

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

Aidan Phillip Butterfield, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 6.9

Canadian Aviation Regulations, SOR/96-433, par. 605.86(1)(a) and sub. 606.02(8)

Review Determination
Keith Edward Green

Decision: February 3, 2004

Counts 1 and 2, under Schedule A of the Notice of Suspension have been proven by the Minister on a balance of probabilities. The Minister's suspensions of 14 and 3 days respectively are upheld for a total of 17 days. The said suspension will commence on the thirty-fifth day following service of the present determination.

A **Review Hearing** on the above matter was held Tuesday, December 9, 2003 at 10:00 hours at the Federal Court of Canada, Vancouver, British Columbia.

BACKGROUND

During a routine ramp inspection at the Campbell River Municipal Airport on June 8, 2003, Transport Canada Inspector, Mr. Greg Ostafiew, identified four irregularities pertaining to aircraft C-GIPO. Three of those items constituted maintenance discrepancies while the fourth item pertained to a lack of documentation. The aforementioned Transport Canada findings consist of:

- Fire extinguisher (12 month) inspection overdue
- Annual compass swing overdue
- Annual Inspection overdue
- Failure to carry proof of insurance

The Notice of Suspension reads in part as follows:

Pursuant to section 6.9 of the *Aeronautics Act*, the Minister of Transport has decided to suspend the above-indicated Canadian Aviation document on the grounds that you have contravened the following provision(s):

[...]

Count 1:

Canadian Aviation Regulation subsection 605.86(1)(a), in that you conducted a take-off in an aircraft when the aircraft was not maintained in accordance with a maintenance schedule that conforms to the Aircraft Equipment and Maintenance Standards, to wit: aircraft C-GIPO was operated on a flight from Boundary Bay, B.C. to Campbell River B.C., on or about June 8, 2003, when the twelve month annual inspection requirement was overdue.

Penalty: 14 day suspension

Count 2:

Canadian Aviation Regulations subsection 606.02(8), in that you operated aircraft C-GIPO, on or about June 8, 2003, at or near Campbell River, B.C. when you, as owner, did not subscribe for liability insurance covering risks of public liability.

Penalty: 3 day suspension

PREAMBLE

The Member read into the record a brief germane address explaining the principles, policies and procedures to be followed during a Tribunal Hearing. The respective parties were asked if there had been any pre-agreements, to which both parties responded in the negative. However, it was brought to the Tribunal's attention that an error existed in the spelling of Mr. Butterfield's Christian name. According to Mr. Butterfield, the spelling quandary emanates originally from his Birth Certificate, where his name was incorrectly recorded as "Aiden"; now an accepted version. The more common and recognized version of the name is spelt with an "a". For clarification purposes pertaining to this Hearing, all submitted evidence or artefacts referencing either spelling will represent Mr. Butterfield and may be employed interchangeably.

LAW

Subsection 605.86(1) of the *Canadian Aviation Regulations* (CARs):

605.86 (1) Subject to subsection (3), no person shall conduct a take-off in an aircraft, or permit a take-off to be conducted in an aircraft that is in the person's legal custody and control, unless the aircraft is maintained in accordance with

(a) a maintenance schedule that conforms to the *Aircraft Equipment and Maintenance Standards*; and

[...]

Subsection 606.02(8) of the CARs:

606.02 [...]

(8) No aircraft owner not referred to in paragraph (2)(a), (b) or (c) shall operate an aircraft unless, in respect of every incident related to the operation of the aircraft, the owner has subscribed for liability insurance covering risks of public liability in an amount that is not less than

(a) \$100,000, where the maximum permissible take-off weight of the aircraft is 1 043 kg (2,300 pounds) or less;

(b) \$500,000, where the maximum permissible take-off weight of the aircraft is greater than 1 043 kg (2,300 pounds) but not greater than 2 268 kg (5,000 pounds);

(c) \$1,000,000, where the maximum permissible take-off weight of the aircraft is greater than 2 268 kg (5,000 pounds) but not greater than 5 670 kg (12,500 pounds);

(d) \$2,000,000, where the maximum permissible take-off weight of the aircraft is greater than 5 670 kg (12,500 pounds) but not greater than 34 020 kg (75,000 pounds); and

(e) \$3,000,000, where the maximum permissible take-off weight of the aircraft is greater than 34 020 kg (75,000 pounds).

[...]

