

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**John David Clancy**, Respondent

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 7.7

*Canadian Aviation Security Regulations*, SOR/2000-111, s. 41

**Retricted area pass**

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**Review Determination**  
**Philip D. Jardim**

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**Decision: January 21, 2002**

*John David Clancy was in breach of section 41 of the Canadian Aviation Security Regulations on July 26, 2001. However, in the circumstances, I reduce the fine to \$25. 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 service of this determination.*

A review hearing on the above matter was held Wednesday, January 16, 2002 at 10:00 hours at Sudbury, Ontario.

**BACKGROUND**

On July 26, 2001, Transport Canada's Regional Security Inspector, John Rehn, conducted a security audit/inspection at the Sudbury Airport. At approximately 10:15 a.m. on that day Mr. Rehn observed that two personnel were not wearing their restricted area passes in a visible and conspicuous manner, as required by the *Canadian Aviation Security Regulations* (CASRs). At that time, Mr. Rehn was situated about 100 yards from the scene, behind a glass window, looking out onto the apron, where the two individuals were working on loading/dispatching an aircraft. The two men left the apron which is a restricted area shortly thereafter, and Mr. Rehn intercepted them in the "lunchroom", which is also in the restricted area of the aerodrome.

Mr. John David Clancy was one of those personnel, and Mr. Rehn noticed that Mr. Clancy had his restricted area pass clipped to his belt, but that the pass was only partially visible, as it was partially obscured by a sweater. Mr. Clancy was seated at a table, having his lunch at the time. Mr. Rehn warned him that he was in violation of the CASRs, and that action would be taken against him for not wearing his pass in a conspicuous area of his outer clothing, as required by the CASRs. In passing, it should be noted that the other gentleman did not have his pass visible at all, and had to retrieve it either from his locker or his pocket, to show it to Mr. Rehn.

Both Mr. Clancy and the other person, Mr. MacRae, were subsequently fined. Mr. MacRae paid his fine, but Mr. Clancy did not, for reasons which will become apparent below. Hence, Transport Canada applied to the Tribunal for this review hearing.

## **THE LAW**

Subsection 4.3(1) of the *Aeronautics Act* states:

4.3 (1) The Minister may authorize members of the Royal Canadian Mounted Police or any other person to exercise or perform, subject to such restrictions or limitations as the Minister may specify, any of the powers, duties or functions of the Minister under this Part except, subject to subsection (3), any power conferred on the Minister by the Governor in Council to make regulations or orders.

Subsection 7.7(1) of the Act states:

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).

Section 41 of the CASRs states:

41. A person must not enter or remain in a restricted area unless the restricted area pass issued to the person is visibly displayed on the person's outer clothing.

## **EVIDENCE**

In a pre-hearing agreement, Mr. Georges Leduc, the Minister's case presenting officer, and Mr. Clancy agreed on the content and applicability of the above regulations.

Mr. Leduc tendered a batch of Exhibits, M-1 through M-8, which consists of the applicable regulations and rules for the wearing and display of passes, the notice of monetary penalty to Mr. Clancy, and evidence of Mr. Clancy's attendance at a Sudbury Airport security and safety meeting held previously. It should be noted that the date on Exhibit M-7 is given as May 18, 2000, when it was actually held on November 1, 2000. Mr. Hal Hogan, the airport security and safety officer, noted this mistake, subsequently, at the conclusion of the hearing. While this date has no significant bearing on the matter, I only learned about it when observing that it was some 14 months previous to the incident, and on questioning Mr. Hogan as to the frequency of such meetings.

Mr. Rehn was duly sworn, and revealed in his testimony the requirements for the issue and wearing of restricted area passes. In cross-examination by Mr. Clancy, Mr. Rehn stated that these punitive actions were the first disciplinary actions ever taken by the Minister at Sudbury. Further cross-examination by Mr. Clancy revealed that Mr. Rehn was about 100 yards away from the ramp area, behind a glass window, when he observed Messrs. Clancy and MacRae on that day. In addition, Mr. Rehn did not approach them on the apron, instead, he waited until they were in the "lunchroom" before confronting them. Mr. Rehn warned both men that enforcement action would be taken against them.

Mr. Hal Hogan, security and safety officer at Sudbury Airport, was the Minister's second witness. He was duly sworn and gave an overview of the security situation at Sudbury Airport on the day in question, July 26, 2001. He stated that he had held a security and safety meeting on May 18, 2000, which was attended by the Respondent (M-7). This meeting dealt with the criteria for the issue of restricted area passes, and the requirement to wear them on external clothing. There had been frequent breaches of the CASRs, not least of which was the requirement to display the passes on external clothing. He stated that Mr. Clancy had been warned about a year previously about not wearing his pass, and he was well aware of the requirements attached to the pass.

