



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Luis Alberto Martinez Vargas v. Canada (Minister of Transport)*, 2022 TATCE 19 (Ruling)

TATC File No.: Q-4778-33

Sector: Aviation

BETWEEN:

Luis Alberto Martinez Vargas, Applicant

- and -

Canada (Minister of Transport), Respondent

[Official English translation]

Heard by: Written submissions on February 1 and 4, 2022

Before: Patrick Vermette, Chairperson and Member

Rendered: April 7, 2022

REASONS FOR RULING

Held: The Tribunal dismisses the applicant's late request for a review of the Notice of Assessment of Monetary Penalty. In this case, the applicant's election to pay the penalty constitutes a waiver of the right to seek a review of the Notice by the Tribunal.

I. BACKGROUND AND POSITIONS OF THE PARTIES

[1] On January 25, 2022, the applicant filed with the Transportation Appeal Tribunal of Canada (Tribunal) a request for a review of a Notice of Assessment of Monetary Penalty (Notice) issued by the Minister of Transport (Minister) on December 7, 2021 (Minister's file: 4004-16-10-107905). The applicant had until January 6, 2022, to pay the penalty or file with the Tribunal a request for a review of the facts of the alleged contravention or of the amount of the penalty.

[2] Pursuant to its *Policy on Late Applications*, the Tribunal requested that the parties make submissions regarding the late application.

[3] The applicant made submissions on February 1, 2022. He submits that he served notice on the Minister of his intention to dispute the Notice as early as December 10, 2021. He claims that he was misled by a Transport Canada (TC) officer during a discussion on December 14, 2021, that led to an agreement between the parties regarding the Notice and the payment of the penalty by the applicant. The applicant alleges that there was a defect in consent in the exercise of his election to admit to the contravention alleged in the Notice. The applicant alleges that he has suffered prejudice as a result of his admission of responsibility since the penalty was paid. The applicant asks the Tribunal to revoke his election to pay the penalty and to allow him to exercise the second option offered in the Notice, namely, to file a request for a review of the facts of the alleged contravention.

[4] On February 4, 2022, the Minister's representative made submissions. He objects to the late application for review. He submits that following a meeting on December 14, 2021, that was attended by a TC officer, the applicant and a third party invited by the applicant, the parties signed an agreement in which the applicant admits committing the alleged violation, agrees to pay a lesser penalty than that set out in the Notice following an offer made by the TC officer, and waives his right to have the Tribunal review the facts alleged in the Notice. The Minister's representative submits that pursuant to section 7.8 of the *Aeronautics Act (Act)*, the Tribunal does not have jurisdiction to review the facts of the alleged contravention following the voluntary payment of the penalty by the applicant. He also rejects the applicant's allegation of defect in consent by way of an affidavit by the TC officer.

[5] The applicant did not file a final reply to respond to the Minister's submissions.

II. ISSUES

[6] Can the Tribunal exercise its discretion to accept the late request for a review of the Notice following payment of the penalty by the applicant?

[7] If so, are there extenuating circumstances that justify the applicant's failure to file a request for a review within the statutory 30-day period?

III. ANALYSIS

A. The Tribunal's discretion to accept the late request for a review of the Notice following payment of the penalty by the applicant

(1) *The consequence of payment of the penalty*

[8] Section 7.8 of the *Act* provides as follows

7.8 A person who has been served with or sent a notice under subsection 7.7(1) must either pay the amount of the penalty specified in the notice or file with the Tribunal a written request for a review of the facts of the alleged contravention or of the amount of the penalty.

[9] The English and French versions of this provision leave no doubt as to the options available. The Tribunal is of the view that this provision is clear and allows the applicant to exercise only one of the two options.¹

[10] An applicant who has paid the amount assessed in the notice or a reduced amount as a result of an agreement has exercised the option of paying the penalty to settle the matter and cannot subsequently file a request for a review with the Tribunal. The payment of the penalty has the effect of closing the file.

[11] In fact, the Minister's notice to the applicant complies with the requirements of paragraph 103.08(3)(b) of the *Canadian Aviation Regulations* which provides that the Minister must clearly indicate the two options provided by the *Act*; either to pay the penalty or to file a request for a review.

