

CIVIL AVIATION TRIBUNAL

BETWEEN:

Serge Désilets, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

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

Low flying, Built-up area

Review Determination
J. Rouleau

Decision: October 20, 1986

TRANSLATION

Heard: Nicolet, Quebec, October 14, 1986.

DETERMINATION

The applicant was contesting the decision of the Minister of Transport dated August 14, 1986, fining him \$250.00 for contravention of section 534(2)(a) of the Air Regulations. A photocopy of the section was entered as Exhibit R-1, and a photocopy of the Notice of contravention was entered as Exhibit R-2.

The representative of the Department of Transport identified the applicant and established that he was in command of the Bellanca aircraft with registration marks C-CLCC at the places and on the date when the contravention occurred.

I will not dwell on the main evidence submitted by the respondent since the applicant admitted that, on the two occasions mentioned (for the aircraft with registration marks C-CLCC) in the report entered as exhibit R-3, he was flying at an altitude of less than 1,000 feet, "perhaps 800 feet", he said. This fact has been established to the satisfaction of the Tribunal.

In his testimony the applicant said that, on the two occasions when he was flying at low altitude, he was making a landing approach.

The representative of the Department of Transport admitted that, when the witness, Mr. André Monast, saw the applicant at point 4 on the map entered as exhibit R-3, he was probably approaching for a landing.

Thus the only point at issue is the situation at the time when the aircraft was spotted at point 1 on the map. According to Mr. Monast's testimony, the aircraft was at least two miles from the lake where a landing could be made, it was flying at between 500 and 1000 feet, and it turned sharply. The turn was not made in a dangerous manner: Mr Monast stated that he would probably not have complained as a result of this observation. Rather his complaint was related to an observation of another plane during the same hour; this other plane had executed some extremely dangerous manoeuvres.

The applicant claims that he was turning to position himself in the right direction for landing on the lake, and that he was a mile and a half from the lake.

In his arguments, the representative of the Minister stated that two miles was too far to begin a landing approach with the type of aircraft being used by the applicant on that day. The applicant claimed that he had been landing at that spot for years and that his approach was a normal one.

No technical evidence was submitted to the Tribunal by the parties in support of their arguments. Thus there is doubt about the alleged contravention, and the Tribunal accepts the applicant's version, namely, that he was beginning his descent with a view to landing.

For these reasons, the Tribunal decides in favour of the applicant and rescinds the Notice of contravention bearing the number 5003-3-2078/Q96-0059, which was issued by the Minister of Transport on August 14, 1986.