TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Académie de Pilotage Internationale Inc. v. Canada (Minister of Transport)*, 2021 TATCE 7 (Appeal)

TATC File No.: O-4345-41

Sector: Aviation

BETWEEN:

Académie de Pilotage Internationale Inc., Appellant

- and -

Canada (Minister of Transport), Respondent

Heard in:	Videoconference on January 20, 2021
Before:	Deborah Warren, Member (chairing) Tracy Medve, Member Keith Whalen, Member
Rendered:	March 29, 2021

APPEAL DECISION AND REASONS

Held: The appeal is dismissed. The appeal panel upholds the review determination, confirming the Minister of Transport's decision to assess a monetary penalty for the contravention of subsection 605.84(1) of the *Canadian Aviation Regulations*. The panel reduces the amount payable to $1,000.

The total amount of $1,000 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 decision.

I. BACKGROUND

[1] By Notice of Assessment of Monetary Penalty (Notice) dated July 19, 2017, and pursuant to section 7.7 of the *Aeronautics Act*, Transport Canada (TC) assessed a monetary penalty to the attention of Jules Selwan, Accountable Executive of Académie de Pilotage Internationale Inc. (Académie). The Notice alleged the contravention of subsection 605.84(1) of the *Canadian Aviation Regulations (CARs)* and imposed a penalty of $5,000.

[2] The Notice stated:

> On or about September 20, 2016 at approximately 1057 hours local time, at or near the Ottawa Carp, Ontario airport (CYRP), Carp, Ontario, you permitted a take-off to be conducted in a Cessna 172p aircraft bearing registration C-FPAU that was in your legal custody and control, where the aircraft did not meet the requirements of a notice that is equivalent to an airworthiness directive (AD) and that was issued by the competent authority of the foreign state that, at the time the notice was issued, was responsible for the type certification of the aircraft. Specifically, the aircraft was not in compliance with Airworthiness Directive 2011-10-09 issued by the United States Federal Aviation Administration, …

[3] The review hearing took place on April 25, 2019, in Ottawa. In a determination dated October 15, 2019, the review member found that the appellant had contravened subsection 605.84(1) of the *CARs*. However, the review member reduced the monetary penalty from $5,000 to $2,500.

II. LEGAL FRAMEWORK

[4] Pursuant to subsection 7.7(1) of the *Aeronautics Act*, the Minister of Transport (Minister) can issue a monetary penalty if it believes on reasonable grounds that a person has contravened a designated provision. In this case, the designated provision at issue is subsection 605.84(1) of the *CARs*, which reads as follows:

> **605.84 (1)** Subject to subsections (3) and (4), no person shall conduct a take-off or permit a take-off to be conducted in an aircraft that is in the legal custody and control of the person, other than an aircraft operated under a special certificate of airworthiness in the owner-maintenance or amateur-built classification, unless the aircraft
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> > **(a)** is maintained in accordance with any airworthiness limitations applicable to the aircraft type design;
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> > **(b)** meets the requirements of any airworthiness directive issued under section 521.427; and
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> > **(c)** except as provided in subsection (2), meets the requirements of any notices that are equivalent to airworthiness directives and that are issued by
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> > > **(i)** the competent authority of the foreign state that, at the time the notice was issued, is responsible for the type certification of the aircraft, engine, propeller or appliance, or
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> > > **(ii)** for an aeronautical product in respect of which no type certificate has been issued, the competent authority of the foreign state that manufactured the aeronautical product.

[5] The Federal Aviation Administration (FAA) Airworthiness Directive (AD) in question requires the inspection of seat rails, and the time frame to comply with AD 2011-10-09 (Exhibit M-4) is as follows:

> … within the next 100 hours time-in-service (TIS) after the last inspection done following AD 87-20-03 R2 or within the next 12 calendar months after the effective date of this AD, whichever occurs first. Repetitively thereafter do the actions at intervals not to exceed every 100 hours TIS or every 12 months, whichever occurs first:

[6] It should be noted that the Notice did not specify which paragraph of subsection 605.84(1) they were alleging was contravened by the appellant. The matter was not raised by Mr. Selwan, who was representing the appellant. The review member did not note it in his determination. It appears to have been presumed by all parties that the alleged offence occurred under paragraph (c) and the appeal panel agrees.

