



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Randell Kuan v. Canada (Minister of Transport)*, 2021 TATCE 23 (Review)

TATC File No.: P-4606-33

Sector: Aviation

BETWEEN:

Randell Kuan, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on April 30, 2021

Before: William Cottick, Member

Rendered: July 22, 2021

REVIEW DETERMINATION AND REASONS

Held: I confirm the Minister of Transport's finding that the applicant made an inaccurate entry in a technical record and failed to date that entry, thereby contravening subsection 605.93(1) of the *Canadian Aviation Regulations*. I further confirm the monetary penalty assessed by the Minister in the amount of \$250.

The total amount of \$250 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 determination.

I. BACKGROUND

[1] On April 21, 2020, the Minister of Transport (Minister) issued a Notice of Assessment of Monetary Penalty to the applicant, pursuant to section 7.7 of the *Aeronautics Act (Act)*. The Notice stated:

On or about April 22, 2019, at or near Boundary Bay Airport (CZBB), British Columbia, you, Randell Kin Lap Kuan, made an inaccurate entry in the journey log of a Cessna 172M aeroplane, registration C-GWZB, namely, the entry stated a check flight had been performed when that did not occur, and you also failed to date the entry, thereby contravening subsection 605.93(1) of the Canadian Aviation Regulations.

Monetary Penalty Assessed: \$250.00

[2] On May 8, 2020, Mr. Kuan requested a review of the Administrative Monetary Penalty (AMP) by the Transportation Appeal Tribunal of Canada (TATC).

II. ANALYSIS

A. Legal framework

[3] Pursuant to subsection 7.7(1) of the *Act*, the Minister can issue a monetary penalty if the Minister believes on reasonable grounds that a person has contravened a designated provision.

[4] In this case, the designated provision is subsection 605.93(1) of the *Canadian Aviation Regulations (CARs)*, which states:

Technical Records — General

605.93 (1) Every person who makes an entry in a technical record shall

- (a) make the entry accurately, legibly and in a permanent manner;
- (b) enter the person's name and signature or employee identifier or, where the record is kept as electronic data, enter the person's user code or an equivalent security designation; and
- (c) date the entry.

B. Circumstances leading to the AMP

[5] Mr. Kuan is the owner and operator of International Flight Centre Inc. (IFC), a flight training school at Boundary Bay Airport. In addition, he is a flight instructor there and the designated person responsible for maintenance (PRM). IFC did not have the capability to perform maintenance and repairs on its aircraft, and therefore contracted third party approved maintenance organizations (AMOs) for performance of such work. In April 2019, one of the aircraft at the flying school, Cessna 172 C-GWZB, required some work to be done on it to address an unserviceable directional gyro (DG), and Mr. Kuan took the aircraft to Canada West Avionics Ltd. (Canada West), an AMO located nearby at the airport, to perform the work.

[6] Canada West removed the unserviceable DG and installed a serviceable replacement. On completion of the work, Canada West inserted an entry dated April 22, 2019, in the aircraft

journey log of C-GWZB describing the replacement of the DG, which included the following statement: “Serviceability of replacement DG subject to satisfactory check flight”.

[7] Mr. Kuan was advised that the work had been completed on the aircraft and went to pick it up on April 22, 2019. The evidence was uncontested that Mr. Kuan subsequently made an entry in the aircraft journey log of C-GWZB, opposite the entry by Canada West on the immediately following facing page, which stated: “A/C check flight is satisfactory”. Mr. Kuan signed beside this entry and inserted his pilot licence number.

[8] The journey log of C-GWZB is a technical record within the meaning of subsections 605.92(1) and 605.93(1) of the *CARs*.

C. Did a check flight take place?

(1) Overview of events

[9] Evidence was introduced by both parties as to what did or did not take place with regard to checking the serviceability of the DG after Mr. Kuan picked up aircraft C-GWZB on April 22, 2019.

[10] Saied Namazi, an enforcement inspector with the Regional Enforcement Unit of Transport Canada Civil Aviation, gave evidence on behalf of the Minister. Mr. Namazi is a licensed aircraft maintenance engineer (AME) and has 12 years’ experience with Transport Canada (TC), as well as 21 years’ prior experience in the aviation industry. I find Mr. Namazi to be a credible witness.

