



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Michel Ouellet v. Canada (Minister of Transport)*, 2021 TATCE 3 (Appeal)

TATC File No.: Q-4350-27

Sector: Aviation

BETWEEN:

Michel Ouellet, Appellant

- and -

Canada (Minister of Transport), Respondent

[Official English translation]

Heard by: Written submissions on October 15, 2020, November 12, 2020, and December 11, 2020

Before: Patrick Vermette, Member (chairing)
Franco Pietracupa, Member
Andrew Wilson, Member

Rendered: February 10, 2021

APPEAL DECISION AND REASONS

Held: The appeal is dismissed. The Tribunal member's review determination, that the Minister of Transport had reasonably interpreted and applied the conditions for the issuance of the Canadian aviation document for the Class 3 flight instructor rating and had shown, on a balance of probabilities, that Michel Ouellet did not meet those conditions, is affirmed.

I. BACKGROUND

[1] On September 12, 2017, the Minister of Transport (Minister) sent the appellant, Michel Ouellet, a notice of refusal to issue or amend a Canadian aviation document (notice) pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act (Act)*. Under Appendix A of the notice, the Minister indicated that the conditions for issuance had not been met, citing the *Canadian Aviation Regulations (CARs)* standard related to required skills and indicating that the file submitted showed that none of the three students presented in the application for a Class 3 flight instructor rating demonstrated the required skills for the flight test.

[2] In September 2017, the appellant wrote to the aviation operations officer of Civil Aviation at Transport Canada that the *CARs* did not require candidates to pass their flight test on the first try. He noted that the three students received their licences following an additional flight test and asked the Minister to review the decision. On September 12, 2017, the appellant wrote to the Transportation Appeal Tribunal of Canada (Tribunal) to challenge the Minister's decision.

[3] The review hearing was held in Montreal, Quebec, on February 20, 2018. A determination was rendered on October 4, 2018. In that determination, the member upheld the Minister's decision. She determined that the Minister had reasonably interpreted and applied the conditions for the issuance of the Canadian aviation document for the Class 3 flight instructor rating and had shown, on a balance of probabilities, that Mr. Ouellet did not meet those conditions.

[4] Mr. Ouellet filed a notice of appeal with the Tribunal on November 1, 2018. At the request of the Tribunal, Mr. Ouellet clarified his grounds of appeal in writing on November 7, 2018.

[5] The case proceeded by way of a hearing by written submissions. The Tribunal member chairing the appeal hearing held a management conference by telephone with the parties on September 2, 2020, to confirm the appellant's grounds of appeal and the order of proceedings. The appellant submitted his written submissions on October 15, 2020. The respondent filed a response on November 12, 2020, and the appellant submitted a final reply on December 11, 2020.

[6] Paragraph 7.2(3)(a) of the *Act* provides that the appeal panel may dismiss the appeal or refer the matter back to the Minister for reconsideration.

II. GROUNDS OF APPEAL

[7] The grounds of appeal raised by the appellant are summarized as follows:

- a. the member erred in giving weight to the testimony of Pierre-Laurent Samson, a witness for the Minister, regarding a national directive requiring that the skills and knowledge necessary for the complete flight test be acquired from a single test within the meaning of *CARs* Standard 421.70(4)(a)(ii), when no evidence was presented regarding this national directive at the review hearing, and

- b. the member erred in giving weight to Mr. Samson’s testimony on the impact of this national directive on safety when no evidence was presented regarding this issue at the hearing.

III. STANDARD OF REVIEW

[8] The appropriate standard of review applicable to the Tribunal’s appeal panel was established by the Federal Court in *Billings Family Enterprises Ltd. v. Canada (Transport)*, 2008 FC 17, and more recently in *Canada (Attorney General) v. Friesen*, 2017 FC 567. The standard of reasonableness applies to findings of credibility, findings of fact, and mixed findings of fact and law, and in these matters an appeal panel must give considerable deference to the review member. On questions of law, the standard is correctness, in which case an appeal panel is entitled to its own interpretation of the law.

[9] The analysis of the appeal panel must include the reasons and conclusions of the review member when considering the grounds of appeal.

[10] The two grounds of appeal relate to the weight given by the review member to the testimony of a witness on the evidence presented at the review hearing, namely about a national directive and its impact on safety. The standard of reasonableness applies to both grounds of appeal.

IV. ANALYSIS

A. First ground of appeal

[11] Despite the wording of his first ground of appeal, the appellant acknowledges in his written submissions that a national directive on the interpretation of *CARs* Standard 421.70(4)(a)(ii) existed at the time of his application for a Class 3 flight instructor rating.

[12] He argues, however, that the member did not consider all the evidence presented on the directive and that the directive discriminates against Class 4 flight instructors because the interpretation of the *CARs* standard fails to consider important elements that should be taken into account in order to apply the standard correctly.