A. Grounds of Appeal

[7] On November 8, 2019, Mr. Selwan filed a request on behalf of the appellant for an appeal of the review member's determination. A pre-hearing case management conference was held on October 15, 2020, at which time Mr. Selwan slightly amended his grounds of appeal, without objection by the Minister. The grounds of appeal submitted to the Transportation Appeal Tribunal of Canada (Tribunal) can be summarized as follows:

1. The member on review erred in law in upholding a monetary penalty against Académie for permitting a take-off to be conducted on or about September 20, 2016, at approximately 10:57 a.m. local time, when the aircraft was in compliance with AD 2011-10-09, thereby not contravening subsection 605.84(1) of the *CARs*. The member on review erred in fact by misrepresenting the words "on or about September 20" considering it to be broad words as opposed to more precise or restrictive language.
2. The member on review erred in fact and in law or in mixed fact and law in that the determination by the member on review was based on a statement from a witness that an aircraft can take off compliant but cannot land non-compliant.
3. The member on review erred in law by assessing a monetary penalty on erroneous principles, including the concept that the clerical error in the Notice should not create confusion; and the concept that the quality assurance program's finding was not a sufficient indication of why the error occurred.

B. Standard of Review

[8] The appellant's grounds of appeal included alleged errors of law and errors of mixed fact and law. He did not reference the standard of review to be applied to such errors.

[9] The Minister's representative submitted that all grounds of appeal should be considered errors of mixed fact and law and, therefore, the standard of review to be applied is one of reasonableness.

[10] The Minister's representative submitted that the principles of reasonableness should be taken from the Supreme Court of Canada decision of *Canada (Minister of Citizenship and*

Immigration) v. Vavilov, 2019 SCC 65 *(Vavilov)*. The principles of reasonableness are as follows:

- A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (paragraph 85).
- It is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies (paragraph 86).
- The reasons should be read holistically and contextually in order to understand the basis on which a decision was made (paragraph 97).
- Where reasons are provided but they fail to provide a transparent and intelligible justification, the decision will be unreasonable (paragraph 136).
- The challenging party must demonstrate to the appeal panel that any shortcomings or flaws relied on are sufficiently central or significant to render the decision unreasonable (paragraph 100).

[11] It is the appeal panel's view that while these principles of reasonableness apply, the principles pertaining to the standard of review found in *Vavilov* are not applicable to an administrative tribunal appeal process as that decision applies to the standards of the court in reviewing the decision of an administrative tribunal.

[12] The appropriate standard of review for an appeal panel of the Tribunal 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, fact, and mixed fact and law, and an appeal panel must give considerable deference to the review member on such questions. On questions of law, the standard is one of correctness, and an appeal panel is entitled to take its own view. The standard of review is addressed at each of the grounds of appeal.

C. Facts

[13] The facts below are not in dispute:

a. The aircraft, a Cessna 172P with registration C-FPAU, is operated by Académie, which holds a Flight Training Unit Operating Certificate (Exhibit M-2). Académie is the registered owner of the aircraft (Exhibit M-3). Académie at all relevant times had legal custody and control of the aircraft.

b. The FAA AD 2011-10-09 applies to the aircraft. It is a seat rail inspection that must be repeated within 100 hours TIS or every 12 months, whichever occurs first.

c. The AD inspection was completed on July 31, 2016, at 10489.1 total time since new (TTSN). This inspection came due again at 10589.1 TTSN. According to the journey log (Exhibit A-5), the aircraft had 10588.9 TTSN at the start of the day on September 18, 2016; flew 1.4 hours on that day and ended the day with 10590.3 hours TTSN, which was 1.2 hours over the AD inspection limitation. The journey log shows the aircraft took off

> on September 19, 2016, with the AD inspection overdue and flew an additional .2 hours landing that day with 10590.5 TTSN. The journey log also showed that AD 2011-10-09 was carried out on the aircraft on September 19, 2016, at 10590.5 TTSN, 1.4 hours overdue.