[11] During an enhanced monitoring visit conducted by two TC inspectors at the IFC offices at Boundary Bay Airport on July 2, 2019, the inspectors observed the check flight entry made by Mr. Kuan in the C-GWZB journey log, but no entry recording air time or any other entry corresponding to the “check flight”. Mr. Kuan initially told the TC inspectors that he had conducted an actual check flight, that the flight had lasted about six minutes and had consisted of one circuit at Boundary Bay Airport, and that he had not entered particulars of the flight in the C-GWZB journey log because he had been distracted by a student in his office at the time he was making the entry.

[12] At the end of the site visit on July 2, Mr. Kuan was given a Letter of Notification informing him of a defect or deficiency regarding his entry concerning the check flight, as “no flight information has been recorded”.

[13] Mr. Kuan responded to the Letter of Notification on July 2, 2019, stating the following:

Aircraft Check flight for the DG was done on 2019-04-22 and the flight was not entered in the Journey Log, most light *[sic]* because of interruption while I was entering the information on the DG check flight in the journey log. I put the DG check flight information beside the work done from Canada West Avionics and thinking that I would put the flight on the following page. Somehow, with the interruption I forgotten *[sic]* to enter the flight in the journey log.

[14] On August 19, 2019, Mr. Namazi sent a Letter of Investigation to Mr. Kuan advising that TC was investigating a possible violation of *CARs* subsection 605.93(1).

[15] Mr. Namazi interviewed Mr. Kuan by telephone on September 6, 2019, in connection with the investigation, and a transcript of that interview was entered as Exhibit M-3A. In that interview, Mr. Kuan stated that he had checked the DG while he taxied C-GWZB from Canada West to where he normally parks the aircraft near the IFC office.

[16] Mr. Kuan also acknowledged in this interview that he had told the TC inspectors on July 2, 2019, that, to check the DG, he had taken C-GWZB “up for a flight”.

[17] Mr. Kuan indicated in this interview that when he took the plane, he did not have his flying gear, such as his headset, with him, so he did not go flying. He stated: “What I did was I checked the instruments on the ground while taxiing”.

[18] In his testimony at the hearing, Mr. Kuan altered his story again somewhat, saying that upon learning on initial arrival at Canada West that a check flight was required, he returned to his office to pick up his headset prior to returning to Canada West to get C-GWZB to take it for the check flight. He stated that it had been his intention initially to check the DG by conducting an actual “in-air” check flight, but he had subsequently changed his mind because he decided he could check the functionality of the DG by comparing its readings against the magnetic compass in the aircraft while taxiing to return C-GWZB to its usual parking place.

[19] Mr. Kuan testified that he did not take C-GWZB for an in-air check flight on April 22, 2019, nor did he request or receive a taxi clearance or a transponder code for the purpose of taking off from Boundary Bay Airport to conduct a check flight on that day.

[20] At several times in his testimony at the hearing, Mr. Kuan indicated that, due to medical procedures he had undergone and related medications he had taken, he had had difficulties with his memory at various times relevant to the matters which are the subject of this hearing, but that each time he had subsequently remembered more accurately what had actually happened.

[21] Based on the evidence at the hearing, I make the following findings of fact:

- a. After Mr. Kuan picked up C-GWZB at Canada West on April 22, 2019, he taxied the aircraft back to its parking place near the IFC facility.
- b. During that taxi, he checked the functionality of the DG by comparing it to the readings on the magnetic compass on the aircraft.
- c. Mr. Kuan did not take C-GWZB on an in-air flight on that day.
- d. Mr. Kuan did not request or receive a taxi clearance for the purpose of taxiing to the runway to take off and conduct an in-air check flight to verify the functionality of the DG in C-GWZB, nor did he request or receive a transponder code for the purpose of taking off from Boundary Bay Airport on April 22, 2019, after picking up the aircraft.
- e. If Mr. Kuan initially had an intention of taking C-GWZB for an in-air check flight or test flight when he picked up the aircraft at Canada West, he subsequently abandoned that intention.

(2) Meaning of “flight” and “check flight”

[22] During the hearing of this matter, it became apparent that a principle area of contention between the parties was the meaning of “check flight” in the conditional maintenance release entered by Canada West in the C-GWZB journey log, and whether the actions taken by Mr. Kuan constituted a check flight.

[23] The *Act* and the *CARs* do not contain a specific definition of “flight”, “check flight” or “test flight”.

