

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Chad Richard Davis, Respondent

LEGISLATION:

Aeronautics Act, S.C., c. A-2, s. 3, 7.7, 7.9(5), 37

Canadian Aviation Regulations, SOR/96-433, s. 101.01(1), 103.02(2)(b), 202.26, 401.03(1), 605.92(1), 605.95

Failure to Appear, Documents, Best Evidence Rule, Agent, Peace Officer, Produce for Inspection

Review Determination
Ken Clarke

Decision: May 25, 1998

It is the determination of this Tribunal that the allegations made against Mr. Davis are hereby dismissed.

A **Review Hearing** for the matter at hand was held Tuesday, March 24, 1998 at 10:30 hours, at the Federal Court of Canada, Vancouver, British Columbia.

THE ALLEGATION

A Notice of Assessment of Monetary Penalty dated November 5, 1997 was sent to Mr. Chad Richard Davis. The assessment followed investigation and read in part:

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):

Canadian Aviation Regulations, Part I, Subpart 3, Section 103.02(2)(b) in that, at approximately 1600 hours Pacific Daylight Saving Time on or about October 18, 1997, on the west side of the Cleveland Dam, near North Vancouver, British Columbia, being the pilot-in-command of an aircraft, namely a Bell 206 JetRanger bearing the Registration Marks C-FLES, you did unlawfully fail to produce for inspection in accordance with the terms of a demand made by a peace officer: helicopter commercial pilot's licence CH408955, the medical certificate for licence CH408955, the certificate of registration for C-FLES, the certificate of airworthiness for C-FLES and the aircraft journey log for C-FLES.

The total assessed penalty was \$500.00.

BACKGROUND

The search for and rescue of two mountain hikers was taking place at the time of the alleged violation(s). Chief pilot for Pioneer Helicopters Ltd., Mr. Davis, landed at the site with a television camera operator. A second helicopter was involved actively in the rescue operation and was preparing to take off from the dam at the time. A complaint from a North Shore Rescue Team member to the attending police liaison officer was made regarding the operation of Mr. Davis's helicopter.

REPRESENTATION BY AGENT

Prior to the review hearing, the Civil Aviation Tribunal was advised Mr. Davis would not be in attendance. It was stated at the same time Mr. Heeb would be acting as an agent.

At the outset of the review, I received and accepted written authorization appointing Mr. Heeb as agent for Mr. Davis. This was also confirmed verbally. As Case Presenting Officer for the Minister, Mr. Bachinsky expressed concern.

It is stated in the *Aeronautics Act*, Part IV, subsection 37(2): "Any person appearing before the Tribunal or any member thereof may appear in person or by agent."

PRE HEARING AGREEMENT OF FACT

An agreement of fact dated March 9, 1998 was entered into by Inspector P. Bachinsky and pilot Mr. C.R. Davis pursuant to which the parties agreed to the following:

- That the date of the occurrence was October 18, 1997
- That the time of the occurrence was about 1600 hours.
- That the place of the occurrence was the west side of the Cleveland Dam near North Vancouver, B.C.
- That the aircraft involved was Bell 206 JetRanger C-FLES.
- That the pilot in command of C-FLES was Chad Richard Davis.

- That Chad Richard Davis is the holder of Commercial Helicopter Pilot Licence CH408955.
- That Chad Richard Davis is the holder of Medical Certificate 408955.
- That Mr. Davis did not produce Commercial Helicopter Pilot Licence CH408955.
- That Mr. Davis did not produce Medical Certificate 408955.
- That Mr. Davis did not produce the Certificate of Registration for helicopter C-FLES.
- That Mr. Davis did not produce the Certificate of Airworthiness for helicopter C-FLES.
- That Mr. Davis did not produce the Journey Log for helicopter C-FLES.

Deleted from the agreement and initialized by both parties were points:

- That Constable Ian Daniels identified himself to Mr. Davis as a member of the North Vancouver RCMP.
- That Constable Daniels asked Mr. Davis for "his pilot's licence and paperwork for the helicopter."

