



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Jean-François Vermette v. Canada (Minister of Transport)*, 2019 TATCE 30 (Review)

TATC File No.: Q-4367-32

Sector: Aviation

BETWEEN:

Jean-François Vermette, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard in: Montreal, Quebec, on February 20, 2019

Before: Patrick Vermette, Member

Rendered: July 5, 2019

[Official English translation]

REVIEW DETERMINATION AND REASONS

Held: Transport Canada has demonstrated, on a balance of probabilities, that the applicant, Jean-François Vermette, violated section 603.66 of the *Canadian Aviation Regulations* by conducting a flight operation in only one of the two periods specified in the Notice of Assessment of Monetary Penalty without complying with the provisions of the applicable special flight operations certificate. The monetary penalty of \$750 is therefore reduced to \$375.

The total amount of \$375 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

I. BACKGROUND

[1] On October 19, 2017, Transport Canada (TC), through Audrée Lamontagne, Regional Manager, issued a Notice of Assessment of Monetary Penalty (Notice) to Jean-François Vermette (applicant), pursuant to section 7.7 of the *Aeronautics Act (Act)*. Annex A of the Notice states:

On the dates and at the places indicated, you conducted a flight operation involving the operation of an unmanned air vehicle without complying with condition 10 of the special flight operations certificates issued by the Minister on or about January 20 and February 23, 2017; specifically, you failed to coordinate with the air traffic services unit responsible for air traffic services in the area of operation, thereby violating section 603.66 of the *Canadian Aviation Regulations*; more specifically, the flights took place:

1. On or about January 27, 2017, between approximately 9:40 p.m. and 11:00 p.m., at the Igloofest 2017 festivities at or around the Jacques Cartier Pier in the Old Port of Montreal; and
2. On or about March 1, 2017, between approximately 1:00 p.m. and 1:10 p.m., at the Cirque du Soleil event at or around the Jacques Cartier Pier in the Old Port of Montreal.

Penalty: \$750

[2] The Transportation Appeal Tribunal of Canada (Tribunal) received an application for review from the applicant on November 20, 2017.

[3] On December 10, 2018, the Tribunal sent the parties a notice of hearing for February 20, 2019.

[4] The Tribunal must determine whether the applicant violated section 603.66 of the *Canadian Aviation Regulations (CARs)*.

II. ANALYSIS

[5] The issue is as follows: did the applicant conduct a flight operation involving the operation of an unmanned air vehicle (UAV) on the dates and at the places indicated in the Notice without complying with condition 10 of the special flight operations certificates (certificates) issued by TC for these operations, thereby violating section 603.66 of the *CARs*?

A. Legal framework

[6] Pursuant to subsection 7.7(1) of the *Act*:

7.7(1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision.

[7] Section 603.66 of the *CARs* is a designated provision, and it states:

Certification Requirements

603.66 No person shall conduct a flight operation referred to in section 603.65 unless the person complies with the provisions of a special flight operations certificate issued by the Minister pursuant to section 603.67.

[8] Paragraph 603.65(d) states that the division of the *CARs* containing section 603.66 applies to flight operations involving a UAV.

[9] Section 603.67 states that the Minister shall issue a special flight operations certificate when an application is made in compliance with certain criteria.

B. Application to the facts

[10] In response to two applications for certificates made by the applicant for UAV operations planned for January, February and March 2017 (Exhibits M-3 and M-4), TC issued certificates on January 20, 2017 (RDIMS No. 12637057) and February 23, 2017 (RDIMS No. 12701613) (Exhibits M-5 and M-6), which contain conditions that the applicant had to meet for the planned operations.

[11] Both certificates issued have the same condition 10, which states:

(10) The UAV operator must coordinate with the air traffic services unit responsible for providing air traffic services in the area of operation well before the proposed operation. The validity of this certificate is contingent upon this coordination.

[12] It also states at the beginning of both certificates that Nav Canada's air navigation service must authorize the flight and that the certificate holder must contact a Nav Canada unit procedures specialist by email or telephone during business hours during the week to obtain this authorization. An email address and telephone number are provided.

[13] Following verifications by TC Inspector Larouche with Nav Canada and the applicant about the flight operations the applicant conducted on January 27, 2017 and March 1, 2017, two notices of detection for these flight operations were sent to TC Investigator Melançon (Exhibits M-9 and M-10). The notices of detection were undated.