THE MINISTER'S CASE (Respondent)

Count 1

The Minister's case focussed on the two above-mentioned counts contained in the Notice of Suspension. Count 1 alleges that aircraft C-GIPO, a Maule Aircraft Corporation M-4-210C, owned and piloted by Mr. Butterfield, was flown on or about June 8, 2003 from Boundary Bay Municipal Airport to Campbell River Municipal Airport, during which time the annual maintenance inspection was overdue. Count 2 alleges that Mr. Butterfield, on or about June 8, 2003 flew his aircraft C-GIPO without subscribing to liability insurance, covering risks of public liability. The assessed penalty for count 1 prescribed a 14-day suspension; count 2 prescribed a

3-day suspension, equating to an amassed penalty of a 17-day suspension.

The Minister called his first witness, Mr. Greg Ostafiew, a Transport Canada Safety and Security Inspector, who was sworn in accordingly. The Minister asked Mr. Ostafiew to relate the events leading to the alleged contraventions. Mr. Ostafiew informed the Tribunal that on June 8, 2003 he was at the Campbell River Municipal Airport performing routine ramp inspections. One aircraft subjected to Mr. Ostafiew's scrutiny was C-GIPO, belonging to Mr. Butterfield. The Minister introduced Exhibit M-1, a Secretary's Certificate dated November 25, 2003, clearly identifying both the aircraft and owner (with a certified copy of Certificate of Registration of Aircraft attached).

Mr. Ostafiew continued in his narrative providing a description of the items he had found wanting and/or discrepant regarding aircraft C-GIPO. This process was augmented by the introduction of another document recorded as Exhibit M-2, which was presented to the Tribunal. Exhibit M-2 is the original "Aircraft Document/Equipment Check" form dated June 8, 2003 and references four items relating to counts 1 and 2, which are as follows:

- Annual Inspection due June 5, 2003 (overdue 3 days - aircraft grounded)

(2) Insurance

- Fire Extinguisher - last test May 27, 2002 (due every 12 months)
- June 4, 2002 - compass swing

Exhibit M-2 also contained information pertaining to the pilot-in-command, departure point, and licence number in addition to other less applicable information.

The Minister introduced Exhibit M-3, a certified true copy of Mr. Butterfield's Journey Log Book. Via this document, in conjunction with Mr. Ostafiew's testimony, the Minister was able to demonstrate aircraft C-GIPO last received an Annual Inspection on June 5, 2002 at 1742.9 hrs. total airtime. Exhibit M-3 contained several pages copied from the Journey Log, which provided a revealing entry recorded June 5, 2002. The log pages clearly demonstrated that June 5, 2002 was the last recorded date an Annual Inspection was performed against C-GIPO. Consequently, and without a contrary entry after the aforementioned date, the last recorded Annual Inspection expired 365 days later, becoming invalidated on June 6, 2003.

Continuing to question Mr. Ostafiew, the Minister presented Exhibit M-4, a Letter of Notification sent to Mr. Butterfield on June 8, 2003. The purpose of Exhibit M-4 was to demonstrate to the Tribunal that Mr. Butterfield had clearly been informed what the Ramp Inspection had revealed wrong with his aircraft and what was required to be rectified before further flight could be accomplished. Exhibit M-4 listed three discrepant items:

- Annual Inspection overdue – Last done June 5/02
- Compass swing overdue – Last done June 4/02
- Fire extinguisher overdue – Last done May/02

Via the same approach, the Minister introduced a further Exhibit M-5; a document Mr. Ostafiew had received from a maintenance representative contracted by Mr. Butterfield. The document (24-0019) confirmed that the items noted in Exhibit M-4 (Letter of Notification) had been rectified. It was signed and dated June 23, 2003.

Count 2

The Minister continued to question Mr. Ostafiew over the allegation that Mr. Butterfield failed to carry liability insurance. Mr. Ostafiew explained to the Tribunal how he had requested Mr. Butterfield to produce his Insurance Policy for examination; he was unable to produce it. Given the day was well advanced and time was running short for Mr. Ostafiew's return flight to his office, Mr. Ostafiew decided to issue a "warning" to Mr. Butterfield on condition that he provide proof to Transport Canada within a prescribed time frame.