[24] As part of the Minister’s case, the Minister proposed to enter in evidence as an exhibit, through the testimony of Mr. Namazi, extracts from the publication *The Aviation Dictionary for Pilots and Aviation Maintenance Technicians (Jeppesen Aviation Dictionary)*, published in 2012, by Jeppesen Sanderson Inc. The relevant extracts were the following definitions:

flight — 1. Travel through the air. An aircraft is considered to be in flight from the time it airplane [*sic*] departs from the ground until it lands. [...]

check flight — A test flight to check the aircraft performance after major re-work or repairs.

[25] Mr. Namazi stated that this was one of a number of publications available as a reference source for aviation personnel in Canada, and that he had himself referred to it in his capacity as an AME and as a TC inspector from time to time.

[26] Mr. Kuan objected to the entry of the dictionary extracts as an exhibit, and to any reliance on the definitions, arguing that it was an American publication not relevant in Canada and that, in any event, the meaning of the definitions referred to in the extract should be determined by reference to the *Act* and the *CARs*, with particular reference to the definition of “flight time” in the *CARs*.

[27] After hearing the arguments, I accepted the *Jeppesen Aviation Dictionary* extracts as Exhibit M-12 in the proceedings, advising the parties I would take into account their arguments in considering what weight, if any, to give the document and its content in my decision. In the result, I have taken the definitions into account, but have not found them to be determinative, although of some limited assistance in reaching my decision in this matter.

[28] The Minister also submitted that the plain meaning of the phrase “subject to satisfactory check flight”, as entered by Canada West in the C-GWZB journey log, required an actual in-air flight to take place and for the verification of the functionality of the DG to take place in the course of such flight.

[29] Mr. Kuan testified that, in his view, a check flight could take place on the ground during taxi, even if the aircraft did not at any time leave the ground, relying for this interpretation on the definition of “flight time” in the *CARs*. The definition of “flight time” in section 101.01 of the *CARs* is:

flight time means the time from the moment an aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight;

[30] Mr. Kuan stated that it was his understanding from this definition that taxi time on the ground during which he checked the functioning of the DG could comprise a “flight” as used in the term “check flight”. He stated that when he picked up C-GWZB, he initially had the intention of taking off for an in-air flight, but that he had changed his mind after he determined that he could test the functionality of the DG solely during taxi.

[31] I do not agree with the interpretation of “flight” put forward by Mr. Kuan in the context of the factual situation in this case. “Flight time” is not defined in the CARs in connection with the meaning of test flight or check flight, but for other purposes. I find that the plain meaning of the phrase “subject to satisfactory check flight”, used by the Canada West AME who entered the conditional maintenance release for C-GWZB, required the DG to have been checked in the course of a flight in which the aircraft took off into the air and returned to the ground for landing, even if some of the verification of the correct operation of the instrument might take place prior to actual take-off from the ground.

[32] In interpreting the provisions of the *Act* and the CARs, I have been guided by the general principle of statutory interpretation expressed by legal author Elmer Driedger, known as the modern principle, which has been approved by the Supreme Court of Canada and applied in numerous decisions:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, paras. 20-21; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539, para. 8; *British Columbia Human Rights Tribunal v. Schrenk*, [2017] 2 S.C.R. 795, para. 30).

In particular, I have taken into account the general theme of promotion of aviation safety that runs through the *Act* and the CARs.

[33] With regard to the specific area of disagreement between the parties as to the meaning of “flight”, particularly as used in the term “check flight”, I have taken some account of the definitions in the *Jeppesen Aviation Dictionary* as mentioned above, but I have also considered and taken account of the ordinary meaning of the word “flight” as defined in the *Oxford English Dictionary* (third edition, August 2010; online version March 2021 update):

flight

a. The action or manner of flying or moving through the air with or as with wings

[...]

f. The action or technique of travelling through the air or space in an aircraft or spacecraft or in a balloon; the movement through air or space of such a machine.

[34] In addition, I have considered the provisions of subsection 571.10(4) and section 605.85 of the CARs, which when read together contemplate an in-air flight, and which state:

571.10 (4) Where a person signs a maintenance release in respect of maintenance performed on an aircraft, the satisfactory completion of **which cannot be verified by inspection or testing of the aircraft on the ground, the maintenance release shall be made conditional on the satisfactory completion of a test flight** carried out pursuant to subsections 605.85(2) and (3), by the inclusion of the phrase “subject to satisfactory test flight”. [emphasis added]

[...]

605.85 (1) Subject to subsections (2) and (3), no person shall conduct a take-off in an aircraft, or permit a take-off to be conducted in an aircraft that is in the legal custody and control of the person, where that aircraft has undergone maintenance, unless the maintenance has been certified by the signing of a maintenance release pursuant to section 571.10.

