



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Académie de Pilotage Internationale Inc. v. Canada (Minister of Transport)*,
2020 TATCE 17 (Ruling)

TATC File No.: A-4307-45

Sector: Aviation

BETWEEN:

Académie de Pilotage Internationale Inc., Appellant

- and -

Canada (Minister of Transport), Respondent

Heard by: Written submissions

Before: Arnold Olson, Member (Chairing)
Fazal Bhimji, Member
Dr. Francis Hane, Member

Rendered: September 18, 2020

RULING ON PRELIMINARY MOTION NEW EVIDENCE

Held: Pursuant to section 14 of the *Transportation Appeal Tribunal of Canada Act*, the appellant's request to consider the evidence, an air operator certificate dated November 16, 2015, is dismissed. This ruling is without prejudice to the appellant's arguments at appeal.

I. BACKGROUND

[1] By Notice of Assessment of Monetary Penalty (Notice) dated February 3, 2017, the Minister of Transport (Minister) assessed a monetary penalty of \$12,500 against the appellant, Académie de Pilotage Internationale Inc., for an alleged contravention of subsection 406.03(1) of the *Canadian Aviation Regulations (CARs)*. The Notice read, in part, “On or about February 6, 2016, ... you Academie de Pilotage Inc., operated a flight training service ... when you did not hold a flight training unit operator certificate which authorized you to operate that service ...”.

[2] Jules Selwan, on behalf of the appellant, requested a review hearing from the Transportation Appeal Tribunal of Canada (Tribunal), which took place on April 24, 2019, in Ottawa, Ontario. In a determination dated July 3, 2019, the review member found that the appellant had contravened subsection 406.03(1) of the *CARs*, and that the exemptions under subsection 406.03(2) of the *CARs* did not apply.

[3] On July 28, 2019, the appellant filed a request for an appeal of the review member’s decision. Consequently, a pre-hearing case management conference (CMC) was held on August 6, 2020. During this CMC, the appellant amended its grounds of appeal, without objection by the Minister, to read in part as follows:

Ground 2: The Member on Review erred in law in upholding a penalty against the Academie for operating a flight training service under s.406.03(1) when the Academie had complied with the conditions and specifications set out under s.702.76 of the *CARs*.

[4] On August 16, 2020, the appellant filed a motion to request that the Tribunal accept new evidence, an air operator certificate (AOC) dated November 16, 2015. The Operations Specifications permitted the appellant to conduct aerial work under Part 702 of the *CARs* using a Cessna 172P type aircraft.

[5] The panel must consider whether the AOC, dated November 16, 2015, can be introduced as evidence during the appeal of the review determination.

II. LEGAL FRAMEWORK

[6] The appeal panel has the discretion to accept new evidence on appeal proceedings subject to section 14 of the *Transportation Appeal Tribunal of Canada Act (TATC Act)*, which states:

14 An appeal shall be on the merits based on the record of the proceedings before the member from whose determination the appeal is taken, but the appeal panel shall allow oral argument and, if it considers it necessary for the purposes of the appeal, shall hear evidence not previously available.

III. SUBMISSIONS

A. Appellant's submissions

[7] The appellant submitted that the new evidence is necessary to: determine whether the exemption under subsection 406.03(2) of the *CARs* applies to its arguments; assist the panel in its review of the record; and prevent a miscarriage of justice. The appellant submits that this document is central to the issue of whether subsection 406.03(1) of the *CARs* was contravened. The appellant stated that the review member had asked for this evidence, but that it could not be provided at the time.

B. Respondent's submissions

[8] The respondent argued that the appellant's submissions do not meet the legal threshold required of section 14 of the *TATC Act*, and that the motion should be dismissed. The respondent submitted that the AOC had been issued in 2015, some four years before the review hearing on April 24, 2019, that it was easily available to the appellant at the time of the review hearing, and that the appellant elected not to introduce it on the record. Further, contrary to the appellant's assertion, the record does not show that the review member asked for this evidence at the review hearing.