Questioning the witness further, the Minister demonstrated that Mr. Butterfield failed to provide the Insurance Policy to Transport Canada within the prescribed time frame. The only insurance related document provided to Transport Canada by Mr. Butterfield was on July 18, 2003. This document was a facsimile of an Insurance Policy issued by Marsh Canada Limited, a COPA Insurance Administrator. Subsequently, the Minister introduced Exhibit M-6, a copy of the facsimile sent to the Minister by Mr. Butterfield in response to Mr. Ostafiew's request to demonstrate Liability Insurance. The Minister made reference to this document on several occasions, emphasizing the effective date of the Policy which was commissioned on June 26, 2003, expiring on January 1, 2004. In point of fact, an Insurance Policy which only became effective 18 days after the alleged flight into Campbell River Municipal Airport.

Cross-examination

Mr. Butterfield questioned Mr. Ostafiew during the cross-examination on several issues pertaining to counts 1 and 2. However, nothing of any significance to the case presented itself, which might have contradicted or dispelled any statement made by Mr. Ostafiew. Namely, Mr. Butterfield was the pilot/owner of C-GIPO which flew into Campbell River Municipal Airport on June 8, 2003 and that the aircraft was not in compliance to the required maintenance schedule and that there was no Liability Insurance coverage at the time of the alleged flight.

Re-examination

The Minister during his re-examination emphasized several key points made during his initial examination period: i.e. there was no record of an annual inspection having been conducted; that there were two other maintenance issues out of compliance and that no evidence had been produced during the interim period between the ramp inspection of C-GIPO and the Hearing, to suggest that Mr. Butterfield had any current liability insurance coverage at the time he landed at Campbell River.

MR. BUTTERFIELD'S CASE (Applicant)

Mr. Butterfield, having been sworn, provided his testimony to the Tribunal, which he accomplished primarily by reading from a previously prepared document, written in his own words.

In the course of providing his testimony, Mr. Butterfield indicated that the Minister was attempting to charge him with two counts when only one might be applicable. Mr. Butterfield submitted the second count, involving the requirement for Liability Insurance, was wrongly attributed, intimating that count 2 was really a "double jeopardy" situation and that he was being charged twice for the same contravention – namely that the second count stemmed from his aircraft being flown without a valid Certificate of Airworthiness. Mr. Butterfield provided this reasoning to the Minister in the form of a letter, which he read into the record, stating that the Minister may not sequentially impose multiple penalties for a given offence.

Mr. Butterfield narrated to the Tribunal how Mr. Ostafiew had explained to him that the Insurance Policy would necessarily have become invalid with the expiration of C-GIPO's June 5, 2003 Annual Airworthiness Inspection. Mr. Butterfield, however, failed to provide the Tribunal with any evidence demonstrating the existence of an Insurance Policy covering the period of flight i.e. June 8, 2003 irrespective of the validity pertaining to the Certificate of Airworthiness. Mr. Butterfield informed the Tribunal that he has subsequently enrolled in the COPA insurance program, which expires on December 31 every year, a program covering the pilot and not specifically an aircraft. Mr. Butterfield provided the Minister a copy of this Insurance Policy via facsimile on July 18, 2003 which the Minister had already entered as Exhibit M-6. Mr. Butterfield assured the Tribunal he had continued to search for his Insurance Policy covering the period as alleged by the Minister and was unable to find any Certificate of Insurance, other than for the period demonstrated in Exhibit M-6.

Cross-examination

The Minister questioned the Applicant with regard to his flying qualification and his professional interests. Via this process, the Minister attempted to demonstrate (not without modest success) an inherent nonchalant attitude and lack of astuteness with respect to Mr. Butterfield's aviation related endeavours. For example, under questioning, Mr Butterfield informed the Tribunal that he owned and operated a Marine Insurance Consultancy and was qualified with the Insurance Institute of Canada's Qualifications and Certifications. When queried how he obtained his aircraft insurance, Mr. Butterfield replied, "my wife does it".

The Minister asked Mr Butterfield a key question, and I quote, "Mr. Butterfield, do you acknowledge that in fact the twelve month Annual Inspection was overrun?" Mr. Butterfield responded affirmatively, "Yes I do, I acknowledge that". The Minister shortly after asked Mr. Butterfield another vital question, concerning the insurance issue, and again I quote, "can you confirm at all that you had insurance on June 8th?" Mr. Butterfield responded, "I can't confirm it". The Minister rephrased the question: "you could not say whether that insurance was valid...and you still can't today". Mr. Butterfield replied "I still can't today".

ANALYSIS

In order to provide a true analysis of the case, it is necessary in reviewing the relevant evidence and testimony to exclude any extraneous or superfluous detail, concentrating exclusively on the principal facts at hand. Namely, that the aircraft was flown on June 8, 2003 without a valid Certificate of Airworthiness and the aircraft was flown without valid Liability Insurance.