III. ANALYSIS

A. First Ground of Appeal

[14] Did the review member err in law by upholding a monetary penalty for a take-off on or about September 20, 2016, at approximately 10:57 a.m. when the aircraft was in compliance with the AD on that day? And did the review member err in fact by giving a broad meaning to the words "on or about September 20, 2016"?

[15] The appeal panel finds that the use of "on or about" in a Notice of Assessment of Monetary Penalty as opposed to using a specific date is a question of mixed fact and law, to which a standard of reasonableness applies, and that considerable deference is to be accorded the review member.

[16] At the review hearing, Mr. Selwan testified (and the journey log confirmed) that the aircraft was compliant on September 20, 2016, as the maintenance for the AD was performed on September 19. During the hearing, the Minister's witness, Victor Veiga acknowledged in his testimony that the date of September 20, 2016, was an error. Notwithstanding this error, Mr. Veiga stated that the alleged violation may have occurred on September 18 or 19 but admitted that the AD inspection was completed by September 20 and that putting that date in the Notice was his mistake.

[17] The review member noted at paragraph 15 in his determination "that the Notice contains the broad words 'on or about September 20', as opposed to more precise or restrictive language such as 'on September 20'". Relying on a letter sent by Académie to TC on April 24, 2017 (Exhibit M-7), wherein the letter's author, Mr. Selwan, mentions having discovered "the cause of the AD non-compliance", the member found that this letter "appears" to make it clear that Académie understood which incident was being reviewed by TC. He therefore concluded that the applicant, despite an inaccuracy in the date, had sufficient information to know which incident was being referred to and to prepare for the review and found that the date of the incident was sufficiently proven by the Minister.

[18] The appeal panel was not afforded any information provided by the review member as to any case law relied upon by the member for making this determination. It was also not clear from the testimony how the applicant came to learn which dates were actually at issue.

[19] The Minister's representative at the appeal hearing stated that the wording "on or about" is not fatal to the Minister's case. She referred to the Supreme Court decision of *R. v. Douglas*, [1991] 1 S.C.R. 301 *(R. v. Douglas)*, that stated:

a. "Time is not required to be stated with exact precision unless it is an essential part of the offence charged and the accused is not misled or prejudiced by any variation in time that arises." (p. 314).

b. "An indictment is adequate if it contains sufficient details to give the accused reasonable information with respect to the charge and to enable the accused to identify the transaction so as to permit the adequate preparation of the defence. Whether an indictment is sufficient will depend on the offence charged and the facts of the case." (p. 314).

[20] At the appeal hearing, the appellant argued that to prove the element of the infraction as set out in Schedule A of the Notice, the Minister needed to prove that it had occurred on September 20, 2016, at approximately 10:57 a.m. local time, and they did not. Mr. Selwan challenged the review member's interpretation that "on or about" should be given a broad application. He further stated that through testimony, Mr. Veiga confirmed he was compliant on September 20. It is notable that Mr. Veiga confirmed, initially, that the violation dates were September 18 or 19 and subsequently that the charge should have been on September 19.

[21] We find that while the principles established in *R. v. Douglas* apply, the facts are distinguishable from this case. In *R v. Douglas*, the indictment contained a date range. In this case, there was only a reference to "on or about" a specific date. Furthermore, in *R. v. Douglas*, it was also noted that an important element for consideration was that the indictment specified the cities which pertained exclusively to the Phase II conspiracy and so clearly indicated that the Phase II conspiracy was the sole subject of the indictment. In this case, there was additional information in the Notice (i.e., "at approximately 1057 hours"). The difference from *R v. Douglas* is that the time of 10:57 a.m. was a departure time noted **only** on September 20, 2016, and **not** on September 18 or 19, 2016. We acknowledge that the addition of the time reference in the Notice may have served to create further confusion for Mr. Selwan. The review member did not comment on the inclusion of an approximate time in his determination.

