

CIVIL AVIATION TRIBUNAL

BETWEEN:

Glen J. Gulay, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

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

Air Regulations, C.R.C. 1987, c.2, s. 540.2(5), 803(b)

Commencement of flight when ice on critical surfaces

Review Determination
William C. Pearson, Q.C.

Decision: January 31, 1994

I find that Glen Joseph Gulay did not contravene subsection 540.2(5) of the Air Regulations. The Minister of Transport's allegation is therefore dismissed.

The Review Hearing on the above matter was held Tuesday, January 18, 1994 at 10:00 hours, at the Secretary of the State, Canadian Grain Commission Building, in the City of Winnipeg, Manitoba.

BACKGROUND

This Review Hearing deals with two separate Notices. By agreement, during the proceedings, the evidence adduced by both parties applied to both allegations.

Before commencing the hearing, both parties advised me that there were no agreements on any facts and no motions to be made.

Mr. Pratt then commenced the presentation of the Minister of Transport's case and called first **Inspector Ray Brown**. I think it would be of assistance to record the allegations now.

The Notice of Suspension (CAT File No. C-0331-02) reads in part as follows:

"Pursuant to section 6.9 of the *Aeronautics Act*, the Minister of Transport has decided to suspend the above indicated Canadian aviation document on the grounds that you have contravened the following provision(s):

Air Regulation 540.2(5) in that approximately 1440 hours CST on 20 February 1993 at or near St. Andrews, Manitoba, you did unlawfully commence a flight in a Cessna 185D aircraft bearing Registration Marks C-GYIU when there was frost, snow or ice adhering to the wings, a critical surface of the said aircraft."

The Notice of Assessment of Monetary Penalty (CAT File No. C-0332-33) reads in part 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 803(b) in that at approximately 1435 hours CST on 20 February 1993 at or near St. Andrews, Manitoba you unlawfully left the engine of a Cessna 185D aircraft bearing Registration Marks C-GYIU, running when the pilot's seat was not occupied by a person competent to control the aircraft."

Clearly Inspector Brown had no personal knowledge of the facts. He was in charge of the investigation, and his evidence was largely directed to the filing of Exhibits M-1 to M-7.

The balance of the witnesses called were pilots who either worked for the Winnipeg Flying Club or were training there. The evidence is quite clear and uncontradicted on the following:

- On February 20, 1993, Mr. Gulay taxied the aircraft in question to the fuel pumps at the Winnipeg Flying Club, and the aircraft was fuelled up.
- After fuelling was completed, and payment therefor made, Mr. Gulay taxied the aircraft to the hold line.
- He did his run-up and control checks, and subsequently took off.

The evidence differs substantially on the following matters:

- (a) the question of having ice or snow on the aircraft;
- (b) the question of whether Mr. Gulay left the pilot's seat after the run-up.

Terry Taylor testified that there was one inch of crusty powder snow on the wing of the aircraft. **Mr. McGregor** said the wing had a mixture of snow and ice on about 40% to 50% of its surface. **Mr. Ransom**, who was acting as dispatcher, admitted that customarily he would have offered to

have the aircraft swept of snow, but in this case he did not. He saw one to two inches of snow on the wing. **The Acting Chief Flying Instructor of the Club** said most of the wing had snow and frost on it.

The evidence varied as to the amount of snow, the depth of the snow and the presence of ice and frost. Finally, Exhibit M-7 is a statement filed by Mr. Pratt as part of the Minister's case. It shows that the aircraft in question was pushed out of Mr. Campbell's hangar at approximately noon on the day in question. Mr. Campbell's presence would have been preferable, to allow testing of his evidence by cross-examination. However, neither party objected to the filing of Exhibit M-7, and indeed **Mr. Gulay** gave the same evidence in reading his written statement.

Where there is such a conflict of evidence filed by the Minister, what then are the Civil Aviation Tribunal's guidelines in dealing with this conflict?

I must first seek if there is any other evidence that supports the position of one party or the other. In reading the Aircraft Journey Log (Exhibit M-2), it shows clearly that the aircraft arrived at St. Andrews on February 9, 1993. The next entry in the log is the flight in question from St. Andrews to Arborg on February 20, 1993. The aircraft therefore was at St. Andrews for that total period.

Exhibit D-2, Narol's precipitation record, shows that there was a trace (T) of snow on February 11 and February 20, 1993. Such an amount is too small to measure. I am therefore satisfied that insufficient snow had fallen on the day in question to be measurable and certainly not one to two inches. Also, Exhibit M-4 shows zero (0) precipitation for 24-hour period. These sources would appear to corroborate Mr. Gulay's evidence and Mr. Campbell's statement, rather than the four (4) witnesses from the Flying Club.

I have therefore found as a fact that, at best, there was only a trace of snow on the aircraft and certainly insufficient to measure. Having reached this conclusion, I cannot accept the evidence of the four (4) witnesses from the Flying Club regarding the snow.

I turn now to the allegation under paragraph 803(b) of the *Air Regulations*. This allegation depends totally on the evidence of the four (4) witnesses from the Flying Club. From their evidence, clearly Mr. Gulay taxied to the hold line where he did his run-up and control check. The distance from the observers to the aircraft was between 200 and 300 feet.

The witnesses testified that they saw Mr. Gulay climb out of the pilot's seat into the area behind the rear seats and then return to the left-hand seat. Mr. Gulay denies that he left the pilot's seat, but says he turned twice into the rear seat. The first time, to get the headset that was on the rear seat, and the second time, to remove his parka (a bulky garment) and place it behind the rear seats.

Using two (2) chairs in the boardroom, he then showed this latter manoeuvre. I am satisfied that from 200 or more feet, the stuffing of the parka into the rear may easily have given the impression that the pilot had changed locations. In the demonstration, his feet, legs and lower

torso remained in or about the pilot's seat. These parts of his body, I am sure, may well have not been visible to the witnesses. I am not therefore satisfied that Mr. Gulay left the pilot's seat.

DETERMINATION

Subsection 540.2(5) of the *Air Regulations* (CAT File No. C-0331-02):

I find that Glen Joseph Gulay did not contravene subsection 540.2(5) of the Air Regulations. The Minister of Transport's allegation is therefore dismissed.

Paragraph 803(b) of the *Air Regulations* (CAT File No. C-0332-33):

I dismiss the Minister of Transport's allegation under paragraph 803(b) of the Air Regulations.

William C. Pearson
Member
Civil Aviation Tribunal