

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Robert Maguire**, Appellant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Air Regulations*, C.R.C. 1978, c. 2, as am., s. 534(2)(a), 534(3)

**Low Flying, Built-up Area, Aerial Photography**

---

**Appeal decision**

**G. Richard, J. Rouleau, Suzanne Jobin**

---

**Decision: December 4, 1992**

TRANSLATION

***THE APPEAL IS ALLOWED. THE MINISTER'S DECISION TO SUSPEND THE RESPONDENT'S PILOT LICENCE FOR A PERIOD OF 120 DAYS IS UPHELD. THE SUSPENSION WILL START ON THE FIFTEENTH DAY FOLLOWING THE DATE OF SERVICE OF THIS APPEAL DETERMINATION ON THE APPELLANT.***

**The Appeal Hearing** on the above matter was held before designated Civil Aviation Tribunal Members at the Tax Court of Canada, 2nd Floor, Motions Room, 200 Kent Street, in Ottawa, Province of Ontario.

The Minister of Transport is appealing the determination made by Jean-Marc Fortier on May 14, 1992. The Review Hearing in this case was heard jointly with *Aéro-Cam Inc. vs. the Minister of Transport* (CAT File No: O-0312-10 and DOT File No. 6504-C-5906-19139). The determination made was appealed by the Minister of Transport. The two appeals were heard jointly.

In the determination at first instance the Tribunal, while acknowledging that the Respondent had contravened subsections 534(2) and 534(3) of the *Air Regulations*, reduced the penalty assessed by the Minister.

The grounds for the appeal are as follows:

"1. The Tribunal Member erred in reducing the suspension period from 120 days to 30 days in light of the evidence filed and submissions made by the representative for the Minister of Transport with respect to the sanction.

2. Such further and other grounds that the transcript of the proceedings may disclose."

## **REPRESENTATIONS OF THE PARTIES**

The Appellant submits in his arguments that the Tribunal member assigned to conduct the review reduced the assessed penalty without proper justification. On the basis of his comments, Mr. Fortier did not take into account the seriousness of the offence and the Respondent's prior record. The Appellant further contends that the determination at first instance was based on erroneous data about the length of the penalty assessed by the Minister.

The Respondent explains in his arguments that the alleged contraventions are due to the exigencies of his professional activities as an aerial photographer. In this context, he deems that the period of suspension adopted by the Tribunal is more than adequate.

## **DISCUSSION**

In his determination Mr. Fortier states the following:

"Transport Canada put forward a series of arguments to justify the 90-day suspension of Mr. Maguire's licence, and among those, was a computer list where Mr. Maguire's prior infractions, extending over an 8 to 9 year period from 1982 to 1990, are disclosed and summarized. Several infractions for which Mr. Maguire was found guilty concerned low flying operations. The Tribunal understands that the operations carried out by Mr. Maguire may sometimes require that he be called to fly at low altitudes which may be close to the minimum required under the *Air Regulations*."

Mr. Fortier concludes as follows:

"... the Tribunal is of the opinion that the 90-day suspension requested by the Minister of Transport is a harsh penalty in the circumstances. The Tribunal understands the purposes of Transport Canada in requesting a penalty of such nature due to Mr. Maguire's prior record of infractions.

In the present circumstances, the Tribunal finds that a 30-day suspension is more reasonable and commensurate with the infraction committed by Mr. Maguire."

After examining the record of the Review Hearing and considering the representations of the parties, the Tribunal finds that, in view of the Respondent's prior record and the seriousness of the alleged offences, the Minister's decision to assess a suspension of 120 days was well-founded. The arguments relating to the exigencies of the Respondent's professional activities could not, in the circumstances, be regarded as a factor mitigating the penalty assessed or justifying a contravention of the established regulations.

Further, the Appellant's submission to the effect that the determination at first instance is vitiated with errors is well founded. The evidence clearly shows that the Notice of suspension issued by the Minister of Transport on January 13, 1992, provided for a suspension of the Respondent's pilot licence for 120 days and not 90 days as the member of the Tribunal suggests in his determination.

**THE APPEAL IS ALLOWED. THE MINISTER'S DECISION TO SUSPEND THE RESPONDENT'S PILOT LICENCE FOR A PERIOD OF 120 DAYS IS UPHELD. THE SUSPENSION WILL START ON THE FIFTEENTH DAY FOLLOWING THE DATE OF SERVICE OF THIS APPEAL DETERMINATION ON THE APPELLANT.**