[22] The panel also notes the decision of *R. v. Goudreault*, 2005 ABQB 699 (CanLII), where the court found that "on or about" could include two days before the specified date, and possibly longer. The court stated:

> [14] […] Jurisprudence provides that the words "on or about" means the period of times surrounding that date. *R. v. Hartley*, [1972] 1 ALL E.R. 599 at 603 (C.A.) is the seminal case on this point. There the court concluded:
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> > . . . if the words "on or about" the date are used in an indictment, then provided that the offence is shown to have been committed within some period that has a reasonable approximation to the date mentioned in the indictment, then the fact that the date is not correctly stated does not preclude a valid verdict of guilty.
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> [15] This statement has been accepted in Canada in *R. v. Poirier*, [1989] N.B.J. No. 445; and see also *R. v. Smiley* (1995), 1995 CanLII 960 (ON CA), 80 O.A.C. 238 (C.A.). I accept the foregoing as a correct statement of the law and therefore in my opinion, on the facts of this case, I find "on or about" to certainly cover two days before the specified date, and on the facts of this case even greater flexibility without causing prejudice to the appellant or jeopardizing the conviction. […]

[23] If it is to be accepted that the use of "on or about", even though modified by the additional information of "at approximately 1057 hours", could have included the two days prior

to September 20, the panel must also consider, per *R. v. Douglas*, whether or not the appellant had sufficient information to adequately prepare for the review.

[24] On March 28, 2017, Académie received a letter from TC advising that they were investigating a possible violation of subsection 605.84(1) of the *CARs* (Exhibit M-6). This letter did not contain the date of the possible violation.

[25] On April 5, 2017, a corrective action plan (CAP) (Exhibit A-8) prepared pursuant to TC's program validation inspection (PVI) was sent from Académie to TC. The document outlines the company's intentions to manage the maintenance overrun errors. It is noted in this document that the maintenance overrun for C-FPAU was recorded as an observation during the PVI but was not included as a finding.

[26] On April 11, 2017, Académie wrote a letter (Exhibit A-2) to TC in response to the notice of investigation indicating that they did not know what dates the investigation letter was referring to. There was no evidence submitted of a response to that query.

[27] On April 24, 2017, Académie wrote to TC (Exhibit M-7) stating they had reviewed journey logs from July 31, 2016, to present in an attempt to determine the cause of the non-compliance and proffered an explanation and a solution to the non-compliance issue. This letter does not contain any reference to a date or range of dates, but rather refers to having discovered "the cause of the AD non-compliance". The review member relied heavily on this letter to support his finding that the use of "on or about" met the requirement that the applicant had sufficient information to know which incident was being referred to and to prepare for the review.

[28] There is no evidence that there was any further discussion between the appellant and Mr. Veiga following the April 24, 2017, letter and there is no evidence that the appellant, prior to the hearing, was ever made aware of the actual dates of non-compliance other than the reference made to the date in the Notice.

[29] On July 19, 2017, the Notice was sent to Académie alleging the infraction took place on or about September 20, 2016, at approximately 10:57 a.m. local time.

[30] By the time of the hearing in April 2019, Mr. Selwan was aware of the non-compliances that took place on September 18 and/or 19 as he did speak to these in his testimony; however, his defence focused on being compliant on September 20, 2016.

[31] There were inaccuracies in the date contained in the Notice, along with inconsistencies during the review hearing from the Minister's witness about the date(s) of the offence and it is troubling that there is no evidence to support how the appellant became aware of the actual date(s) of the infraction. However, in spite of these concerns, it was not unreasonable for the review member to conclude that the applicant had sufficient information to know which incident was being referred to and to prepare for the review as the appellant's representative did in fact address the flights on September 18 and 19 during the review hearing. We must conclude that the appellant was therefore not prejudiced by the use of the words "on or about" in the Notice, and that the review member did not err in giving broad meaning to the dates in the Notice.

B. Second Ground of Appeal

[32] Did the review member err by basing his determination on testimony from a witness that an aircraft can take off compliant but cannot land non-compliant?

[33] The question is one of mixed fact and law, to which a standard of reasonableness applies, and that considerable deference is to be accorded the review member.

[34] On September 18, 2016, according to the journey log (Exhibit A-5) the aircraft had 10588.9 TTSN at the start of the day; flew 1.4 hours on that day; and ended the day with 10590.3 hours TTSN which was 1.2 hours over the AD inspection limitation.

