

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

High Country Fishing Ltd., Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, as am., s 210(1)(a), 826(1)

Incomplete Journey Log Entries, Flights when Certificate of Airworthiness not in force

**Review Determination
Ed J. Jenson**

Decision: February 19, 1992

THE MINISTER'S ALLEGATIONS ARE UPHELD AND THE TOTAL PENALTY OF \$2,450.00 IS CONFIRMED. THIS AMOUNT, PAYABLE TO THE ORDER OF THE RECEIVER GENERAL FOR CANADA, IS TO BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL AT THE ABOVE ADDRESS WITHIN 15 DAYS OF RECEIPT OF THE PRESENT DETERMINATION.

The Review Hearing on the above application was held at the Court House, Court Reporters' Office, 10260-99th Street, in the City of Grande Prairie, in the Province of Alberta, on January 21, 1992 at 09:00 hours.

MOTIONS AND AMENDMENTS

A motion was made by Inspector I.D. Gillespie that the Review Hearing for Wayne A. Hodges (CAT FILE NO. W-0142-02 AND NOT FILE NO. SARB-6504-P-246210-17699) be held in conjunction with this Review Hearing of High Country Fishing Ltd. The evidence and testimony to be presented would be applicable to both hearings. There being no objection from the respondent, the motion was approved.

Inspector Gillespie requested an amendment to the Notice of Assessment of Monetary Penalty to change "18 May" to "24 May". The amended notice Counts \$1 and \$7, would read:

"Count No. 1 - (\$250):

In that from 24 May 1990 to 14 February 1991, you, as the registered owner of Cessna A185F, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations."

"Count No. 7 - (25):

In that from 24 May 1990 to 3 September 1990, you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to log all of the particulars required pursuant to Air Navigation Order Series VIII, Number 2".

There being no objection, the amendment was approved.

BACKGROUND AND OVERVIEW

High Country Fishing Ltd. was assessed Monetary Penalties totalling \$2,450.00 on twelve (12) counts of contravention, as follows:

"Count No. 1 - (\$250):

In that from 24 May 1990 to 14 February 1991, you, as the registered owner of Cessna A185F, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Count No. 2 - (\$300):

In that on or about 16 February 1991 in the vicinity of Grande Prairie, Alberta you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Count No. 3 - (\$300):

In that on or about 18 February 1991 in the vicinity of Grande Prairie, Alberta you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Count No. 4 - (\$275):

In that on or about 19 February 1991 in the vicinity of Grande Prairie, Alberta you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Count No. 5 - (\$275):

In that on or about 23 February 1991, you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA from Grande Prairie, Alberta to Red Deer, Alberta when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Count No. 6 - (\$275):

In that on or about 24 February 1991 you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fly Canadian registered aircraft C-GXZA from Red Deer, Alberta to Grande Prairie, Alberta when there was not in force in respect of that aircraft a certificate of airworthiness issued under Part II of the Air Regulations.

Section 826(1) Air Regulations

Count No. 7 - (\$25):

In that from 24 May 1990 to 3 September 1990, you, as the registered owner of Cessna A185F aircraft, Canadian registration C-GXZA, did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to log all of the particulars required pursuant to Air Navigation Order Series VIII, Number 2.

Count No. 8 - (\$150):

In that on or about 16 February 1991 you, as the registered owner of Cessna A185F, Canadian registration C-GXZA did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to enter the particulars of a flight departing from the Grande Prairie, Alberta Airport at approximately 2040 UTC and arriving back at that airport at approximately 0041 UTC.

Count No. 9 - (\$150):

In that on or about 18 February 1991 you, as the registered owner of Cessna A185F, Canadian registration C-GXZA did fail to maintain for that aircraft an

aircraft journey log, to wit: did fail to enter the particulars of a flight departing from the Grande Prairie, Alberta Airport at approximately 1725 UTC.

Count No. 10 - (\$150):

In that on or about 19 February 1991 you, as the registered owner of Cessna A185F, Canadian registration C-GXZA did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to enter the particulars of a flight arriving at the Grande Prairie, Alberta Airport at approximately 0123 UTC.

Count No. 11 - (\$150):

In that on or about 23 February 1991 you, as the registered owner of Cessna A185F, Canadian registration C-GXZA did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to enter the particulars of a flight departing from the Grande Prairie, Alberta Airport at approximately 2344 UTC and arriving at the Red Deer, Alberta Industrial Airport at approximately 0123 hours UTC.

Count No. 12 - (\$150):

In that on or about 24 February 1991 you, as the registered owner of Cessna A185F, Canadian registration C-GXZA did fail to maintain for that aircraft an aircraft journey log, to wit: did fail to enter the particulars of a flight departing from the Red Deer, Alberta Industrial Airport at approximately 0328 hours UTC."

