

CIVIL AVIATION TRIBUNAL

BETWEEN:

Calgary Flight Training Centre Inc., Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S., c. 33 (1st Supp), s. 7.1(1)(b)
Canadian Aviation Regulations, SOR/96-433, ss. 406.36, 605.86

Failure to Comply with Conditions of Issuance, Suspension, Operator Certificate

Review Determination
E. David Dover

Decision: June 11, 2001

As a result of the deficiencies found in the audit, i find that the minister of transport was justified in issuing the notice of suspension dated october 18, 2000 which was to come into effect within thirty (30) days. As the deficiencies were corrected by calgary flight training centre prior to this date, the said suspension did not take place.

A **review hearing** on the above matter was held Wednesday, April 11, 2001, at 10:00 hours at the Federal Court of Canada in Calgary, Alberta. All witnesses were excused from the courtroom prior to the commencement of proceedings. There were no pre-hearing conferences held between the Applicant and the Respondent.

BACKGROUND

On October 18, 2000, the Minister of Transport, by registered mail, issued a Notice of Suspension under paragraph 7.1(1)(b) of the *Aeronautics Act* to the Canadian Flight Training Centre suspending their flight training unit (FTU) operator certificate number 9579 dated November 1, 1999.

THE LAW

Paragraph 7.1(1) of the *Aeronautics Act*:

7.1 (1) Where the Minister decides

[...]

(b) to suspend or cancel a Canadian aviation document on the grounds that the holder of the document is incompetent or the holder or any aircraft, airport or other facility in respect of which the document was issued ceases to have the qualifications necessary for the issuance of the document or to meet or comply with the conditions subject to which the document was issued, or

[...]

the Minister shall, by personal service or by registered mail sent to the holder or to the owner or operator of the aircraft, airport or facility, as the case may be, at the latest known address of the holder, owner or operator, notify the holder, owner or operator of the Minister's decision.

OPENING STATEMENTS

The case presenting officer, Mr. Dan Hrynyk, stated that a Transport Canada inspector, Mr. Mike Delia, conducted a routine inspection in May of 2000, on Calgary Flight Training Centre Inc. During this inspection a number of deficiencies were uncovered which warranted a full audit on the company. Following this audit a notice of suspension was issued to the company with a 30-day time period to correct the deficiencies.

Mr. Aarbo, representing Calgary Flight Training Centre Inc., stated:

- That the audit was not properly conducted
- The Notices were incorrect
- Requested that the audit references be struck from the company record

FOR THE RESPONDENT-The Minister of Transport

The case presenting officer, Mr. Dan Hrynyk, presented the following witnesses.

Mr. Mike Delia was sworn. He stated that Transport Canada employed him as an inspector with Aviation Enforcement.

He testified that in May of 2000 he conducted a routine inspection on Calgary Flight Training Centre Inc. During this inspection he found outstanding Airworthiness Directives (AD) on

aircraft that were still in operation. He stated that there were deficiencies in the record keeping and maintenance procedures.

Exhibit M-1 : Copy of a Maintenance & Manufacturing Surveillance Report dated May 17/18/00 directed to Calgary Flight Training Centre Inc. and signed by M. Delia.

This exhibit outlines the AD deficiencies and a recommendation to conduct an internal audit.

Cross-examination

Mr. Aarbo queried Mr. Delia's presence on the Transport Canada audit team, as it was not normal policy to have the assigned inspector on the audit team. Mr. Delia responded that it was not normal practice to have the principal operations inspector but they could be appointed in special cases if the convening authority approved the appointment (Exhibit D-2: Civil Aviation's National Audit Program, section 2.14).

Mr. Brian Schroeder was called as a witness and sworn. He stated that he was an inspector for Transport Canada. He confirmed that upon his review of the reports prepared by Mr. Delia an internal audit should be undertaken on Calgary Flight Training Centre Inc. He stated the convening authority for the audit was Dave McNab of Transport Canada.

Cross-examination

Mr. Schroeder, in reply to a question about how the suspension was issued, stated that the audit committee as a whole issued the suspension.

Mr. Aarbo entered Exhibit D-1, from the FTU operator certificate manual, specifically Suspension/Cancellation procedures. Mr. Schroeder stated that in his opinion all reports covering observer deficiencies were covered.

Mr. Ken Turnbull was called as a witness and sworn. He stated that he was employed as a civil aviation inspector for Transport Canada. He further stated that he was the audit manager for the audit being performed on Calgary Flight Training Centre Inc.

