

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Art's Flying Service Ltd., Respondent

LEGISLATION:

Air Navigation Order Series II, No. 2, 3(1)

Vicarious liability, Seats, safety belts and safety harnesses, Due diligence

**Review Determination
William C. Pearson, Q.C.**

Decision: March 11, 1993

I CONFIRM THE MINISTER'S DECISION TO LEVY ASSESSED PENALTY OF \$250.00, THIS AMOUNT PAYABLE TO THE RECEIVER GENERAL FOR CANADA IS TO BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL WITHIN FIFTEEN DAYS FROM THE DATE OF THIS HEARING. REASONS FOR THE DECISION ARE ATTACHED.

The Review Hearing on the above application was held at the Federal Building, 269 Main Street, 4th Floor, Room 410 in the City of Winnipeg, Manitoba, on Tuesday March 9, 1993 at 10:00 hours.

BACKGROUND

This matter came up for hearing at Winnipeg, Manitoba on March 9, 1993 at 10:00 in the morning. The Minister alleged a contravention of Air Navigation Order Series II, No. 2, 3(1) as follows:

"in that on August 3, 1992 at approximately 1150 hours local time at or near Big Whiteshell Lake, Manitoba, you flew an aircraft, to wit a Cessna 180C bearing Canadian registration marks C-FBWS, that was not equipped with a seat and an individual safety belt or safety harness for each person in the aircraft."

Art's Flying Service Ltd. was charged pursuant to the provisions of subsection 8.4(1) of the Aeronautics Act (vicarious liability).

The evidence was quite clear, from both witnesses called by the case presenting officer for the Minister, that the said aircraft landed on Big Whiteshell Lake, and that upon examination of the aircraft by the inspectors, it was noted that one passenger had been riding on a cooler rather than on a seat. The evidence went on to show that the seat was in fact in the shed above the dock.

From a review of Exhibit M3, photos of the aircraft, I am satisfied that the baggage was not strapped down or tied down.

Exhibit M2, a copy of the certificate of registration, indicates that Art's Flying Service Ltd. was the owner of the aircraft in question. The provisions of subsection 8.4(1) of the Aeronautics Act provide for a fixing of the responsibility for a breach of any of the Air Navigation Orders on the registered owner of the aircraft in which that breach occurs unless it can be shown that the aircraft has been operated without the knowledge and consent of the owner.

In this case no such evidence was indicated. In fact Mr. Swirski, on behalf of the corporation, indicated that the pilot was operating the aircraft with the knowledge and consent of himself, the owner of the corporation, and certainly with the knowledge of the corporation.

I would observe that very little effort was made on behalf of Mr. Swirski to insist that his chief pilot, Mr. Chambers, operate the aircraft in accordance with the provisions of the operations manual. On the whole of the evidence I feel that he trusted his chief pilot to conform to the operating manual and did very little to ensure that he did.

ACCORDINGLY, IN MY VIEW, THE DEFENCE OF DUE DILIGENCE WHICH IS AVAILABLE UNDER SECTION 8.5 OF THE AERONAUTICS ACT WAS NOT MET BY ART'S FLYING SERVICE LTD., AND ACCORDINGLY I MUST CONFIRM THE MINISTER'S ALLEGATION THAT THE AIR NAVIGATION ORDER WAS CONTRAVENED. I ALSO CONFIRM THE FINE OF \$250.00 WHICH IS THE MINIMUM FINE FOR A FIRST OFFENCE. THIS AMOUNT, TO BE PAID TO THE RECEIVER GENERAL FOR CANADA, MUST BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL WITHIN FIFTEEN DAYS OF THE SERVICE OF THIS DETERMINATION.