[9] In addition, the respondent submits that this new evidence is not relevant for the purpose of the appeal for two reasons: first, the AOC specifies a different type of aircraft than that considered by the member on review, and second, the administrative penalty considered by the review member was not for "aerial work" performed under Part 702 of the *CARs*, but rather for operation under its flight training unit operator certificate.

C. Appellant's reply

[10] The appellant replied that the Minister had elected not to include all the corporate entity documents listed in Transport Canada's National Aviation Company Information System (NACIS) database. Therefore, neither the review member, nor the appellant, had all the records on the date of the hearing.

[11] The appellant reiterated that the evidence is relevant to the appeal, referring to paragraphs 36 and 38 of the review determination, and noting that an AOC issued under Part VII of the *CARs* authorizes the document holder to operate a commercial air service. The appellant cited the review member's finding that "... no evidence was provided that the applicant holds such a certificate ...".

[12] The appellant asserted that a connection exists between the AOC and the application of an exemption under subsection 406.03(2), considering that the contravention is based on the nature of service and not for a specific type of aircraft.

IV. ANALYSIS

A. Was the evidence available at the time of the review hearing?

[13] The appeal panel has examined the proposed fresh evidence, that is, the AOC for aerial work (aerial advertising, aerial photography) under Part 702 of the *CARs*, and note that the issue date of November 16, 2015 clearly predates the date of the review hearing, April 24, 2019. Quite apart from the NACIS database, the AOC itself would have been accessible to the appellant at the time of the review hearing. Therefore, it cannot be said that it was not previously available.

B. Is the evidence necessary for the purposes of the appeal?

[14] In considering whether the evidence is necessary, the panel has considered the test set out in *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, [2000] 1 S.C.R. 44, at para. 6, including that the evidence must bear on a decisive or potentially decisive issue; it must be credible; and if accepted, **the evidence would have affected the result of the previous proceeding.**

[15] We note that the AOC specifies the type of work to be aerial advertising or aerial photography. However, the monetary penalty applied by Transport Canada pertained to flight training conducted under the authority of the flight training unit operator certificate, not the AOC for aerial work.

[16] The AOC specifies that the type of aircraft to be used for aerial work is a Cessna 172P. The contravention considered by the review member involved a multi-engine PA-34-200T Piper Seneca (Exhibit M-5). The appeal panel is not persuaded that an AOC that specifies use of a Cessna 172P for aerial advertising or aerial photography in itself authorizes use of a multi-engine aircraft for flight training.

[17] The panel notes that the exemption under paragraph 406.03(2)(a) that permits flight training by the holder of an air operator certificate reads in part:

406.03 (2) A person who does not hold a flight training unit operator certificate may operate a flight training service if

(a) the person holds ... an air operator certificate, **the aircraft used for training ... is specified in the air operator certificate** [...] [emphasis added]

Since the aircraft type specified in the AOC is different than the aircraft type used for flight training, it is highly unlikely that the exemption under paragraph 406.03(2)(a) would have been available to the appellant. The AOC, had it been accepted into evidence at the review hearing, would not have affected the result.

[18] For these reasons we do not accept the appellant's connection between the AOC and the application of an exemption under subsection 406.03(2) of the *CARs*.

[19] We find that the proposed fresh evidence is not relevant to the administrative penalty applied under subsection 406.03(1) and therefore not necessary for the purpose of the appeal.

V. RULING

[20] Pursuant to section 14 of the *Transportation Appeal Tribunal of Canada Act*, the appellant's request to consider the evidence, an air operator certificate dated November 16, 2015, is dismissed. This ruling is without prejudice to the appellant's arguments at appeal.

September 18, 2020

(Original signed)

Reasons for the
appeal decision: Arnold Olson, Member (chairing)
Concurred by: Fazal Bhimji, Member
Dr. Francis Hane, Member

Appearances

For the Minister: Eric Villemure
For the Appellant: Jules Selwan