of the two witnesses, has satisfied the Tribunal that the contravention and the assessment of the monetary penalty are

valid. It is the opinion of the Tribunal that the amount sought is reasonable given the seriousness of the offence.

The Minister of Transport could, at his pleasure, proceed against either owner of the aircraft or both jointly and severally. He could also proceed against the pilot-in-command of the aircraft on September 5, 1995. He chose to proceed against only one of the owners, and the Respondent cannot dispute the legality of this decision. This choice is the Minister's prerogative.

The Tribunal, after reviewing the evidence presented, determines that the Applicant has met its burden of proof. The Respondent has not proven that in the circumstances the defences provided in the Act were applicable.

The Tribunal must therefore confirm the decision of the Minister of Transport to the effect that the Respondent contravened paragraph 534(2)(b) of the *Air Regulations*.

Suzanne Jobin
Member
Civil Aviation Tribunal