EVIDENCE FOR THE MINISTER

Royal Canadian Mounted Police Constable Ian Daniels was the only witness for the Minister. He described his duties as a police officer, and how on October 18, 1997, he was the liaison officer for the local rescue team who were actively engaged in a rescue operation utilizing another helicopter. Constable Daniels described Mr. Davis's landing of a second helicopter and subsequent wave off to a nearby location. A complaint of unsafe operation from a rescue team member gave reason for the police officer to approach the latter helicopter, C-FLES. He testified as to wearing camouflage fatigues and an RCMP baseball type of hat at the time.

The police officer's testimony was that he identified himself as an RCMP officer to the two individuals from the helicopter, and then he ascertained that Chad Davis was the pilot. Constable Daniels told Mr. Davis that he was not familiar with the Air Regulations/Aeronautics Act, but there may be charges later. When asked for identification, Mr. Davis produced his driver's licence. Constable Daniels demanded Mr. Davis produce "his pilot's licence and paperwork for the helicopter." According to the officer, Mr. Davis searched his wallet and then the helicopter. Mr. Davis told the police officer it was not required to carry these documents within twenty-four nautical miles of the airport.

Constable Daniels stated that Mr. Davis never indicated he did not know who the constable was. Although Mr. Davis never said he did not have the documents, it was the impression of the witness he did not.

CROSS-EXAMINATION OF THE MINISTER'S WITNESS

Cross-examination of Constable Daniels by Mr. Heeb explored the nature of the rescue operation. It was Constable Daniels's evidence that Mr. Davis did not seem hurried.

Initially, Constable Daniels testified he did not request any specific paper other than "pilot's licence and paperwork." During cross-examination, he thought he had asked for the "log book." The witness reconfirmed he wore an RCMP "ball" cap, and he had identified himself. Although not clarified, Constable Daniels "said no exemptions were in place."

OBJECTION

Prior to Mr. Heeb taking the witness stand, Mr. Bachinsky raised an objection to Mr. Heeb acting on behalf of Mr. Davis and as a witness. He was concerned why Mr. Davis was not present. Mr. Bachinsky was concerned that due to that absence best evidence was eroded, and there was going to be no opportunity to cross-examine him.

As I had accepted Mr. Heeb as agent from the outset of the hearing and since he was the only person present acting on behalf of Mr. Davis, the objection was overruled.

EVIDENCE FOR THE DOCUMENT HOLDER

Evidence by Mr. Heeb was sworn. He commenced by reading a letter signed by Mr. Davis. It was identified as Exhibit D-1. The letter again confirmed Mr. Heeb's participation as agent. It then described the reason for the flight as being ... "to fly a television news crew to and around ..." (my underlining for emphasis). The letter continued to describe how Mr. Davis was approached, at the busy rescue site, by an individual who wore a dark jacket without identifying marks and did not appear to be a police officer. According to the letter, that person asked for identification, but the individual did not declare himself to be a police officer.

Mr. Davis's letter continued to say that as the commercial pilot licence does not have a photograph, he inquired as to the type of identification sought. After a brief discussion including the officer's uncertainty as to specific identification, a driver's licence was offered. Explanation was given that a hurried departure was sought and followed. The pilot felt he had satisfied all requirements at the scene.

The letter summarizes that with the passage of time and lack of tangible evidence, it is difficult to prove that he indeed did have all the required documentation on board. Finally, it states it is the policy of Pioneer Helicopters Ltd. to comply with all rules and regulations, and in every event operating within the letter of the law.

Mr. Heeb then read and submitted his own letter entered as Exhibit D-2. He said as an employee of Pioneer Helicopters Ltd., he first learned of Saturday's incident on Monday from a television contact. He described Mr. Davis's concern for a quick exit. Discussions with the RCMP and various media reports were described. The only new information was that the Ministry of Transport was being consulted. The balance of the letter detailed the sequence of events after the encounter or supported testimony already made. Significant points were made, however, that Mr. Davis had not been clear just who was asking for the information, and the situation was hurried. In conclusion, Mr. Heeb said Mr. Davis "did have the documents on board" but did not know specifically what was being requested in that time-limited situation.