[35] Mr. Veiga testified at the review hearing that an aircraft cannot take off if the flight is planned to go beyond the maintenance due time, referring to the flight conducted on September 18, 2016. He provided some guidance on what could be done prior to the flight so that the time was not exceeded but did not provide any regulatory reference for the use of this procedure.

[36] Mr. Selwan testified during the review hearing that there are sometimes unforeseen circumstances that result in an aircraft exceeding a time limit. He did not provide any evidence that this occurred on the flight in question.

[37] During the appeal, Mr. Selwan stated that Mr. Veiga's testimony should not be taken as an expert but should be weighted as an opinion only.

[38] On appeal, the Minister's representative submitted that it is common sense that a flight which leaves in compliance but returns out of compliance is a non-compliant flight, and taking off compliant with no regard to overflying the AD inspection times goes against the spirit of the law. No regulatory references were provided in support of this statement.

[39] The review member accepted Mr. Veiga's testimony regarding the procedures to carry out if an aircraft is going to be dispatched when there was a risk of it going beyond a maintenance limitation. However, in paragraph 24 of the review determination, the review member only refers to the journey log on September 19, 2016, indicating the AD inspection was overdue by 1.4 hours. He does not include anything in his determination that on September 18, 2016, when the flight departed it was compliant but returned with TTSN beyond the AD inspection time.

[40] Notwithstanding the above, the panel finds that this is an unfounded ground of appeal as the testimony of the witness was with respect to the flight on September 18. The review member made his finding that the AD inspection was overdue by 1.4 on September 19 and did not make a finding specifically related to the flight that occurred on September 18, 2016.

C. Third Ground of Appeal

(1) Part 1 – Clerical Error

[41] Did the review member err by assessing a monetary penalty on erroneous principles including a clerical error in the Notice which should not create confusion?

[42] The question is one of mixed fact and law, to which a standard of reasonableness applies, and considerable deference is to be accorded the review member.

[43] The clerical error is in reference to the date listed on the Notice as "on or about September 20". Mr. Selwan's argument, the Minister's argument, the review member's finding and the finding and reasons of this appeal panel are the same as made in the first ground of appeal.

[44] As noted in the first ground of appeal, there were inaccuracies in the date contained in the Notice, along with inconsistencies during the review hearing from the Minister's witness about the date(s) of the offence. However, notwithstanding this error it was not unreasonable for the review member to conclude that the applicant had sufficient information to know which incident was being referred to and to prepare for the review as the appellant's representative did in fact address the flights on September 18 and 19 during the review hearing. We must conclude that the appellant was therefore not prejudiced by the use of the words "on or about September 20", and that the review member did not err by accepting the date as listed in the Notice.

(2) Part 2 – Quality Assurance Program

[45] Did the review member err by not accepting the finding of Académie's quality assurance program (QAP) as sufficient indication of why the error occurred?

[46] The question is one of mixed fact and law, to which a standard of reasonableness applies, and considerable deference is to be accorded the review member.

[47] At the appeal hearing, Mr. Selwan spoke to the existence of a QAP at Académie and how it is a system to ensure policies and procedures are effective and would be a due diligence defence. On April 5, 2017, a CAP was submitted by Académie as part of the TC PVI that identified what was being proposed to address the maintenance overrun caused by the electronic record keeping system (ERKS).

[48] The Minister's representative argued that a due diligence defence has not been met by the appellant as the argument provided fell short of the high standard placed on an appellant in the test under the *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299 *(R. v. Sault Ste. Marie)*. The Minister submitted that the determination provided by the review member on due diligence (paragraphs 25 and 26) was intelligent, transparent and justified.

[49] The review member examined the reasonableness of the action of the applicant and whether due care had been taken pursuant to *R. v. Sault Ste. Marie*.

[50] In paragraph 26 of the determination, the review member states:

> … the applicant makes an argument that could be considered a due diligence defence: there seems to have been an issue with the electronic record keeping system (ERKS) used to control the maintenance of the aircraft. The Tribunal cannot accept this argument, given that there is no indication of why, if it existed, this error in the computer system was not discovered during the implementation and testing phase. I do not find that a due diligence defence has been made out and I do not dismiss the case.

