



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Air New Zealand Limited v. Canadian Transportation Agency*, 2019 TATCE 32 (Ruling)

TATC File No.: H-4525-80

Sector: Aviation

BETWEEN:

Air New Zealand Limited, Applicant

- and -

Canadian Transportation Agency, Respondent

Heard by: Written submissions

Before: Jacqueline Corado, Vice-Chairperson and Member

Rendered: July 17, 2019

RULING

Held: The request for review is late and cannot be accepted.

I. BACKGROUND

[1] On June 19, 2019, the applicant, Air New Zealand Limited, sent the Transportation Appeal Tribunal of Canada (Tribunal) a request to extend the deadline to file a request for review of a decision by the Canadian Transportation Agency, namely Notice of Violation (Notice) number 18-04688, issued on September 5, 2018.

[2] The applicant had until October 9, 2018 to contest the Notice or pay the associated penalty of \$5,000, pursuant to section 180.1 of the *Canada Transportation Act (CTA)*.

[3] In its request for a deadline extension, the applicant submitted arguments explaining why the request for review was not filed before October 9, 2018.

[4] The respondent, the Canadian Transportation Agency, is opposed to the late request for review and submitted arguments on June 26, 2019. The applicant had until July 2, 2019 to reply to the respondent's submissions but did not do so.

II. ISSUES

[5] The first question before the Tribunal is as follows:

A. Was the applicant late in applying for a review of the Notice?

[6] A positive answer to the above question prompts this next question:

B. Are there any valid reasons for extending the deadline to request a review of Notice 18-04688?

III. ANALYSIS

A. Is the request for review late?

[7] Pursuant to subsection 180.3(1) of the *CTA*, a person who is served with a notice of violation and who wishes to have it reviewed shall, on or before the date specified in the notice or within any further time that the Tribunal on application may allow, file a written request for a review with the Tribunal at the address set out in the notice.

[8] The applicant had until October 9, 2018 to request a review of the Notice; it did not do so until June 19, 2019.

[9] Section 180 of the *CTA* states that the notice must be served on the person who committed a violation. The particulars in the Notice identify Air New Zealand Limited as having committed a violation.

[10] The applicant does not dispute having received the Notice, which was sent to the attention of Bruce McIntosh in Richmond, British Columbia. Exhibit CTA-2, submitted by the respondent, indicates that the Notice was delivered on September 6, 2018.

[11] The Notice specifies the deadline to pay the penalty as being October 9, 2018. It also advises the applicant that to request a review by this Tribunal, it must do so before the date indicated or within any further time that the Tribunal, on application, might allow.

[12] The request for review was submitted over eight months past the deadline.

B. Are there any valid reasons for extending the deadline to request a review of Notice 18-04688?

[13] The Tribunal has the discretion to extend the deadline to submit a request for review, pursuant to subsection 180.3(1) of the CTA. The Tribunal's *Policy on Late Applications* states that in making a decision on whether to accept a late application for review, the Tribunal will determine whether the applicant has established extenuating circumstances to justify the failure to apply for a review within the deadline.

[14] On June 19, 2019, in support of its late request, the applicant submitted that the company had had team overhauls, marketing team restructuring and personnel turnovers in the past nine months. The applicant also mentioned that they needed to do research time and time again by new personnel and that when the Notice reached the right person to deal with it, there was a lot of back and forth communication with the respondent. I cannot consider these arguments as extenuating circumstances that justify an extension of nearly nine months.

[15] The Notice specifies that if the full amount of the penalty has not been paid and a request for review is not filed with the Tribunal before the specified date, the applicant will be deemed to have committed the violation.

[16] Once a Notice has been received, the applicant has the opportunity to file a request for review within the allowed time. The Notice contains the Tribunal's address and phone number at which to be reached; it also contains information about how to obtain the Tribunal's *Guide for Applicants*, which is also available on its website. Therefore, I cannot accept the argument that research time justifies such a long extension of the deadline.

[17] I cannot accept the argument that the request for review could not be filed due to restructuring and personnel changes within the company over the past nine months. Exhibit CTA-3, an email from Maggie Amin of Air New Zealand Limited, dated May 16, 2019, states that corrective measures were taken in September 2018 regarding the alleged violation of August 22, 2018. Simona Sasova, of the Canadian Transportation Agency, confirms in her affidavit at paragraph 5 that in the fall of 2018, corrective measures had been completed on the company's website. The applicant was prompt to take action in regard to the alleged violation; therefore, concurrent with the corrective measures taken, the company could have filed a request for review.

[18] The request for review was submitted over eight months late; the reasons presented by the applicant do not justify such a lengthy extension of the deadline.

IV. RULING

[19] The request for review is late and cannot be accepted.

July 17, 2019

(Original signed)

Jacqueline Corado

Vice-Chairperson and Member

Appearances

For the Minister: Karine Matte

For the Applicant: Maggie Amin