Counts 1 and 2 are charges pursuant to section 6.9 of the *Aeronautics Act*; accordingly, both counts are classified as strict liability offences. As with all strict liability offences, the Minister need only prove on a balance of probabilities an offence was committed 'actus reus' (a state of 'omission or commission'). Once actus reus has been established, the evidentiary burden of proof shifts (as in this case) to the applicant, Mr. Butterfield; who in order to defy the charge may either present supporting evidence or prove due diligence was employed. Mr. Butterfield was not diligent in his defence and failed on both counts of defence.

The Minister substantiated count 1 by proving on a balance of probabilities:

Balance of Probabilities	Attestation
The pilot-in-command and date	Exhibits M-2, M-4, testimony
The aircraft registration and type	Exhibits M-1, M-2, M-3, testimony
Absence of (recorded) maintenance, specifically annual inspection	Exhibit M-3 , testimony

Under oath, Mr. Butterfield confirmed that he was the pilot-in-command of aircraft C-GIPO on June 8, 2003 which he piloted having alighted at the Campbell River Municipal Airport on route from Boundary Bay Airport. Mr. Butterfield did not proffer any type or form of maintenance record(s) demonstrating that the Annual Inspection had been accomplished in accordance with the aircraft (C-GIPO) predefined maintenance schedule; thereby validating Exhibit M-3. Additionally, Mr. Butterfield under oath, confirmed C-GIPO was non-compliant with respect to the required Annual Inspection. "Mr. Butterfield, do you acknowledge that in fact the twelve month Annual Inspection was overrun?" Mr. Butterfield responded affirmatively "Yes I do, I acknowledge that".

The Minister substantiated count 2 by proving on a balance of probabilities:

Balance of Probabilities	Attestation
The pilot-in-command and date	Exhibits M-2, M-4, testimony
The aircraft registration and type	Exhibits M-1, M-2, M-3, testimony
Absence of (recorded) Insurance Policy	Testimony

Mr. Butterfield failed to produce any substantiating evidence confirming the existence of an Insurance Policy covering the liability requirements of aircraft C-GIPO at the time of the occurrence. Under oath, Mr. Butterfield confirmed to the Tribunal that he had continued to search for his Insurance Policy covering the period as alleged by the Minister but was unable to

find any Certificate of Insurance other than for the period demonstrated in Exhibit M-6, which is a new insurance policy which came into effect after the date of the infraction.

CONCLUSION

Throughout the Hearing and continuing into the final stages of my Determination, I am forced to take the opinion that Mr. Butterfield could have been more diligent in the preparation and presentation of substantiating evidence to counter the Minister's case, especially since Mr. Butterfield was the originating Applicant. However, I believe Mr. Butterfield's only contention and principle reason for requesting a Hearing related to count 2, in which Mr. Butterfield felt the Minister was unfairly sanctioning him with a second charge emanating from count 1; in Mr. Butterfield's eyes, a case of double jeopardy.

Mr. Ostafiew had correctly informed Mr. Butterfield that any insurance policy would naturally be nullified via invalidation of the Certificate of Airworthiness. This, however, was not the premise for count 2. Count 2 stems from the fact that Mr. Butterfield did not provide the Minister with proof or confirmation of an original insurance policy providing coverage as in accordance with subsection 606.02(8) of the CARs, at the time when C-GIPO was "ramped" by Inspector Ostafiew. The Minister appears to have been lenient and quite specific with Mr. Butterfield, providing only a warning instead of a charge under subsection 606.02(9), until verification of a policy could be provided. Count 2 clearly originates from an absence of an original insurance policy and not a lapse of an insurance coverage, resulting from an invalidated Certificate of Airworthiness.

Double jeopardy is not applicable in Mr. Butterfield's case. I believe Mr. Butterfield, by his own acknowledgment, did not read the Minister's case sufficiently to understand the basis of the two unique and separate counts. It must be noted to Mr. Butterfield's credit that he had an outstanding aviation record, spanning back over thirty years without any previous infringement.

DETERMINATION

Count 1, under Schedule A of the Notice of Suspension has been proven by the Minister on a balance of probabilities. The Minister's suspension of 14 days is upheld.

Count 2, under schedule A of the Notice of Suspension has been proven by the Minister on a balance of probabilities. The Minister's suspension of 3 days is upheld.

Keith E. Green
Member
Transportation Appeal Tribunal of Canada