



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Canada (Minister of Transport) v. Yves Généreux*, 2021 TATCE 4 (Appeal)

**TATC File No.:** Q-4383-33

**Sector:** Aviation

### BETWEEN:

**Canada (Minister of Transport)**, Appellant

- and -

**Yves Généreux**, Respondent

[Official English translation]

**Heard in:** Videoconference on October 16, 2020

**Before:** Franco Pietracupa, Member (chairing)  
Caroline Desbiens, Member  
Yves Duguay, Member

**Rendered:** February 19, 2021

### APPEAL DECISION AND REASONS

**Held:** The Minister's appeal is dismissed. The appeal panel upholds the review determination that the Minister of Transport has not established that Yves Généreux contravened subsection 571.10(1) of the *Canadian Aviation Regulations*.

## I. BACKGROUND

[1] On January 4, 2018, Transport Canada (TC) issued a Notice of Assessment of Monetary Penalty (Notice) to Yves Généreux, which reads as follows:

On February 4th, 2017 in Mascouche (Quebec) or thereabouts, you signed a maintenance release pertaining to the replacement of a faceplate and Mhz digits on an RT 385 Nav/Com unit, P/N 46660-1100 and S/N 16318, as required pursuant to section 605.85 of the *Canadian Aviation Regulations*, when the maintenance release did not meet the applicable requirements specified in subsection 571.10 (2) of the *Airworthiness Manual*, more specifically, you failed to document on the Authorized Release Certificate number 0634, which you used for Maintenance Release Record Keeping purposes, a brief description of the work performed and a list of replacement parts installed, thereby contravening to subsection 571.10 (1) of the *Canadian Aviation Regulations*.

Monetary penalty : \$1,000.00

[2] The review hearing took place on September 6, 2018, in Montreal, Quebec. On January 22, 2019, the review member rendered his determination that the Minister of Transport (Minister) had not proven, on a balance of probabilities, that the applicant, Mr. Généreux, violated subsection 571.10(1) of the *Canadian Aviation Regulations (CARs)*. As such, the monetary penalty of \$1,000 was dismissed. More particularly, the review member found that the evidence showed that Mr. Généreux did not replace the faceplate but rather inspected the radio and that as such, the authorized release certificate (certificate) did not contravene subsection 571.10(1) of the *CARs*.

### A. Review determination rendered on January 22, 2019

[3] The review member's determination was based on the points that follow. The review member accepted the applicant's testimony that the information on the certificate—the maintenance release record-keeping document required under the *CARs* and the basis for the Minister issuing the violation—describes the work he performed on the radio.

[4] The review member was of the opinion that the applicant did not replace any parts and was satisfied that he only inspected the radio, as he indicated on the certificate, which was filled out in accordance with Appendix J of Standard 571 of the *Airworthiness Manual*.

[5] Based on the evidence presented at the hearing by both parties, the review member found that the applicant did not violate the requirements of subsection 571.10(1) of the *Airworthiness Manual* on maintenance release record keeping.

### B. Legal framework

[6] The legislative provisions and rules applicable to this proceeding are as follows: subsection 7.7(1) of the *Aeronautics Act*, subsection 571.10(1) of the *CARs*, Standard 571 of the *Airworthiness Manual*, which provides the scope of section 571.10 of the *CARs*, and Appendix J of Standard 571 of the *Airworthiness Manual*.

[7] On appeal, the Minister introduced subsections 571.11(1) and (6) of the *CARs*. However, such provisions were not part of the Notice. In addition, and as discussed below, such provisions

do not apply in the circumstances. However, since these provisions are part of the appeal arguments, we must refer to such provisions which read as follows:

**571.11 Persons Who May Sign a Maintenance Release**

**571.11 (1)** Except as provided in subsections (2) and (7), no person other than the holder of an aircraft maintenance engineer (AME) licence issued under Part IV, specifying a rating appropriate to the aeronautical product being maintained, shall sign a maintenance release as required by section 571.10.

[...]

**(6)** If a maintenance release is signed by a person in respect of work performed by another person, the person signing the maintenance release must personally observe the work to the extent necessary to ensure that it is performed in accordance with the requirements of any applicable standards of airworthiness and, specifically, the requirements of sections 571.02 and 571.10.

