

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Manfred Pirwitz, Respondent

LEGISLATION:

C.R.C., c. 2, s. 534(2)(a)
Section 534(2)(a) of the Air Regulations
section 6.7 of the Aeronautics Act

Low flying, Built-up area

Review Determination
Zita Brunet

Decision: August 31, 1988

Heard: North York, Ontario, August 22, 1988

That the Minister of Transport did not prove that Mr. Manfred Pirwitz contravened Air Regulation 534(2)(a) on July 11, 1987. Mr. Pirwitz is, therefore, absolved of any monetary penalty.

The Ministry of Transport issued a Notice of Assessment of Monetary Penalty to Mr. Manfred Pirwitz. This Notice of Assessment of Monetary Penalty is dated April 25, 1988, and reads as follows:

Pursuant to section 6.7 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:

Section 534(2)(a) of the *Air Regulations* in that on July 11, 1987, you flew a Cessna 172, registration CF-PHP, at low altitude several times over a densely populated campground in Freelton, Ontario.

Air Regulation 534(2)(a) reads:

Except as provided in subsections (4), (5) and (6), or except in accordance with an authorization issued by the Minister, unless he is taking off, landing or attempting to land, no person shall fly an aircraft,

a) over the built-up area of any city, town or other settlement or over any open-air assembly of persons except at an altitude that will permit, in the event of an emergency, the landing of the aircraft without creating a hazard to persons or property on the surface of the earth, and such altitude shall not, in any case, be less than 1,000 feet above the highest obstacle within a radius of 2,000 feet from the aircraft.

The total assessed penalty of \$1,000 was to be paid on or before the May 25, 1988.

This penalty was not paid by Mr. Pirwitz, therefore, the Minister of Transport requested a hearing.

Upon invitation of preliminary motion arguments, Mr. McWilliams, Counsel for Mr. Pirwitz, argued that issuing a Notice of Assessment of penalty for \$1,000 is against the *Charter of Rights and Freedoms*, section 7 and section 11. Issuing a penalty presumes Mr. Pirwitz guilty of an offence when it has not yet been proven that he committed the offence.

Mr. Wilson, representing the Minister of Transport, stated that at a preliminary meeting, Mr. Pirwitz had agreed that he was the owner of a C172 registered CF-PHP, that Mr. Pirwitz did fly on the day in question, and that he did not have a waiver from the Ministry of Transport.

Mr. McWilliams introduced Exhibit D-1, which is a Notice of Assessment for an alleged infraction to 534(2)(a) of the *Air Regulations* on August 17, 1987. He further stated that Mr. Pirwitz never received a notice for the alleged infraction on July 11, 1987.

Mr. Wilson then introduced Exhibit M-2, which is a letter to Mr. Pirwitz on April 25, 1988, showing that this error had been discussed with Mr. Pirwitz and a corrected Notice of Assessment had been forwarded to Mr. Pirwitz.

The Ministry of Transport presented three witnesses who recounted the events on the day in question. The witnesses did not have the advantage of reading their own statements given to the RCMP at the time of the incident. None of the witnesses identified the registration of the aircraft involved.

Therefore, the Ministry of Transport did not meet the *onus* of the burden of proving that the aircraft involved in this incident was Aircraft CF-PHP C-172, owned by Mr. Manfred Pirwitz.

I would like to address Mr. McWilliams' concern regarding the *Charter of Rights and Freedoms* providing, of course, that the Tribunal has the jurisdiction to address charter-related matters.

Section 6.7(1) of the *Aeronautics Act* reads:

Where the Minister believes on reasonable grounds that a person has contravened a designated provision, he shall notify the person of the allegations against him 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.

Therefore, until a decision has been rendered at a Review Hearing or until the person pays the fine without a hearing, that person is only alleged to have contravened a designated provision, and the *onus* of the burden of proof is on the Minister of Transport.

In closing, the Tribunal finds that the Minister of Transport did not prove that Mr. Manfred Pirwitz contravened *Air Regulation 534(2)(a)* on July 11, 1987. Mr. Pirwitz is, therefore, absolved of any monetary penalty.