

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Gary P. Clayton, Respondent

LEGISLATION:

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

Air Regulations, C.R.C. 1978, c. 2, as am., s. 521(g)

Air Traffic Control Clearance

Review Determination
Alfred R. Spence

Decision: October 30, 1992

THE MINISTERS ALLEGATION IS CONFIRMED. THE PENALTY OF \$200.00 IS UPHELD. THIS AMOUNT, PAYABLE TO THE ORDER OF THE RECEIVER GENERAL FOR CANADA, IS TO BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL AT THE ABOVE ADDRESS WITHIN 15 DAYS OF SERVICE OF THE PRESENT DETERMINATION.

The Review Hearing on the above application was held at the Ellen Fairclough Building in the City of Hamilton, Province of Ontario, on October 6, 1992 at 10:00 hours.

BACKGROUND

The NOTICE OF ASSESSMENT OF MONETARY PENALTY reads as follows:

"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):

Air Regulations, s. 521(g), in that on July 28, 1991, at approximately 20:48 UTC, as pilot-in-command of an aircraft registered C-FTYO you proceeded onto runway 12R at Hamilton, Ontario when you had not received a clearance to proceed onto the runway.

Air Regulations, s. 521(g) states, in part, that the pilot-in-command of an aircraft operated on an aerodrome shall where the aerodrome is a controlled airport, obtain from the appropriate air traffic control unit, either by radio or visual signal, clearance for his movements."

C-FTYO, a commercially registered Cessna 172, was owned by Markham Airways and was leased to Mr. G.P. Clayton on July 28, 1991, for the purpose of instruction work with 3 students as indicated by Exhibit M-4.

The original allegation was made under *Air Regulations*, s. 506(a) on November 1, 1991, and after further investigation the Ministry of Transport reassessed and changed the alleged infraction to *Air Regulations*, s. 521(g) on December 20, 1991.

Mr. Gary Clayton responded to the above letters as indicated in Exhibit M-8 with a written statement:

"a) Yes I was the pilot in command of FTYO on the said date and time".

b) Yes I did make an error on the said date and time at Hamilton Airport, which is in contradiction to Air Regulation 521 G."

The aerodrome chart, Exhibit M-9A, displays in red the taxi route C-FTYO had taken. This is supported by the testimony of Air Traffic Controller Bryce. Mr. Bryce's notes of October 6, 1992, Exhibit M-9B, give an operational analysis of the infraction.

A.I.P. Canada - RAC 4-3, Exhibit M-10, suggests the following procedure should have been followed:

"Pilots of aircraft equipped with two-way radio are reminded that if authorized to taxi without restriction to the runway in use, no further authorization is required to cross any non-active runway en route. However, under no circumstances may a taxiing aircraft, whether proceeding to or from the active runway, taxi onto an active runway unless specifically authorized to do so (see paras. 4.2.6 and 4.2.7).

Upon receipt of a normal taxi authorization, a pilot is expected to proceed to the taxi holding position for the runway assigned for takeoff. If, for any reason, the ground or airport controller requires that a pilot request a further authorization before crossing or entering any of the runways en route to this taxi limit, this requirement will be reflected in the taxi authorization."

DECISION

The applicant (MOT) introduced all the above evidence listed in the background information accompanied by a cassette tape of communications between C-FTYO and the Control Agency (i.e. Hamilton Tower) which occurred on July 28, 1991.

Documentation presented by the Applicant and Mr. Clayton's letter of admission are absolute in determining the fact that the infraction did take place as charged.

Taking into consideration that Mr. Clayton was engaged in instructional activities with students on board, I believe the assessed fine is appropriate. A lesser penalty would be of no benefit to the aviation community.

Therefore, **THE MINISTER'S ALLEGATION IS UPHELD. THE PENALTY OF \$200.00 IS UPHELD. THIS AMOUNT, PAYABLE TO THE ORDER OF THE RECEIVER GENERAL FOR CANADA, IS TO BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL AT THE ABOVE ADDRESS WITHIN 15 DAYS OF RECEIPT OF THE PRESENT DETERMINATION.**

Alfred R. Spence
Member
Civil aviation Tribunal