**C. Grounds for appeal**

[8] Originally, the appellant had submitted three grounds for appeal. Following the case management conference on August 26, 2020, the Minister withdrew one ground and confirmed the following two:

(a) The member of the Tribunal erred in his interpretation of section 571.10 of the *Canadian Aviation Regulations*.

(b) The member of the Tribunal rendered an unreasonable decision by not taking into account all of the exhibits on the record, specifically Exhibits M-3, M-5 and R-1.

**II. ANALYSIS**

**A. Standard of review**

[9] The standard of review to be exercised by an appeal panel of the Transportation Appeal Tribunal of Canada (Tribunal) was established by the Federal Court in *Billings Family Enterprises Ltd. v. Canada (Transport)*, 2008 FC 17, and more recently supported by *Canada (Attorney General) v. Friesen*, 2017 FC 567, which found that questions of credibility, fact and mixed fact and law attract a reasonableness standard, whereas questions of law attract a correctness standard.

[10] The basis for an appeal hearing is set out in section 14 of the *Transportation Appeal Tribunal of Canada Act* as follows:

**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.

Essentially, this means that the appeal panel must reach its decision on the basis of the evidence that was before the review member at the initial hearing, and that generally no additional evidence will be considered. The appeal panel notes that, throughout the submissions of the parties, statements were made that were not supported by the evidence presented at the review hearing. Consequently, these statements will not be considered in reaching our conclusions.

[11] On appeal, subsection 8.1(3) of the *Aeronautics Act* provides that the appeal panel may dispose of the appeal by dismissing it or allowing it and, in allowing the appeal, the panel may substitute its decision for the determination appealed against. Such determination is based on the review principles stated above and in the context of the evidence presented at the hearing and the arguments presented to the panel. More particularly, as appeal panel members, our role is framed by limiting our analysis specifically to the alleged errors in the review member's determination, i.e., the alleged errors as submitted by the appellant. In other words, the appeal panel members' role is not to review (again) the violation as a whole (i.e., the appeal hearing is not a *de novo* hearing), as it is not our role to act as the review member. In summary, the appeal panel will review the alleged errors, as submitted by the appellant.

[12] The Minister has raised two grounds for the appeal, as previously noted. The first being that the review member's determination erred in the interpretation of subsection 571.10(1) of the *CARs*, thus an error in law in that the review member did not consider subsection 571.11(6) of the *CARs* where the work can be performed by another aircraft maintenance engineer and that in such case, the maintenance certification of the work done by another shall conform with the requirements of section 571.10 of the *Airworthiness Manual*. As such, when the issue on appeal is about an error of law, the appeal panel will apply the correctness standard. No deference is due to a review member with regard to issues of law.

[13] The second ground of appeal is based on the decision rendered being **unreasonable** based on the review hearing testimony and evidence provided. Particularly, the Minister argued that the error of law led the review member to omit important elements of facts shown on Exhibits M-3, M-5 and R-1 regarding the replacement of the faceplate made by an employee of Cargair and that it had to be documented in the certificate (Exhibit M-3). As such, when the issue on appeal is about an error of mixed fact and law, the appeal panel will apply the reasonableness standard. This means that as long as the determination on review is within the range of reasonable outcomes based on the evidence that was before the review member and in light of the Notice, the appeal panel should not intervene.

## **B. First ground of appeal**

### **The review member erred in his interpretation of section 571.10 of the *CARs***

[14] The appellant argued that the review member erred in the interpretation of subsection 571.10(1) of the *CARs* in that the respondent did not properly describe the work accomplished on the RT 385 Nav/Com radio unit, including having not indicated the parts that were replaced by an employee of Cargair for whom he allegedly had to certify the work done. The Minister specifically referred to Appendix J of Standard 571 of the *Airworthiness Manual*, which contains information on how to complete the authorized release certificate.