[14] Documentary evidence supported the notices of detection submitted to the investigator. It included:

1. An email exchange from May 18, 2017, in which Mr. Collette of Nav Canada confirmed to Inspector Larouche that he had had no contact or coordination with the applicant's company (Exhibit M-8);
2. An email exchange from May 29, 2017, in which the applicant confirmed the geographic coordinates, date, time, name of the pilot, and type of aircraft used for six flights conducted on January 27, 2017 and two flights conducted on March 1, 2017 (Exhibit M-7); and
3. The applicant's applications for certificates and the certificates issued by TC for the flight operations described in the Notice (Exhibits M-3, M-4, M-5 and M-6).

[15] Based on this documentary evidence attached to the detection notices, Investigator Melançon recommended issuing the Notice dated October 19, 2017, with a penalty of \$750.

[16] At the review hearing, the applicant testified that he conducted the six flights on January 27, 2017 (governed by the TC certificate dated January 20, 2017) as indicated in his May 29, 2017 email to Inspector Larouche. He testified that he tried several times to contact Mr. Collette by telephone to obtain authorization to conduct these flights, as required under condition 10 on the certificate. He also testified about difficulties he experienced at the time with the UAV flight authorization process as an entrepreneur trying to conduct this type of flight operation for commercial purposes. The Tribunal acknowledges the applicant's account of the difficulties he encountered trying to operate in this new field and to comply with the regulations in effect. However, the Tribunal finds that the flights on January 27, 2017 were conducted without the required coordination under condition 10 of the certificate governing this flight operation and that it was the applicant's responsibility to pursue his efforts to meet this condition.

[17] For the two flights allegedly conducted on March 1, 2017, the applicant testified at the review hearing that he did not conduct these flights. He testified that he made an error in his May 29, 2017 email to Inspector Larouche. He claimed that his email described two flights that took place the previous year, in March 2016, for the same client, which planned a similar flight operation in March 2017 that ended up not occurring. The applicant's testimony in this regard was credible, and he provided a plausible explanation for this confusion between the two years. The Tribunal accepts the applicant's testimony on this issue.

[18] The evidence submitted by TC that the flight operations alleged in the Notice took place is based entirely on the contents of the email the applicant sent Inspector Larouche on May 29, 2017, which contains information on the flights conducted on January 27, 2017 and March 1, 2017. TC did not present any other evidence to support the accuracy of the information in this email, such as material evidence, testimony, or other documentary evidence confirming that the flights took place on these two dates.

[19] Therefore, the version of the facts presented by TC is based only on a previous written statement the applicant made in an email. As stated, the applicant made credible corrections to this evidence at the review hearing. He testified that the January 27, 2017 flights took place as described in his May 29, 2017 email, but that the March 1, 2017 flights did not occur.

[20] TC argued based on section 28 of the *Act* that the information in the applicant's May 29, 2017 email is deemed to be accurate. This section stipulates that an entry in any record required under the *Act* to be kept is, in the absence of evidence to the contrary, proof of the matters stated therein as against the person who made the entry or was required to keep the record.

[21] This provision does not help inform the Tribunal in this case. Even if we were to find that the information in the May 29, 2017 email was proof of an entry in a record required under the *Act* to be kept, the applicant presented evidence to the contrary for some of the information in the email. He testified that the information that he conducted flights on March 1, 2017 was incorrect, explaining that he made an error when he wrote the email.

[22] Therefore, the Tribunal finds that the applicant conducted a flight operation involving the operation of a UAV on January 27, 2017, without complying with condition 10 of the certificate issued by TC for this operation, thereby violating section 603.66 of the *CARs*. The Tribunal finds that the applicant did not conduct the March 1, 2017 flight operation alleged in the Notice.

III. DETERMINATION

[23] Transport Canada has demonstrated, on a balance of probabilities, that the applicant, Jean-François Vermette, violated section 603.66 of the *Canadian Aviation Regulations* by conducting a flight operation in only one of the two periods specified in the Notice of Assessment of Monetary Penalty without complying with the provisions of the applicable special flight operations certificate. The monetary penalty of \$750 is therefore reduced to \$375.

[24] The total amount of \$375 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

July 5, 2019

(Original signed)

Patrick Vermette

Member

Appearances

For the Minister: Micheline Sabourin

For the Applicant: self-represented