The panel saw no evidence as to when the ERKS was first introduced at Académie for electronic record keeping purposes. Nor was there any evidence that the ERKS was not working when it was initially installed. There is no mention in the determination specifically about a QAP or any other reason for finding that the appellant did not meet the due diligence test.

[51] Most recently, *Canadian National Railway Company v. Canada (Attorney General)*, 2020 FC 1119 *(Canadian National Railway Company v. Canada)*, a Federal Court judicial review of a Tribunal decision, said this about the defence of due diligence:

> [95] When the defence of due diligence is raised, the trier must determine what steps a reasonably prudent person (or company) would take to avoid the deficiency in question and whether the defendant had taken those steps. It will not suffice for a defendant simply to show that it acted reasonably in general. Rather, the defendant must establish that it took all reasonable steps to avoid the particular deficiency that is alleged …

The issue before the review member was, did the appellant on balance of probabilities show that they had established a system to prevent the aircraft from flying beyond the 100-hour inspection requirement set out in the AD? The panel must consider whether the review member erred in concluding that the test was not met.

[52] To establish the defence of due diligence, the applicant must establish the steps that a reasonable and prudent person or company would take to avoid the deficiency. Based on the *Canadian National Railway Company v. Canada* at paragraph 85:

> […] Where the defendant is a corporation and it defends itself by maintaining it took all reasonable care, it must show that it established "a proper system to prevent the commission of the offence" and that it took "reasonable steps to ensure the effective operation of the system" (*Sault Ste Marie* at 1331).

[53] Académie did have a QAP in place, but is that sufficient to establish due diligence? The appellant argues that the fact the company had a QAP in place should be sufficient for a defence. The appellant also submitted that the implementation of a corrective action whereby their person responsible for maintenance checks and manually resets the AD due time every 50 hours demonstrated the appellant's act of due diligence. No evidence was provided of what measures they took, if any, to ensure the ERKS they were using would provide accurate information when it was initially implemented. Furthermore, there was no evidence that the appellant had taken all reasonable care to ensure the effective operation of their tracking system. While it would appear from the evidence that the issue with the tracking system was identified during the course of a PVI, there is no evidence to confirm that the appellant found the issue as a consequence of having in place a method for ensuring the accurate operation of the tracking system.

[54] The appeal panel agrees with the review member that Académie had not established a proper system to prevent the overrun of AD inspection time and had not taken all the reasonable steps necessary to ensure the system they had in place, either manual or electronic was functioning properly.

[55] While the appeal panel disagrees with the review member's reasoning for not accepting the due diligence defence as set out in paragraph 52 above, we do agree with the ultimate outcome and find that the review member did not err by not accepting the Quality Assurance as sufficient indication of why the error occurred.

(3) Part 3 – Monetary Penalty

[56] Did the review member err by assessing a monetary penalty on erroneous principles?

[57] The appellant had requested that, should this appeal panel find the Minister to have proven the elements of the offence, the monetary penalty be reduced to the amount of $500. The appeal panel has considered the facts of this case in connection with the principles of denunciation, enforcement recommendations, deterrence and rehabilitation to determine the appropriate monetary penalty. While acknowledging that this case is not binding, the panel has taken guidance from *Minister of Transport v. Kurt William M. Wyer*, CAT File No. O-0075-33 (Appeal) *(Wyer)*.

(a) Denunciation and Enforcement Recommendations

[58] The monetary penalty set by the Minister was $5,000. Mr. Veiga stated in his testimony there were no aggravating or mitigating circumstances taken into consideration and the sole purpose was for future compliance. The review member reduced the penalty to $2,500 based on a number of mitigating factors. There were no aggravating factors mentioned in the determination.

(b) Mitigating Factors

[59] In his determination, the review member considered four mitigating factors as follows:

1. Degree of cooperation – The applicant cooperated throughout the investigation (paragraph 30).
2. No previous offences – The violation was a first level charge (paragraph 30).
3. Voluntary compliance – The voluntary compliance element, as stated in the TC Aviation Enforcement Policy Manual, was not followed by the Aviation Enforcement Branch. The option of using voluntary compliance is considered as a progressive and effective approach to safety (paragraph 31).
4. Lack of communication – The applicant argued that communication with TC was not as open as set out in the Aviation Enforcement Policy Manual (paragraph 32).