There was discussion about the requirements to wear the pass displayed conspicuously on outer clothing. Paragraph E of the terms of issue of the pass states that the pass has been designed to be worn on the outer clothing on the left or right side of the chest or on the left or right upper arm when the chest location interferes with the person's ability to work, with the front of the pass visibly displayed (M-3). Section 41 of the CASRs states that the pass must be visibly displayed on the person's outer clothing (M-5). The regulation itself does not detail exactly where the pass should be worn.

Following this meeting, Mr. Clancy was observed by Mr. Hogan to conform to the requirement to wear and visibly display his pass. On the other hand, Mr. Hogan had had to discipline two to three other employees, over the last year, by confiscating their passes for breaching the requirements.

Mr. Clancy took the stand and was duly sworn. He observed that while he was recently always in compliance, there were several others in other departments who were in frequent breach of the rules. He considered it unfair that he and Mr. MacRae were singled out. This was the first time anyone had ever been fined. He was pursuing this line of questioning to the point of irrelevance, and I had to intervene to ask him to deal with the day in question.

Mr. Clancy stated that his pass was visibly displayed on July 26, 2001. It was affixed to his belt since, while working at his ramp handling job, the lanyard and clips provided frequently got in the way and rendered the pass liable to be damaged or lost, or risked being caught up in baggage or equipment. He was wearing a sweater at one stage during the day, in the lunchroom, and was aware that as he was sitting down at a table eating, the pass may have become partially obscured by the sweater, which was when Mr. Rehn approached him. He said that several others were in breach on that day, but he and Mr. MacRae were the only ones singled out. He said that Mr. Rehn did not identify himself and was not wearing a pass.

Mr. Sean Robert MacRae was affirmed as Mr. Clancy's witness. He confirmed that Mr. Clancy was indeed wearing his pass clipped to his belt, and that there were several others not wearing their passes. In cross-examination by Mr. Leduc, Mr. MacRae revealed that he too had been fined, and that he was not properly displaying his pass; it was either in his locker or in his pocket - he could not remember exactly where. He had paid his fine. He works with Mr. Clancy on most days and observed that Mr. Clancy always wears his pass.

Mr. Clancy tendered Exhibit D-1 which was in the form of a memorandum from the Sudbury Airport Manager, dated October 10, 2000. This memo entitled "Proper Disposition of Restricted Area Passes" details penalties for breaches of failing to properly display passes. It does not detail where on one's outer clothing the pass should be displayed, but was accompanied by a Canadian Airport Security Awareness (C.A.S.A.) leaflet. The penalty for a second offence is: "Suspension of Restricted Area Pass privileges for 24 hours...." Mr. Clancy has been fined \$300.

## **DISCUSSION**

This is undoubtedly a serious matter, especially in the light of recent events. However, there are extenuating circumstances:

1. Mr. Clancy was wearing his pass at the time of the infraction.
2. He testified that while he was on the ramp, where Mr. Rehn observed him and Mr. MacRae, he was wearing his pass. Mr. Rehn was, however, 100 yards away and peering through a glass window. He should have confronted the two personnel while they were on the ramp, but waited until they entered the lunchroom.
3. At this time, Mr. Clancy was seated at a table, and his sweater had partially obscured the pass.
4. The lunchroom is in the restricted area of the aerodrome.
5. Ramp handling requires much movement of the body, and it is understandable how clipping the pass to clothing, or wearing it on a lanyard or alligator clip could result in either the pass becoming lost, or caught up in machinery, equipment, or other clothing. In the circumstances, Mr. Clancy did a reasonable thing by clipping it onto his belt.

6. However, his sweater had obscured the pass from time to time, and when Mr. Rehn confronted him in the lunchroom, this was the case.

Mr. Clancy was observing the regulations in spirit, if not in actual practice. His intent was to be within the law and the rules for displaying the pass on his outer clothing. He has been declared by Mr. Hogan as being in compliance since the safety and security meeting on November 1, 2000. In the circumstances, \$300 is an overly harsh fine. I therefore reduce the fine to \$25. In so doing, I am acknowledging Mr. Clancy's sense of responsibility exhibited at the hearing, and I feel that he will not be found wanting in this respect in the future.

I would advise Mr. Clancy and all others affected by this regulation to seek assistance from their employers in securing these passes to outer clothing using Velcro, or such other devices as may be available for extenuating situations, caused by equipment, weather and bulky winter wear. The proper identification of authorized personnel in restricted areas of aerodromes is paramount in the light of recent events.

## **DETERMINATION**

**At the conclusion of this hearing, I have determined that John David Clancy was in breach of section 41 of the CASRs on July 26, 2001. However because of the reasons given above, I reduce the fine to \$25.**

Philip D. Jardim  
Member  
Civil Aviation Tribunal