CROSS-EXAMINATION OF THE DOCUMENT HOLDER'S WITNESS

In cross-examination, Mr. Bachinsky explored Mr. Heeb's relationship as an employee of Pioneer Helicopters Ltd., his own knowledge of what documents are required to be carried, and the fact the carrier did not have an exemption in place. The point was brought out that all pilots would be aware of what documents were being sought.

SUMMATION FOR THE MINISTER

In summation, Mr. Bachinsky's position was that Mr. Davis knew he should have produced the appropriate documents, as all pilots know which documents are required. Mr. Bachinsky stated the established papers were valid, and the RCMP member had been identified. He said it was heresay the papers were on board and that all elements had been made on the balance of probabilities. As this was the first offence the penalty was limited to five hundred dollars.

THE LAW

Subsection 103.02(2) of the *Canadian Aviation Regulations* (CARs):

(2) Every person who

(...)

(b) is the owner, operator or pilot-in-command of an aircraft in respect of which a Canadian aviation document, technical record or other document is kept, or shall produce the Canadian Aviation document, technical record or other document for inspection in accordance with the terms of a demand made by a peace officer, an immigration officer or the Minister.

(...)

shall produce the Canadian Aviation document, technical record or other document for inspection in accordance with the terms of a demand made by a peace officer, an immigration officer or the Minister.

Section 3 of the *Aeronautics Act*:

"Canadian aviation document" means any licence, permit, accreditation, certificate or other document issued by the Minister ...

Subsection 605.92(1) of the CARs:

Every owner of an aircraft shall keep the following technical records in respect of the aircraft:

(a) a journey log;

Section 605.95 of the CARs:

(1) Subject to subsection (2), no person shall conduct a take-off in an aircraft unless the journey log is on board the aircraft.

(2) A person may conduct a take-off in an aircraft without carrying the journey log on board where

(a) it is not planned that the aircraft will land and shut down at any location other than the point of departure; or

(...)

Subsection 605.03(1) of the CARs:

No person shall operate an aircraft in flight unless

(a) a flight authority is in effect in respect of the aircraft;

(...)

(c) subject to subsections (2) and (3), the flight authority is carried on board the aircraft.

Subsection 101.01(1) of the CARs:

"flight authority" means a certificate of airworthiness, ...

Section 202.26 of the CARs:

No person shall operate an aircraft in Canada, ... unless the certificate of registration issued in respect of the aircraft is carried on board the aircraft.

Subsection 401.03(1) of the CARs:

No person shall act as a flight crew member or exercise the privileges of a flight crew permit, licence or rating unless

(a) ... the person is the holder of, and can produce while so acting and while exercising such privileges, the appropriate permit, licence or rating; and

(b) the person is the holder of, and can produce while so acting and while exercising such privileges, a valid and appropriate medical certificate.

Subsection 7.9(5) of the *Aeronautics Act*:

On a proceeding before a member of the Tribunal under subsection (4),

(a) the burden of proving that the person appearing before the member has contravened the designated provision that the person is alleged to have contravened is on the Minister; and

(b) the person is not required and shall not be compelled to give any evidence or testimony in the matter.

Section 37 of the *Aeronautics Act*:

(1) Subject to subsection (5), the Tribunal or a member thereof is not bound by any legal or technical rules of evidence in conducting any matter that comes before it ... as the circumstances and considerations of fairness and natural justice permit.

(...)

(5) The Tribunal or a member thereof may not receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

JURISPRUDENCE

CAT File No. A-1232-33 — *Paul Duchin v. Minister of Transport*. On page four of its determination, the Appeal Tribunal interprets "pursuant to subsection 37(1) of the *Aeronautics Act*, the Tribunal is allowed to use hearsay evidence, when proffered."

CAT File No. Q-0274-41 — *Minister of Transport v. 123582 Canada Inc.*^[1] "... the Tribunal has come to the conclusion that the standard of proof should be the 'balance of probabilities.'" The Tribunal also makes the following comments:

... the Civil Aviation Tribunal is an administrative tribunal whose procedures leave room for substantial flexibility in the application of the 'rules of natural justice' or the 'principles of fairness.'