[12] Following the meeting on December 14, 2021, an agreement was ratified by the applicant on December 15, 2021, and the TC officer on December 16, 2021. The agreement provides, among other things, that the parties "wish to settle the matter" (preamble), that the applicant admits responsibility for the contravention (section 2), that the penalty is reduced in consideration of this admission (section 3), that the applicant "waives each and every one of his rights and remedies against the Minister in the matter" (section 7), that the applicant confirms that he is willing to enter into the agreement, and that "he has had time to consult with legal counsel and to have each and every one of his questions answered" (section 8).

[13] On January 4, 2022, the applicant paid the penalty and TC issued a receipt.

[14] The applicant's election to pay the penalty following the written agreement ratified by the parties represents a waiver by the applicant of the right to seek review of the Notice by the Tribunal.

¹ The Tribunal has considered this provision in another decision, *Riverside Helicopters Ltd. v. Minister of Transport*, 2017 TATC File No. P-4284-37 (Ruling). The Tribunal is not bound by that decision, but reaches the same conclusion offered in that decision, namely that section 7.8, read alone and in conjunction with sections 7.9 and 7.92 of the *Act*, and paragraph 103.08(3)(b) of the *Canadian Aviation Regulations*, provide that only one of the two options is available to the applicant.

(2) *The applicant's alleged defect in consent*

[15] The applicant alleges a defect in consent to the payment agreement that led to his election to pay the penalty. He claims to be the victim of a profound injustice because he “was convicted of the offence [...] after believing in an out-of-court settlement.” He allegedly became aware in mid-January 2022 of prejudice for admitting to the contravention alleged in the Notice.

[16] If there is a defect in consent, there is no valid agreement, and the election by the applicant to pay the penalty pursuant to an obligation created by the agreement could be invalidated.

[17] It is up to the party claiming a defect in consent to prove it on a balance of probabilities.² In assessing consent, the Tribunal must consider whether the parties were given adequate information and explanation of the agreement. Misleading a party, misunderstanding the agreement and unclear information or advice are the most common reasons for claiming that consent is vitiated.³

[18] No evidence was adduced to support the allegation that the applicant was coerced to pay the penalty, or to show any significant and unforeseeable harm that should have been communicated to the applicant before he admitted to the contravention in the agreement that he voluntarily entered into, and before he paid the penalty.

[19] Evidence to the contrary was filed by the Minister. In the affidavit by the TC officer, he states under oath that he explained to the applicant, at the meeting on December 14, 2021, the administrative process for a reduction in the penalty, that he did not mislead the applicant “or create any defect in consent,” and that he acted with professionalism and integrity.

[20] The applicant voluntarily ratified the agreement in which he admitted responsibility for the contravention. He followed through on that agreement by paying the penalty. He now objects to the content of the agreement and to his election to pay the penalty without elaborating on the nature of the prejudice that he should have been made aware of before making his decision.

[21] The Tribunal finds that the applicant has not shown, on a balance of probabilities, the existence of a defect in consent. The allegation that the applicant’s election to pay the penalty is vitiated in the circumstances is therefore rejected.

B. *The presence of extenuating circumstances justifying the applicant’s failure to file a request for a review within the statutory 30-day period*

[22] The Tribunal finds that the applicant’s election to pay the penalty following the agreement ratified by the parties represents a waiver by the applicant to seek a review of the Notice by the Tribunal, and that there was no defect in consent that could invalidate that election. It is therefore not necessary to consider whether there are extenuating circumstances that justify

² The Tribunal, among other things, endorses the approach to the burden of proof proposed in *Manirakiza et Olymel Vallée-Jonction*, 2021 QCTAT 1858 (CanLII), at paragraph 15.

³ The Tribunal, among other things, endorses the approach to assessing consent proposed in *Fortin et Ville de Gatineau*, 2020 QCTAT 4822 (CanLII), at paragraphs 29 and 30.

the applicant's failure to request a review within the statutory 30-day period, as required by the Tribunal's *Policy on Late Applications*.

IV. RULING

[23] The Tribunal dismisses the applicant's late request for a review of the Notice of Assessment of Monetary Penalty. In this case, the applicant's election to pay the penalty constitutes a waiver of the right to seek a review of the Notice by the Tribunal.

April 7, 2022

(Original signed)

Patrick Vermette

Chairperson and Member

Appearances

For the Minister: Michel Tremblay

For the Applicant: Josée Prud'homme