[15] The Minister's representative submitted that under subsection 571.10(1) of the *CARs*, the person who certified the work does not necessarily need to be the one who actually carried out the repairs noted in the certificate as admitted by Mr. Généreux. To justify such argument, he referred to subsection 571.11(6) of the *CARs* which in his view provides that the individual who certified the work or repair must verify that whoever may have carried out this work must have adhered to all required regulatory and repair standards including if any replacement parts were

used. Consequently, failing to consider subsection 571.11(6) of the *CARs* was, in the Minister's view, an error of law made by the review member in applying subsection 571.10(1) which led the review member to omit important elements of facts regarding the replacement of the radio faceplate by an employee of Cargair, and that had to be documented in the certificate since Mr. Généreux was allegedly supervising and had to supervise such work in the Minister's view.

[16] Not being an attorney, Mr. Généreux did not know how to address the legal argument of the appellant but simply added that he was happy to note that the Minister was finally admitting that he did not replace the parts himself (contrary to what the Minister claimed during the review hearing and in the Notice) and that his job was not to inspect the work done by an employee of Cargair but rather to simply inspect the radio as indicated on Exhibit M-3. He added that Cargair, which is an approved maintenance organization, could replace the faceplate and digits (as being line replaceable units) under section 571.04 of the *CARs* and did not have to hire him in this respect and that it was Cargair's responsibility, not his, to ensure that the proper certification be made for the work (replacement of parts) made by its employee. He went on to say that the evidence showed that he was not present when the faceplate was replaced by an employee of Cargair and thus could not have supervised the work. In other words, Mr. Généreux is saying that the review hearing was focused on the fact that he had allegedly replaced the radio faceplate himself and not documented the parts replacement in his certification whereas the appeal hearing is now surprisingly focused on an alleged supervision of work done by an employee of Cargair.

[17] This appeal panel finds that subsection 571.11(6) of the *CARs* is a separate violation and Mr. Généreux was not charged under this provision. This is not only a new argument raised by the Minister, it is a completely different violation under Schedule II, Subpart 3 of Part 1 of the *CARs*. Consequently, it is the appeal panel's view that Mr. Généreux could not be found guilty of contravening subsection 571.11(6) of the *CARs*.

[18] More particularly, as concerns subsection 571.10(1) of the *CARs* referred to in the Notice and the obligation to ensure that the maintenance release meets the applicable requirements specified in section 571.10 of the *Airworthiness Manual*, it is either addressed **to the person signing the maintenance release** itself (i.e., the respondent as indicated in the Notice) or the **person permitting anyone whom the person supervises to sign a maintenance release**. This second situation is addressed to a person who does not sign a maintenance release but who supervises the work of another who signs such maintenance release. It addresses vicarious liability and covers a situation where a person, by way of the organization chart or assignment of responsibilities in an approved manual, exercises supervisory authority over a person making a maintenance release as stated in Standard 571.10. In the present case, it is the respondent who signed the maintenance release, not another person. In addition, no evidence showed that Mr. Généreux was exercising a supervisory authority over another person making a maintenance release by way of the organization chart or assignment of responsibilities in Cargair's approved manual. This second situation is consequently not applicable, and the Minister erred when it referred to section 571.10 of the *CARs* in an attempt to cover the work (faceplate replacement) done by an employee of Cargair allegedly supervised by the respondent.

[19] It is rather subsection 571.11(6) of the *CARs* that deals with the obligation of the aircraft maintenance engineer who supervises the work of another **and signs the maintenance release** to ensure its compliance with section 571.10 of the *CARs* and as stated, this was not part of the

Notice of this case nor the object of the review hearing. Such notice does not even refer to the supervision of the work of another person. In reviewing the transcript of the review hearing, the Minister did not specifically raise subsection 571.11(6) of the *CARs* nor the fact that Mr. Généreux was supervising the work of Cargair's employee. In fact, at the review hearing, the Minister argued that Mr. Généreux had replaced the faceplate based on Work Order 1706 (Exhibit M-5).

[20] Consequently, the Minister cannot argue a separate violation on appeal and the review member did not make an error of law by not considering such separate violation that was not even part of the Notice nor part of the Minister's arguments at the review hearing.

