

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**Major J.J.P.R. Turgeon**, Respondent

**LEGISLATION:**

*Aerodrome Security Regulations*, SOR/87-452, s. 20(1)

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**Review Determination  
Orville Pulsifer**

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**Decision: July 9, 1993**

**Heard:** St. John's, Newfoundland, June 8, 1993

***THE MINISTER'S ALLEGATION IS CONFIRMED. THE PENALTY OF \$50.00 IS WAIVED.***

**The Review Hearing** on the above application was held at Treasury Board, Collective Bargaining Boardroom, Main Floor, Confederation Building, East Block, Prince Phillip Parkway, in the City of St. John's, Newfoundland, on Tuesday, June 8, 1993 at 13:00 hours.

It was alleged in the NOTICE OF ASSESSMENT OF MONETARY PENALTY (SECURITY) that Major J.J.P.R. Turgeon contravened Part III, subsection 20(1) of the Aerodrome security Regulations, as follows:

"in that at approximately 0730 hours, 31 August 1992, at St. John's Airport, St. John's, Newfoundland, you did enter a restricted area without being in possession of a valid restricted area pass."

**BACKGROUND**

On the date of the alleged infraction, Major Réal Turgeon was a team coordinator of the Canadian Forces aerobatic team, the Snowbirds. Major Turgeon and others of the Snowbirds unit

were preparing to depart the airport in their aircraft and were therefore seeking to gain access to these aircraft which were parked inside the Restricted Area following their performance the previous day in an air show at St. John's International Airport.

Major Turgeon's written statement (Exhibit M4) summarized events leading to the charge:

"I proceeded to the airport around 07:00 am. for a takeoff at 08:00 am. I went to the electric gate which we had been using to get to the aircraft. We had been using it for the last four or five days. I pressed the telebox button and a voice asked me what I wanted. I said I was Major TURGEON of the SNOWBIRDS and wanted vehicle ramp access to my aircraft to pack the plane. The voice said 'Ok Standby.' I was standing by the box for four or five minutes. Captain Glen OERZEN was standing with me. Two of our ground crew arrived behind us with a car.

Cpl. Mike UBELL got out of the car and came up to us and went to the gate and slid the gate, without any effort, back and open. He didn't whack it or force it or anything like that. I felt surprised at him doing it so easily. I actually thought it was open and not locked. He said he actually saw kids opening the gate manually the Saturday during the Air Show day. It was a very innocent sort of gesture, not intended to set off alarms. Once the gate opened we got in our cars and went the 200 feet to our aircraft. I must stress that we live around airports and know (sic) the security procedures. We would not knowingly violate an airport's security-- why would we do that? I never heard anything from the voice on the box or ignored anyone. I just assumed that we were clear to enter, especially as the gate seemed open. I saw no sirens or lights to indicate that we had done anything wrong. The gate definitely appeared to be unlocked."

## **DETERMINATION**

It is not necessary in my view to relate the detailed evidence presented on behalf of the Minister by the Case Presenting Officer, Mr. Frank LeBlanc. For the sake of brevity my review will be focused specifically upon the points at issue as clearly stated by Capt. W.D. Kelly.

CAPT. KELLY: "in the letter to me...in his correspondence, the thing that Major Turgeon asked me to point out ...the article under which he was charged and fined indicates that he was in a Restricted Area without a Restricted Area Pass. And that's the only thing that's in contention. He was in possession of a pilot licence and a military I.D. and he was in uniform, which is normally considered to be valid identification as a Restricted Area Pass in those areas.

And that's his entire case. He says that he was entitled to be there; therefore, he should not have been charged or fined under an article that says he was in a Restricted Area without a "Restricted Area Pass."

HEARING MEMBER: "So that...that completes your..."

CAPT. KELLY: "That completes...I've relayed the information he asked me to relay."