(2) Where a maintenance release is conditional on the satisfactory completion of a test flight pursuant to subsection 571.10(4), the aircraft may be operated for the purpose of the test flight if no person is carried on board other than flight crew members and persons necessary for the purpose of making observations that are essential to the test flight.

(3) Following a test flight conducted pursuant to subsection (2), the pilot-in-command shall enter the results of the test flight in the journey log and, where the entry indicates that the results of the test flight are satisfactory, that entry completes the maintenance release required by subsection (1).

[...]

[35] I note that subsections 571.10(4) and 605.85(1) of the *CARs* refer to “test flight” and “flight test”, and the entries in the C-GWZB journey log refer to a “check flight”. I interpret the plain meaning of “check flight”, as used in the C-GWZB journey log, to be an in-air flight involving a check or test of the functionality of the DG, and for purposes relevant to this case, to be the equivalent of a “test flight” as used in the *CARs*.

(3) Conclusion

[36] Evidence was presented during the hearing that it would have been possible to check the functionality of the DG on the ground without an in-air check flight once the aircraft engine was running, but that was not the process chosen by the AME who entered the conditional maintenance release. Once the condition requiring a check flight was entered, Mr. Kuan’s options to satisfy it were to conduct an in-air check flight or to request that the condition be suitably amended by the AME who made the conditional entry. It was not open to Mr. Kuan, who is not an AME, to substitute his own method of checking the serviceability of the DG.

[37] I therefore determine that the entry “A/C check flight is satisfactory” is inaccurate, in that no flight involving a take-off and landing of C-GWZB took place on April 22, 2019, for the purpose of checking or testing the functionality of the DG.

[38] Even if Mr. Kuan initially had an intention of taking C-GWZB for an in-air check flight when he picked up the aircraft at Canada West, he subsequently abandoned that intention, and therefore the actions he took do not meet his own interpretation of “flight” or “check flight”, as they did not occur during “the time from the moment an aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight”. Taxiing C-GWZB to its parking spot was not for the purpose of taking off and no in-air flight took place. Therefore, even under Mr. Kuan’s interpretation, with which I disagree, no check flight took place.

D. Did Mr. Kuan date his entry in the journey log?

[39] The Minister presented evidence that there is no date entered on the same page beside or near Mr. Kuan’s entry in the C-GWZB journey log: “A/C check flight is satisfactory”.

[40] Mr. Kuan acknowledged that he did not include the date of his entry, but says that he made his entry on April 22, 2019, on the page opposite and facing the conditional maintenance release entry made by Canada West that same day. He says that it should be apparent that his entry is related to the entry by Canada West.

[41] I find that the entry by Mr. Kuan is separate and distinct from the entry made by Canada West and should itself be dated so that it is clear in the technical record when the entry was made. In the case of a conditional maintenance release, for safety reasons, it is important that anyone reading the aircraft journey log be able to ascertain with certainty if, when and how the condition in a conditional maintenance release has been satisfied. I find that Mr. Kuan failed to date his entry as required by *CARs* subsection 605.93(1).

E. Monetary penalty

[42] Mr. Namazi indicated in his testimony that the monetary penalty assessed in this matter was determined by referring to the TC Sanction Schedule suggested minimum amount for a first offence by an individual for contravention of *CARs* subsection 605.93(1), and is well under the maximum monetary penalty of \$1,000 specified in the *CARs* for such an offence by an individual. This is not a mandatory penalty amount, but forms part of a range of suggested monetary penalties for a contravention of the provision. Although I am not bound by the suggested penalties in the TC Sanction Schedule, it is helpful in maintaining an element of consistency in penalties assessed by the Minister for contraventions of various *CARs* provisions, and various levels of severity and repetitiveness of such contraventions.

[43] I find that the monetary penalty assessed in this case in the amount of \$250 is reasonable in the circumstances. It is the minimum monetary penalty generally applied for a first offence under this subsection of the *CARs*.

III. DETERMINATION

[44] I confirm the Minister of Transport's finding that the applicant made an inaccurate entry in a technical record and failed to date that entry, thereby contravening subsection 605.93(1) of the *Canadian Aviation Regulations*. I further confirm the monetary penalty assessed by the Minister in the amount of \$250.

[45] The total amount of \$250 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 determination.

July 22, 2021

(Original signed)

William Cottick

Member

Appearances

For the Minister:	John Lindsay
For the Applicant:	Self-represented