[13] The appellant reiterates the arguments made at the review hearing in support of his application for a Class 3 flight instructor rating. He argues that the signature of the supervising Class 1 instructor on the “Class 3 flight instructor application for endorsement” (Exhibit M-2) and that the flight tests ultimately passed by the three students, despite each having failed the first test, meet the requirements of Standard 421.70(4)(a)(ii) which requires that the instructor recommend three students with the necessary skills and knowledge on the flight test for the issuance of a permit or licence.

Appeal panel conclusions

[14] The evidentiary record of the review hearing contains the national directive to which the appellant refers in his first ground of appeal (Exhibit M-10). The appeal panel is of the opinion

that the member gave reasonable weight to Mr. Samson's testimony regarding the interpretation of *CARs* Standard 421.70(4)(a)(ii) in that national directive which requires that the skills and knowledge required for the complete flight test be acquired on a single attempt.

[15] The national directive contains the Minister's interpretation of the standard. In her determination, the member assessed this interpretation by examining the meaning and context of *CARs* Standard 421.70(4)(a)(ii) before deciding on the difference of opinion between the two parties regarding the flight test required by the standard.

[16] Starting in paragraph 79 of her determination, the member concluded that there is only one type of flight test for the issuance of a licence, the complete flight test, and that the skills and knowledge required for the complete flight test must be acquired in a single try within the meaning of *CARs* Standard 421.70(4)(a)(ii).

[17] It is our view that this conclusion reached by the member on the interpretation of *CARs* Standard 421.70(4)(a)(ii) is reasonable and well grounded in the applicable regulatory framework and the evidentiary record presented at the hearing. She correctly relies on the testimony of the Minister's two witnesses on the historical interpretation of the standard as set out in the national directive.

[18] *CARs* Standard 421.70(4) provides that a Class 4 flight instructor may obtain a Class 3 rating based on the skills and knowledge required for a flight test of three students. The instructor is not required to complete a flight test to obtain a Class 3 instructor rating provided the instructor meets the conditions of paragraph 421.70(4)(a) which requires, among other things, that the instructor has recommended at least three students who have demonstrated the required skills and knowledge on the flight test for the issuance of a permit or licence.

[19] Based on the review of this regulatory framework, it seems reasonable to conclude, as did the member, that the interpretation of the standard that the students' flight tests must be passed on a single attempt is the best interpretation of that standard. These single attempt flight tests serve to demonstrate the skills of the instructor who is now given greater trust by granting them a higher rating upon application. This framework confirms the skills and knowledge of students based on the instructor's recommendation and the student's demonstration of competence to the flight test examiner.

[20] As for the meaning of the signature of the supervising Class 1 instructor on the "Class 3 flight instructor application for endorsement" (Exhibit M-2), we agree with the member's conclusion that the signature of the supervising instructor on the application is intended only to certify that the applicant has accumulated 100 hours of dual flight instruction for the issuance of a pilot permit or licence and to endorse the applicable aircraft category, as shown in the text on the application (paragraph 31 of the determination).

[21] At paragraphs 84 and 85 of her determination, the member concludes, after reviewing the content and application of the directive in effect at the time of the filing of the application for Class 3 rating, that no reliable evidence has been presented by the appellant to support the allegation that he was subject to discriminatory treatment and that the Minister acted unreasonably toward him.

[22] We agree with the member that the Minister was not required to provide a transitional period for the coming into force of the directive to reaffirm the interpretation to be given to the standard applicable to the application for a Class 3 instructor rating with respect to the skills and knowledge of the recommended students. We also agree with the member that the appellant has not demonstrated how this directive leads to discriminatory treatment toward him. The application of a reasonable interpretation of the standard does not amount to discriminatory treatment or abuse of authority by the Minister toward the appellant or Class 4 instructors.

[23] Accordingly, the appeal is dismissed on the first ground of appeal.

B. Second ground of appeal

[24] In his written submissions, the appellant makes no submissions on his second ground of appeal. The appeal panel therefore considers that this ground of appeal is abandoned.

[25] Accordingly, the appeal is dismissed on the second ground of appeal.

V. DECISION

[26] The appeal is dismissed. The Tribunal member's review determination, that the Minister of Transport had reasonably interpreted and applied the conditions for the issuance of the Canadian aviation document for the Class 3 flight instructor rating and had shown, on a balance of probabilities, that Michel Ouellet did not meet those conditions, is affirmed.

February 10, 2021

(Original signed)

Reasons for the appeal decision: Patrick Vermette, Member (chairing)

Concurred by: Franco Pietracupa, Member

Andrew Wilson, Member

Appearances

For the Minister: Martin Forget

For the Appellant: self-represented