Subsection 20(1) of the Aerodrome security Regulations Part III, states:

"No person shall enter or remain in a restricted area unless that person has in his possession a restricted area pass in respect of that restricted area and complies with all conditions of issuance or approval of the pass."

The regulation is clear, unequivocal and absolute. While it is indicated in testimony by Cst. Michael Fitzgerald that it is not uncommon to escort military personnel in a Restricted Area based on observation of their I.D. card and their uniform, in this case once an alarm had been triggered and video recording apparatus had automatically been activated, a breach of security under the Aerodrome Security Regulations had, in fact, taken place.

Nor does there appear to be any question as to whether or not Major Turgeon and others in his group had been granted access to the Restricted Area. From the testimony of Commissionaire Minnett it was clear they had not. Indeed, Major Turgeon's written statement admitted he had accessed a Restricted Area when the gate was able to be forced open. But the fact is that the area was still protected by signage specifically stating, "Authorized Persons Only. Restricted Area." By definition of the Aerodrome Security Regulations, this restriction would include Major Turgeon and others in his party.

The fact that Major Turgeon carried Canadian Forces identification and was in uniform is apparently not significant or satisfactory under the Aerodrome Security Regulations.

While it would appear useful that such military identification might have the same weight as the so-called Restricted Area Pass, such provision was not in effect at the time in question. This is particularly strange in light of the fact that provision is made for civilian general aviation pilots to access a Restricted Area.

MR. LEBLANC: "...the very first thing I would like to clarify, sir, is the fact that a military pilot carries an I.D. card, an identification card. But he does not, in his pocket, have a pilot licence. So, there are provisions for general aviation pilots who can produce picture, I.D. and pilot licence to be allowed access into a Restricted Area. Military pilots, unfortunately, do not have pilot licences. Their pilot licence consists of a lot of administration or paper back at their headquarters, not in their pocket.

So in saying that, there's no way that Mr. Turgeon could have produced the necessary documents. So therefore he required an escort...."

On the evidence, Major Turgeon possesses a pilot licence; however, according to Mr. Leblanc, unlike a general aviation pilot licence, it is not a document that can be carried in one's pocket and produced to meet the requirements for access to a Restricted Area.

An unfortunate irony of the case in point is that the Aerodrome Security Regulations and the events, as they developed, served to render Major Turgeon and others guilty of an infringement of the regulations. The regulations are in place, presumably, to protect the air-travelling public

from any act of violence or threat of harm, not to cause difficulty and frustration to serving members of Canada's Armed Forces in the performance of their duties.

Yet the regulation is absolute. To provide exceptions otherwise than by amendment of the regulations themselves would be to open the security process to a plethora of interpretations and special provisions which can only create uncertainty where there ought to be none.

Mr. LeBlanc has cited a similar situation in Minister of Transport and Charles Gaudet (CAT File NO. A-0105-52), entered as Exhibit M5, wherein Tribunal member D.S. McClure, finding in favour of the Minister, summarized as follows:

"Some regulations and laws may appear, at times, to be unfair and unjust but careful analysis of these regulations and laws usually reveals that they serve a very useful purpose and they, therefore, must be adhered to."

On the evidence however I have no reason to disbelieve Major Turgeon, that the gate could have been unlocked. From activities of the previous day, he and his colleagues may have had reason to believe they were doing nothing more than accessing their aircraft for departure, much the same as they had done before in previous days.

**WHILE, IN THE VERY STRICTEST SENSE OF THE WORD, IT MAY HAVE BEEN THAT MAJOR TURGEON CONTRAVENED THE AERODROME SECURITY REGULATIONS, THE FACT IS THAT, FROM A COMMON SENSE VIEW, THE REGULATION WAS SURELY NOT INTENDED TO BE APPLIED TO A MEMBER OF CANADA'S ARMED FORCES ON ACTIVE DUTY IN UNIFORM, CARRYING A VALID MILITARY IDENTIFICATION. I THEREFORE FIND THAT THE FINE OF \$50.00 SHOULD BE QUASHED.**