

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Andrew A. Watson, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, as am., s. 534(2)(a)

Built-up area, Low flying

Review Determination
Gordon R. Mitchell

Decision: March 16, 1993

I confirm the Minister's decision for a monetary penalty of \$500.00 to be made payable to the Receiver General for Canada and must be received by the Civil Aviation Tribunal within fifteen days of the receipt of Determination.

The Review Hearing on the above application was held at Armstrong Resource Developments Corporation (A.R.D.C.), Queen Street, Conference Room, in the City of Armstrong, Ontario, on Friday, February 26, 1993, at 09:00 hours.

BACKGROUND

The NOTICE OF ASSESSMENT OF MONETARY PENALTY reads as follows:

"Pursuant to section 7.7 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(s):

Air Regulation 534(2)(a) in that on July 29, 1992 at approximately 2100 hours UTC at Clearwater Lake, Ontario you did fly an aircraft, to wit, a Piper J3C-65 bearing Canadian registration marks C-GQOM, over the built-up area of a

settlement at an altitude less than 1,000 feet above the highest obstacle with (sic) a radius of 2,000 feet of the aircraft."

The Minister's first witness, Mr. Don Riscoch, stated that aircraft C-GQOM was flying in the area of Clearwater Lake at the time and date indicated in the notice. A copy of the certificate of registration for this aircraft was produced and entered as Exhibit M1.

A copy of the page of the log book for C-GQOM showing an entry for July 29, 1992 covering the flight at approximately 2100 hours made with two persons on board including A. Watson as pilot, was entered as Exhibit M2.

A map of the Armstrong area, 1:250,000 scale, outlining the Clearwater Lake location was entered as Exhibit M3.

An unsigned note from Mr. Watson, dated September 24, 1992 explaining his actions, along with a hand drawn map of the Clearwater Lake area was entered as Exhibit M4.

Mr. Watson had no questions for this witness.

The second witness, A. Nicholl, a senior commercial pilot who was in the vicinity at the time, stated that the aircraft C-GQOM passed almost directly over the dwelling where he was, headed in an easterly direction at an extremely low altitude estimated at 50 to 150 feet above the trees, and came over again a short time later heading in the same direction at the same altitude.

Mr. Nicholl stated he did not see the aircraft land or take off during these passes. He also indicated that the aircraft could not be brought to a landing safely when heading in the easterly direction. Mr. Nicholl stated that identification of the aircraft was apparent, as he was able to read the registration while it was in the air. Mr. Nicholl was at a cottage two or three lots from the Watson cottage.

Mr. Watson had no questions for this witness.

The third witness called was Constable John Lennox of the Ontario Provincial Police. He was at the Nicholl cottage when he observed the aircraft make, in his words, two banks at approximately 200 feet from the ground over the area which consisted of approximately five or six camps. He stated that the circuits brought the aircraft over the camps in a north easterly direction.

Constable Lennox went to the Watson camp and spoke to Mr. Watson who at that time was tying the aircraft to his dock. Constable Lennox identified the aircraft as the one he had seen flying low a short time before.

Mr. Watson had no questions for this witness.

Mr. Watson in his presentation maintained that he did circuits that evening, that he took his granddaughter for a ride and that he flew at an altitude of 300 feet above the trees. He stated that

he liked to keep close to the lake when doing circuits with his granddaughter and that on one occasion he practised an "engine off", saying that maybe he should not do that with his granddaughter in the plane.

He said that this may have been the time he turned above Mr. Nicholl's cabin. Mr. Watson stated that on one occasion he pulled power and turned back to the lake without landing but that it was quite possible to land in spite of what witness Nicholl said earlier. Mr. Watson said that he did a "touch and go" on the first two circuits but not on the "engine out" circuit. He said he could not explain why the two witnesses had not seen him do "touch and go". Mr. Watson's testimony became somewhat belligerent during this part of the hearing.

CONCLUSION

Mr. Watson by his own admission stated that he was flying at three hundred feet, he stated further that he had set the altimeter when on the lake.

Generally the two witnesses and Mr. Watson were relatively close in their reference to the aircraft altitude.

It is apparent that Mr. Watson is not well versed on paragraph 534(2)(a) of the Air Regulations.

The area flown over is a built-up area.

Both witnesses stated that the aircraft had made more than two passes over the cabins without landing.

It concerns me very much that Mr. Watson practised an "engine off", pulled throttle, then turned toward the lake as he stated.

This took place over a built-up area at an extremely low altitude, and in addition he had his granddaughter on board.

DETERMINATION ON MONETARY PENALTY

I CONFIRM THE MINISTER'S DECISION TO ASSESS A MONETARY PENALTY OF \$ 500. THIS AMOUNT IS TO BE MADE PAYABLE TO THE RECEIVER GENERAL FOR CANADA AND MUST BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL WITHIN FIFTEEN DAYS OF THE RECEIPT OF THIS DETERMINATION.