He testified that he prepared Exhibit M-2. This exhibit outlines the extent of the audit giving the entry date of October 2, 2000 and the exit date and meeting of October 6, 2000.

Mr. Turnbull indicated the principal of the company, Mr. Sorensen, was away, and when Mr. Sorensen did contact him he requested to speak to Mr. Turnbull's superior, Mr. McNab.

During the audit, deficiencies were found in the following areas:

- Training files incomplete
- Manuals unavailable
- Overdue time expired replacement items
- Approved Maintenance Manuals unavailable

- Aircraft dispatched with outstanding AD's and inspections incomplete

Mr. Turnbull testified that daily progress meetings were held with representatives from the Company.

Exhibit M-3 : Contained in this exhibit are thirteen (13) 24-0019 forms. These forms indicate what corrective action must be undertaken by the company prior to further flight of specific aircraft.

Mr. Turnbull testified that these forms were issued at the daily meetings. He testified that the company tried to be cooperative during the audit. He further stated that at the exit meeting with representatives of Calgary Flight Training Centre Inc. and the audit team the details of the audit were discussed.

Mr. Turnbull stated that in his opinion the company did not recognize the gravity of the situation. He stated that it was decided to recommend a notice of suspension effective in thirty days to the Regional Manager of General Aviation of Transport Canada in Edmonton Alberta.

Cross-examination

Mr. Turnbull testified that the forms outlined in Exhibit M-3 were given out on a daily basis. He further stated that the audit team interviewed three pilots and had daily meetings with either Mr. Dave Vowell or Mr. Michael Dupuis.

Mr. Dave McNab was called as a witness and was sworn. He stated that he was employed as a superintendent for Transport Canada in Calgary, Alberta. He further stated that he was responsible for the activities of ten (10) inspectors.

He stated that aviation companies were audited on a three-year cycle but Calgary Flight Training Centre Inc. was beyond that term.

Exhibit M-4 : This letter dated September 14, 2000 indicates that Mr. McNab has appointed Ken Turnbull as the manager for the audit at Calgary Flight Training Centre Inc.

After analysing the May 2000 reports submitted by Mike Delia he decided to form an audit team and proceed with the audit. Mr. McNab decided to proceed with the audit before recommending a suspension to give the company 30 days to correct the deficiencies.

He testified that he was present at the exit meeting on Monday, October 9, 2000 between Mr. Sorensen and other members of Calgary Flight Training Centre Inc. and the audit team from Transport Canada. Mr. McNab stated that Mr. Sorensen considered the results of the audit to be minor paper problems, but Mr. Sorensen was given notice to correct the situations during the meeting.

Cross-examination

Mr. McNab stated that he decided not to immediately suspend the company's operator certificate because Calgary Flight Training Centre Inc. was cooperating and trying to correct the situations. He stated that following the completion of the audit he did recommend to the Regional Manager of General Aviation to suspend the FTU operator certificate of Calgary Flight Training Centre.

It is not a requirement of Transport Canada to have senior management present at the audits. While Mr. Sorensen was absent for a portion of the audit his employees cooperated.

Mr. Lindsay Cadenhead was called as a witness and sworn. He is the superintendent of flight training standards for Transport Canada.

Mr. Cadenhead was not a member of the audit team. He did attend the exit meeting and after reviewing the reports with Mr. McNab he concurred that a request to suspend should be forwarded to the manager in Edmonton.

Cross-examination

Mr. Cadenhead concurred that the policies outlined in Exhibit D-1 do apply in the conduct of an audit.

THE APPLICANT

Mr. Johnny Sorensen was called as a witness and sworn. He stated that for 12 years he was the president, bookkeeper and maintenance coordinator for Calgary Flight Training Centre Inc.

He admitted to receiving the copy of the Maintenance & Manufacturing Surveillance Report dated May 17, 2000 and prepared by Inspector M. Delia.

He testified that he requested a delay of the upcoming audit because he had other plans to be out of the country and these plans could not be changed. His request to Mr. D. McNab was denied because Transport Canada did not have the manpower to accommodate this request. He testified that he contacted Air Transport Association of Canada (ATAC) and was advised that the audit about to be preformed was legal.

He stated the person Transport Canada was dealing with at Calgary Flight Training Services, Dave Vowell, had no legal authority to bind Calgary Flight Training Services Inc. to any contractual situations.