... Nonetheless, the weight given to the evidence admitted ... in this connection, and in view of the foregoing observations, we believe it is incumbent upon the Tribunal to determine not only the admissibility of the evidence but also the weight which should be attributed to it within the overall process of assessment, based on the rules of fairness and natural justice.

THE ISSUES

In the Agreement of Fact, the parties agreed that Mr. Davis did not produce any of the documents referred to in the Notice of Assessment. At issue in this hearing is whether Constable Daniels properly identified himself and whether the terms of the demand made by the peace officer were specific enough to have enabled Mr. Davis to satisfy the said terms of the demand.

I will therefore deal with these issues as they relate to each of the five allegations made against Mr. Davis in the Notice of Assessment which relate to the request for the following documents: pilot licence, medical certificate, certificate of registration, certificate of airworthiness and aircraft journey log.

ANALYSIS

First I address the issue of the identification of the police officer. Although out of conventional or anticipated uniform, and with the possibility others in the area were similarly dressed, Constable Daniels was never challenged for identification. Evidence reveals he did state he was a police officer. I find his testimony credible. I am satisfied the officer was in uniform, albeit a different version than usually seen.

Certainly there was opportunity to question the terms, but no evidence was submitted that this was done. When a peace officer requests documentation it should be understood as immediate unless other terms are agreed to.

It is my conclusion Constable Daniels did identify himself, was authorized to demand the documents, and because no other terms were specified or asked for, the demand became immediate.

With respect to the specific "terms of the demand," I accept Constable Daniels's testimony that he requested from Mr. Davis "his pilot's licence and paperwork" and journey log.

The reference to twenty-four nautical miles may have been an incorrect misquote from the now replaced *Air Regulations*. Therefore there is no pertinent significance. Even if there was not a requirement to carry certain documents within that distance, there was no evidence it was satisfied. No evidence was presented by either party as to the nature of the journey or whether it was intended as a non-stop flight or with a landing.

In dealing with the production of the pilot licence, I find that the Minister has proven on "the balance of probabilities" that Mr. Davis should have produced his pilot licence when specifically demanded.

I further find that as the medical certificate validates the pilot licence, it therefore forms part of that licence and ought to have been produced together with the pilot licence by Mr. Davis.

The section of paragraph 103.02(2)(b) of the *Canadian Aviation Regulations* which Mr. Davis is alleged to have contravened refers to production of documents pertaining to an aircraft. There is no reference to documents for the individual. That includes the pilot licence and medical certificate.

Regarding the certificate of registration, certificate of airworthiness, and journey log, I find the demand was not specific enough, the police officer having requested "other paperwork." Although the peace officer is not expected to be conversant with all documentation required, he could have determined the requirement by a number of means. Amongst the options were requiring Mr. Davis to wait while calling a supervisor, the Ministry of Transport, or asking the other pilot. Apparently he had more pressing matters to deal with. Even a request for a log book is not specific enough. It may be understood as any of many types of log books, including a pilot log book, or an engine log book. Testimony reveals no specific demand was made for the certificate of registration or certificate of airworthiness (or flight authority). The Minister has failed to prove the latter three allegations on "the balance of probabilities."

I believe Mr. Davis quite possibly understood what was being required by the demand and who was making it. My belief is he has benefited by the circumstances.

CONCLUSION

Mr. Chad Richard Davis failed to produce for inspection his pilot licence and medical certificate. As he was not charged with failing to produce those documents pursuant to paragraph 103.02(2)(a) of the *Canadian Aviation Regulations*, I dismiss those allegations.

The Minister has failed to prove Mr. Davis contravened the regulation in three parts; namely that he failed to produce for inspection the certificate of registration, certificate of airworthiness, and journey log.

DETERMINATION

It is therefore the determination of this Tribunal that the allegations made against Mr. Davis are hereby dismissed.

Ken Clarke
Member
Civil Aviation Tribunal

^[1] As reported at page 3 in the Civil Aeronautics Jurisprudence, Volume 3, by Transport Canada, Document No. TP 4311E.