EVIDENCE

The Minister's first witness was Inspector M.A. Plonka. On February 28, 1991, while investigating another file, the Grande Prairie R.C.M.P. requested a check on the validity of the documents for Cessna aircraft C-GXZA. After checking the files in Edmonton, it was determined that the Certificate of Airworthiness for C-GXZA had expired on April 11, 1990. On March 5, 1991, Inspector D. Alston from the Airworthiness Branch of Transport Canada expressed a concern to Inspector Plonka that aircraft C-GXZA may be continuing to fly without a valid Certificate of Airworthiness. On March 8, 1991, Inspector Plonka spoke to the Unit Chief of the Grande Prairie airport control tower and discovered that C-GXZA had indeed been flying recently.

At the request of Inspector Plonka, the R.C.M.P. acquired the journey log book for C-GXZA for examination. The log book revealed that from May 24, 1990, to September 3, 1990, 145 flights had been entered and a total of 188 passengers had been carried on board the aircraft. Mr. Wayne A. Hodges was shown as pilot-in-command on all flights from May 24, 1990 to August 17, 1990. It was also noted that the aircraft journey log book was not completely filled out in accordance with the requirements of Air Navigation Order 8, No. 2, Columns 4 and 5 (the up and down times) and Column 12 (total weight) had never been entered. From August 19, 1990 to September 1990, there were no entries for the crew of C-GXZA.

Investigations were made with Alberta Corporate Affairs as to the status of High Country Fishing Ltd., which was "found to be a valid company with Wayne A. Hodges as principal. Investigations made with Transport Canada in Ottawa determined High Country Fishing Ltd. to be the owner of Cessna A185F registration C-GXZA.

Records from the Grande Prairie Airport tower, flight service station, and Red Deer flight service station were submitted in evidence as to the flights made by Mr. Wayne A. Hodges in aircraft C-GXZA. These records revealed that flights made February 16, 18, 19, 23 and 24, 1991, had never been entered in the aircraft journey log book for Cessna A185F registration C-GXZA. This directly contravenes section 826(1) of the Air Regulations which states that "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."

The second witness for the Minister, Inspector D. Alston, testified that, in a routine inspection of aircraft at the Grande Prairie airport on October 22, 1990, Cessna A185F registration C-GXZA was inspected. A number of deficiencies were written up and reported to Mr. Wayne A. Hodges of High Country Fishing Ltd. The next inspection of this aircraft was on February 14, 1991, which was requested by Mr. Hodges for the purpose of obtaining an operating certificate for High Country Fishing Ltd. On this inspection, it was revealed that some of the deficiencies on the aircraft had not been corrected. In addition, the Certificate of Airworthiness had expired, due to the late application by Mr. Hodges. When the log books were inspected and audited, it was revealed that a number of airworthiness directives had not been complied with. Some of these directives went back beyond May 24, 1990. With these directives not completed, the Certificate of Airworthiness would not be valid.

Mr. Hodges admitted he was late sending in the application for renewal of the Certificate of Airworthiness for Cessna A185F registration C-GXZA owned by High Country Fishing Ltd. He stated that he did not realize late filing of the application would totally invalidate the Certificate of Airworthiness and make it necessary to apply for a new one. It was for that reason, he testified, that he continued to fly the aircraft. Mr. Hodges stated he had no intention of flying C-GXZA illegally nor did he have any intention of flying the aircraft when it was not airworthy.

CONCLUSION

SECTION 210(1)(a) AND SECTION 826(1) OF THE AIR REGULATIONS WERE CONTRAVENED in that:

- High Country Fishing Ltd., as the registered owner, did fly Cessna A185F registration C-GXZA during the period May 24, 1990 to February 24, 1991 without a valid Certificate of Airworthiness.
- Mr. Hodges was told on February 14, 1991, in person by Inspector D. Alston, that C-GXZA did not have a valid Certificate of Airworthiness and a flight permit was issued to fly the aircraft back home for maintenance only.
- Evidence was presented that C-GXZA was flying February 16, 18, 19, 23 and 24, 1991 and the complete entries were left out of the aircraft journey log book.

Regulations are made for the safety of all concerned and we must abide by them.

I UPHOLD THE MINISTER'S DECISION AS TO THE SANCTIONS ON ALL TWELVE (12) COUNTS REVIEWED BY THIS HEARING, FOR A TOTAL PENALTY OF \$2,450.00.

Ed. J. Jenson
Member
Civil Aviation Tribunal