He stated that he considered the problems to be paper work completion and that all items and deficiencies were completed prior to the receipt of the suspension notice. He testified that he could not find where in the *Canadian Aviation Regulations* (CARs) the reference to his suspension was as the person responsible for maintenance at Calgary Flight Training Centre.

Mr. Michael Dupuis was called as a witness and sworn. He stated that he was the chief flying instructor and the designated liaison person for Calgary Flight Training Centre Inc. with Transport Canada.

He stated that a request to delay the audit was made because the company did not have the resources to dedicate to the audit. This request was denied.

He testified that he attended the daily meeting during the audits but did not attend the exit meeting on Monday, October 9, 2000 because he was not advised of the meeting. He stated that there was no request from the audit team to interview operating individuals.

He testified that he received the 24-0019 forms outlining the deficiencies late in the day on Friday, October 6, 2000. He tried to contact Transport Canada at 1630 hours on that day and received no reply.

He testified that Calgary Flight Training Centre Inc. initiated a plan to respond to the identified problems immediately.

He stated that Mr. Delia should not have been on the audit team because of section 2.1 of Civil Aviation's National Audit Program.

There being no further evidence the evidentiary record was closed.

CLOSING STATEMENTS

Mr. Hrynuik stated that the maintenance control manual did not meet the standards laid out in section 406.38 of the CARs. He stated that there were no outstanding amendments to update the manual from Calgary Flight Training Centre Inc.

He stated that under section 406.36 of the CARs Mr. Sorensen did not meet the qualifications to be qualified as a person responsible for maintenance control. He stated that under section 605.86 of the CARs the company must maintain an approved manual but did not do so.

He further stated that their investigation revealed:

- The 172P aircraft were not approved
- Paper work was not completed
- Aircraft were dispatched with outstanding AD's
- Aircraft were dispatched that were unairworthy

He stated that Calgary Flight Training Centre Inc. were advised of the deficiencies and given time to correct the problems.

Mr. Aarbo contended that audits are initiated for a particular reason. He further stated that the rights of individuals must be protected.

He stated that there was a lack of daily meetings and that Transport Canada personnel met with incorrect people from Calgary Flight Training Centre Inc. (Dave Fowler). He also stated that there were clerical errors in Transport Canada's letters and documentation.

He questioned the timing of the audit was prejudicial to the company and the individuals because they were unable to be present at meetings to defend and protect themselves. He stated that the company did not receive a corrective action plan from Transport Canada.

ANALYSIS

Mr. Sorensen writes in his letter to the Civil Aviation Tribunal dated November 16, 2000, the following statement: "Please accept this letter as our request for a review, before the Civil Aviation Tribunal, in the matters of the conduct of an audit and the subsequent Notice of Suspension that was issued as a result."

In fairness to Mr. Sorensen I must treat this request as an eventual appeal of a suspension of the FTU operator certificate number 9579. I am convinced that the communication between Mr. McNab and Mr. Sorensen was less than professional. This is not an issue for me.

Under section 2.14 of the National Audit Program I am convinced that Mr. McNab did have the authority to appoint Mr. Delia to the audit team. In this situation the company should have objected verbally and in writing at the entry meeting to this appointment. They did not.

I am convinced through testimony that the company did not take the audit seriously. They did not allocate the responsible people to the various meetings. The one aspect in favour of the company is that once they were advised of the suspension they took corrective action and thus there was no suspension.

On the second issue of the suspension of Mr. Sorensen as the person responsible for maintenance I have no evidence as to why he is being denied this position under section 426.36 of the *Personnel Licensing and Training Standards respecting Flight Training Units (Standards)*.

I find under section 406.36 of the CARs a clearer outline as to what the procedures should be. I suggest that Transport Canada clear up this situation immediately.

There was no suspension of the licence and I find that Transport Canada was correct in proceeding with the audit as a result of their investigation contained in Mr. Delia's report of May 17/18/00.

I find that the actions of Calgary Flight Training Centre Inc. in correcting the deficiencies outlined by Transport Canada is admirable and I suggest they work out their mutual communication difficulties at their earliest possible date.

DETERMINATION

As a result of the deficiencies found in the audit, I find that the Minister of Transport was justified in issuing the Notice of Suspension dated October 18, 2000 which was to come into effect within thirty (30) days. As the deficiencies were corrected by Calgary Flight Training Centre prior to this date, the said suspension did not take place.

E. David Dover
Member
Civil Aviation Tribunal