

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

James Robert Greaves, Respondent

LEGISLATION:

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

Canadian Aviation Regulations, SOR/96-433, s. 602.96(3)g

Appeal decision

Allister W. Ogilvie, Elizabeth M. Wieben, Faye H. Smith

Decision: May 21, 2002

We dismiss the appeal. We note that Mr. Greaves was cooperative with Transport Canada throughout and admitted to the facts of the allegation. He was genuinely concerned with safe procedure although he did make an error. In dismissing the appeal, the Aeronautics Act constrains us from substituting our decision for the determination appealed against. However, were that not so, we would have found that the case was amenable to counselling rather than penalty. The monetary penalty of \$150, payable to the Receiver General for Canada, must be received by the Tribunal within fifteen days of service of this determination.

An appeal hearing on the above entitled matter was held Thursday, May 9, 2002 at 10:00 hours at the Federal Court of Canada in Winnipeg, Manitoba.

BACKGROUND

The Minister of Transport alleged that Mr. Greaves conducted a takeoff from the Winnipeg International Airport on February 14, 2001 without having obtained a clearance from the Winnipeg air traffic control unit.

A hearing of that matter was held before a single Tribunal member on January 15, 2002. The member determined that the Minister had proven each element of the offence and found that Mr. Greaves did not exercise all due diligence. He confirmed the monetary penalty of \$150.

Mr. Greaves appeals that decision.

GROUND OF APPEAL

Two grounds of appeal were asserted:

1. the hearing member misunderstood the facts;
2. the hearing member misapplied the law of due diligence.

DISCUSSION

The facts are not in issue. At the review hearing and at appeal, Mr. Greaves conceded that he had taken off without a clearance. He did take issue with the member's interpretation of his testimony regarding whether there had been confusion or doubt in his mind at the time. He illustrated his point with reference to his testimony showing that at no time did he doubt that he had a clearance. We find that the member's interpretation of the testimony is not an error which would cause us to overturn his conclusion.

Mr. Greaves also appeals from the member's application of the defence of due diligence arguing that the member erred in its application. He relies upon the principles enunciated in the *Sault Ste. Marie*^[1] decision. At page 1326 of that decision it states in part:

... This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent,
...

Our review of the record convinces us that it was not reasonable for him to have believed that the clearance that he relied upon was directed to him. The audio tape recording in evidence is not amenable to that interpretation. It is clear that it was not directed to him.

For that reason we find that the due diligence defence is not applicable and thus the member did not err in his finding.

In this circumstance no hazard was created. However, the possibility of serious consequences occurring when one pilot acts upon another's clearance cannot be diminished. In a safety-sensitive environment there is no room for believing in a mistaken set of facts. The pilots must, by read-back or any other means ensure that they are only acting upon their clearance.

DETERMINATION

We dismiss the appeal. We note that Mr. Greaves was cooperative with Transport Canada throughout and admitted to the facts of the allegation. He was genuinely concerned with safe procedure although he did make an error. In dismissing the appeal, the *Aeronautics Act* constrains us from substituting our decision for the determination appealed against. However,

were that not so, we would have found that the case was amenable to counselling rather than penalty.

Reasons for Appeal Determination by :

Allister Ogilvie, Vice-Chairperson

Concurred :

Faye Smith, Chairperson

Elizabeth Wieben, Member

[\[1\]](#) [1978] 2 S.C.R. 1299.