[60] The appeal panel concurs with the review member and, based on guidance from *Wyer*, has considered two additional mitigating factors:

1. Special factual circumstances – There were a number of inconsistencies in this case. The Minister had the details and dates contained in the Detection Notice but made an error when preparing the Notice by failing to use the correct date of the offence which the Minister's witness, Mr. Veiga, subsequently admitted as being incorrect.
2. Manner of proceedings by the authority – Mr. Selwan, on behalf of the appellant, was working on a CAP with TC arising from a PVI that was focused, in part, on correcting errors in the flight time tracking system. Mr. Selwan was fully cooperating with the PVI team of TC, while simultaneously responding to the enforcement division. The TC Role of inspector document states that "[i]f the operator does not try to correct any problems found by inspectors, they will be fined, or even shut down" (Exhibit A-9). It appears from the evidence submitted that this policy was not followed as the applicant was taking all

effort to identify and correct any ongoing problem. No satisfactory reason was provided for why the Aviation Enforcement Policy Manual was not being followed.

(c) Future Deterrence and Rehabilitation

[61] The appeal panel considered the principle of deterrence when establishing a monetary penalty as stated in *Wyer*:

> This principle is prospective in its focus in that it will act as a future deterrent for a particular offender (specific personal deterrence) and others in the aviation community (general deterrence). The gravity of the offence, the incidence of the occurrence in the aviation community, the harm caused by it, either to the individual or to others, and the public attitude toward it are some of the matters to be considered in using this principle of sentence. If the purpose is to deter the offender from repeating the offence, then greater consideration must be given to the individual, his past record of performance and attitude, his motivation and his reformation and rehabilitation. If both purposes are to be achieved, then there must be a weighing of all the factors and a penalty determined that gives a proper balance to each of them.
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> General deterrence conveys to other members of the aviation community fear of the consequences should one offend and, as well, demonstrates the merits of not offending. It would be hoped that a person with an attitude thus conditioned to regard conduct as reprehensible will not deliberately commit such an act.

[62] The Minister argued that Académie, because it is a training school, needed to be held at the highest standard of care and diligence as the basis for establishing the amount of the monetary penalty. To accomplish this the gravity of the offence along with harm to the community must be considered. It is difficult to see that the facts of this case provide justification to support general deterrence to the aviation community. The violation was 1.4 hours beyond the inspection time and there was no indication of harm in or to the aviation community.

[63] As per *Wyer*, if the purpose of the monetary penalty is to deter the offender from repeating the violation, greater consideration must be given to the past record of performance and attitude, motivation, and reformation and rehabilitation of the offender. Mr. Veiga had testified that the monetary penalty was based on deterring the appellant and also stated that this was a first offence and the appellant was fully cooperative throughout the case. There was no evidence that the act was done intentionally and there was evidence showing the appellant working to solve the problem and prevent reoccurrence, evident through correspondence with the Inspection Branch, as the result of the concurrent inspection process taking place.

(d) Decision to Reduce Monetary Penalty

[64] The appeal panel has taken into consideration the mitigating factors listed, the lack of aggravating factors, the general and offender deterrence and has concluded that the non-conformance and the circumstances surrounding this case warrant a further reduction in the monetary penalty to $1,000.

IV. DECISION

[65] The appeal is dismissed. The appeal panel upholds the review determination, confirming the Minister of Transport’s decision to assess a monetary penalty for a contravention of

subsection 605.84(1) of the *Canadian Aviation Regulations*. The panel reduces the amount payable to $1,000.

[66] The total amount of $1,000 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 decision.

March 29, 2021

(Original signed)

Reasons for the appeal decision:	Deborah Warren, Member (chairing)
Concurred by:	Tracy Medve, Member
	Keith Whalen, Member

Appearances

For the Minister:	Micheline Sabourin
For the Appellant:	Jules Selwan