[21] This panel notes that the Minister even admitted during the review hearing that the supervision of a replacement would be a separate and possible violation. More particularly, when Mr. Généreux claimed that it was not his responsibility to monitor the replacement of the "faceplate" by highlighting the following statement as noted in Exhibit M-3: "This certificate does not constitute authority to install." The Minister responded to this claim by stating:

Then I agree with [Mr. Généreux], ... if Cargair decides to install that radio, and Transport Canada knows it, it will be subject to another investigation and another possible offence. Maybe.

[22] Consequently, if the Minister chose not to charge Mr. Généreux with respect to a work supervision violation in the first place under subsection 571.11(6) of the *CARs*, which is a different violation, the appeal is not the forum to correct its error, and the appeal panel must render its decision and determine if the review member's law interpretation was correct or not in light of the Notice and arguments presented at the review hearing level.

[23] Considering all of the foregoing, during the review hearing, the member had to decide, on a balance of probabilities, if the Minister did prove that Mr. Généreux contravened subsection 571.10(1) of the *CARs* in that he failed in his obligation to properly describe his work and identify any parts that he may have replaced on the RT 385 Nav/Com Unit P/N 46660-110 and S/N 16318, namely in this case, as stated in the Notice, that Mr. Généreux signed a maintenance release pertaining to the alleged replacement of a faceplate.

[24] The review member correctly addressed such legal questions in paragraphs 6 and 25 of his determination in the context of the Notice and arguments presented to him and the reasonableness of his interpretation of the facts is addressed in the second part of this determination.

### **C. Second ground of appeal**

#### **The review member rendered an unreasonable decision by not taking into account all of the exhibits on the record, specifically Exhibits M-3, M-5 and R-1**

[25] The Minister's representative argued during the appeal hearing that since Mr. Généreux, as stipulated in subsection 571.11(6) of the *CARs*, had a responsibility to supervise the work performed by Cargair, the review member failed to take into consideration the evidence that was presented during the review hearing. Particularly, he argued that the error of law led the review member to omit important elements of facts shown on Exhibits M-3, M-5 and R-1 regarding: 1)

the replacement of the faceplate by an employee of Cargair that had to be documented in the certificate and was not; and 2) Mr. Généreux's mandate to supervise the work of Cargair's employee. The Minister's representative's view is that this omission in the factual analysis of the matter before him was unreasonable and thus subject to review by this panel.

[26] Since this panel has decided that subsection 571.11(6) of the *CARs* does not apply in light of the violation the respondent was said to have committed, the alleged omission of the review member to consider evidence on the radio replacement made by an employee of Cargair and alleged supervision role of Mr. Généreux is not relevant in light of the same violation.

[27] Alternatively (as an *obiter dictum*) and since the appeal hearing was focused on the alleged work supervision by Mr. Généreux and failure to document a radio faceplate replacement in the maintenance certificate, the appeal panel would like to take this opportunity to say that subsection 571.11(6) of the *CARs* does mention that work can be performed by another person other than the person signing off the maintenance work. The respondent admits this is also possible. However, the person who does actually carry out the repair or work must be supervised by the signing authority and there must be a personal observance of the work. If we follow the Minister's alleged argument, this signing authority would have been Mr. Généreux.

[28] However, even if Mr. Généreux had been charged under subsection 571.11(6) of the *CARs*, testimony and evidence provided at the review hearing indicate that no supervision took place by Mr. Généreux. In addition, the evidence does not show that he was expected to supervise work being conducted by any of Cargair's employees. Consequently, the evidence shows that he would not have been legally able to do the type of supervision asked by the Minister since he was not present when the work was performed (and could not observe the work as per subsection 571.11(6) of the *CARs*) and since it was not part of the mandate given to him. In summary, the Minister has provided no evidence to show any supervisory role as indicated by the review member in paragraph 35 of his determination or any employee-employer relationship (if any) and has erroneously interpreted subsection 571.11(6) of the *CARs* in submitting that the respondent had to supervise such work and ensure it was done in compliance with the *Airworthiness Manual* even if, in this case, Mr. Généreux was not present when the faceplate was replaced.

[29] Although the Minister did not argue the reasonableness of the decision of the review member on the facts in light of the original Notice, the appeal panel has reviewed the transcript and the review member's determination and found in fact that Exhibits M-3 and M-5 in particular were reviewed and discussed as to the appropriate charge against the applicant and that the review member's interpretation of the evidence is reasonable in this context.

[30] In his argument during the appeal hearing, the Minister's representative referred to the above-mentioned Exhibit M-3 where Mr. Généreux recorded his inspection of the radio as per specifications of the CESSNA RT 385 MM manual. However, he pointed out that Exhibit M-5 contradicted Exhibit M-3 in that it indicated that a faceplate on the radio had been damaged and replaced.

[31] The review member's decision reflected on the fact that the Minister did not prove the allegations, on a balance of probabilities, that Mr. Généreux failed to give a brief description of

the work performed and identify on the certificate the replacement parts installed. In fact, in paragraph 39 of his determination, the member found that the respondent did not repair the radio with replacement parts and that as such, he did not fail to give a brief description of the parts replaced.

[32] Paragraphs 31 and 32 indicate more particularly that no evidence was presented to the Tribunal by the Minister in regard to specific parts being replaced by Mr. Généreux or identified in Exhibits M-3 or M-5. It was clear in his determination, based on the testimony heard, that the work performed by Mr. Généreux consisted of inspecting the functionality of the radio unit.

[33] At the review hearing, Mr. Généreux testified that he had never replaced any parts on the radio and that this was due to an error in his English translation of the French term “replacer” in Exhibit M-5 where he actually meant “reposition” in English, not “replace.” This means that the faceplate was re-set back on the unit by an employee of Cargair. He stated that the faceplate was repositioned on the radio and not replaced by another part.

[34] The review member, based on the written determination, weighed the testimony from Mr. Généreux in that a wording misinterpretation on his part (Exhibit R-1) could explain the confusion, since the word “replacer” in French means that the same faceplate was re-set or repositioned on the unit by Cargair. In fact, no **new** part was installed on the radio by Mr. Généreux.

[35] The review member does admit that exhibits M-5 and M-3 may be conflicting (review determination, paragraph 20) but weighs both and decided that based on the balance of probabilities, the information on the certificate does accurately document the work that Mr. Généreux performed on the radio unit, namely that it was inspected. He clearly mentions in the written determination that he found Mr. Généreux’s testimony credible and allocated the weight to it as he deemed fit (review determination, paragraph 28). No parts were listed but, in our opinion, it is reasonable to have concluded that no parts had been replaced by Mr. Généreux and that his work was limited to inspecting the serviceability of the radio unit. On appeal, the Minister even admits that the faceplate was not replaced by the respondent, confirming the review member’s interpretation of the facts.

[36] Mr. Généreux could have indicated in more detail the information that was given to him by Cargair. He chose not to do this. Adding to the issue was his confusion in the translation from French to English of the term “replacer”, as expressed in his affidavit tendered at the review hearing (Exhibit R-1). It would seem that this error on his part was not done in bad faith, but rather seems to be more of a “translation” error.

[37] Based on the record of the proceedings at the review hearing, and arguments presented at the appeal hearing, we find that the review member did not commit any error of fact or render an unreasonable decision. It is our opinion that exhibits M-3, M-5 and R-1 were properly assessed, and that these exhibits and collaborating testimony are best weighed and evaluated by the review member in the context of the original violation charged.

[38] The appeal panel determines that the review member’s analysis and conclusions of the review hearing were correct as to the applicable law, and reasonable as concerns analysis of



questions of mixed facts and law, and upholds the review determination that the Minister of Transport has not established that Yves Généreux contravened subsection 571.10(1) of the *Canadian Aviation Regulations*.

### **III. DECISION**

[39] The Minister's appeal is dismissed. The appeal panel upholds the review determination that the Minister of Transport has not established that Yves Généreux contravened subsection 571.10(1) of the *Canadian Aviation Regulations*.

February 19, 2021

(Original signed)

Reasons for the appeal decision: Franco Pietracupa, Member (chairing)

Concurred by: Caroline Desbiens, Member

Yves Duguay, Member

#### Appearances

For the Minister: Martin Forget

For the Appellant: self-represented