



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Micklange Qiami v. Canada (Minister of Transport)*, 2022 TATCE 65 (Ruling)

**TATC File No.:** O-4708-38

**Sector:** Aviation

### **BETWEEN:**

**Micklange Qiami**, Appellant

- and -

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

**Heard by:** Written submissions

**Before:** Gary Drouin, Acting Chairperson and Member

**Rendered:** December 6, 2022

### **RULING**

**Held:** The Minister of Transport's motion to dismiss the appellant's appeal is granted. The appellant's appeal is dismissed.

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 ruling.

## **I. BACKGROUND**

[1] On March 9, 2022, the appellant filed with the Transportation Appeal Tribunal of Canada (Tribunal) a request for appeal from a review determination upholding the decision by the Minister of Transport (Minister) to issue a monetary penalty.

[2] On July 18, 2022, a case management conference (CMC) was held to discuss the appellant's request for appeal, at which time the parties agreed to proceed by way of written submissions. On July 19, 2022, the Tribunal emailed the parties a copy of the CMC minutes, including a schedule of submissions. The appellant was to provide his submissions to the Tribunal by November 1, 2022. The Tribunal did not receive any submissions or any other contact from the appellant by that date.

[3] On November 4, 2022, the Minister filed this motion to dismiss the appellant's appeal, and a schedule for submissions was emailed to the parties on November 8, 2022. This schedule provided that the appellant's written submissions shall be filed with the Tribunal on or before November 22, 2022.

[4] The Tribunal did not receive the appellant's submissions by that date and has not received any other communication from the appellant.

## **II. ISSUE**

[5] Should the appellant's request for appeal be dismissed?

## **III. ANALYSIS**

[6] The Minister argues that the appellant has not provided written submissions, any reasons to justify his lateness, nor any request for an extension of time to file submissions, prior to the expiry of the deadline of November 1, 2022.

[7] The Minister argues the appellant's failure to comply with the deadline is a valid basis for dismissal, and that the Minister is prejudiced by the appellant's failure to comply with the decision of the Tribunal in that those deadlines are justified by the principles of natural fairness and the efficacy of the appeal process.

[8] The Minister has not provided any authority for the proposition that the failure to comply with Tribunal deadlines is a valid basis for dismissal. Regardless, the Tribunal finds that the appellant's request for appeal should be dismissed since the Tribunal cannot proceed without submissions from the appellant, and the appellant has disregarded two requests for submissions from the Tribunal.

**(1) Tribunal cannot proceed**

[9] The appeal process requires participation from the appellant, who is required to include, with a request for appeal, a concise statement of the grounds on which the appeal is based (as per section 18 of the *Transportation Appeal Tribunal of Canada Rules*). The appellant also has the burden to demonstrate that the review member made the alleged errors in the determination.

[10] At the CMC, the parties agreed to provide written submissions and agreed to a schedule for those submissions. The minutes of the CMC were subsequently provided to the parties. The Tribunal's *Policy on the Appeal Process* provides that "[s]ubmissions must be filed with the Tribunal by the assigned dates" (section 4.5). It further states that when written submissions will be used, "the Tribunal will start its deliberation based on the record of the proceedings and the written arguments submitted by the parties" (section 4.6).

[11] The Tribunal has yet to receive the appellant's submissions, despite the agreement of the parties and the written submission schedule delivered by email to the appellant in July 2022. Without the written submissions of the appellant, and an explanation of the grounds for the appeal on which he would rely, the Tribunal is unable to begin its deliberations and proceed with this appeal.

[12] Considering the appellant's obligations during an appeal, the Tribunal's *Policy in Regard to Failure to Appear* provides that if an appellant fails to appear at an appeal hearing, the appeal **shall be** dismissed. The Tribunal considers that this policy applies to oral and written appeals and that failure to provide submissions without further explanation is akin to failing to appear at an oral hearing. The appeal cannot proceed if the appellant has not provided any grounds or submissions.

**(2) The appellant has not responded to requests from the Tribunal**

[13] The Tribunal notes that during the CMC, both parties agreed to the dates for the written appeal submissions and the deadline of November 1, 2022, for the appellant to provide his grounds for appeal. The Tribunal emailed a copy of the CMC minutes and a schedule of appeal submissions to the parties on July 19, 2022. Further, upon receipt of the Minister's request for dismissal of the appeal, the Tribunal again emailed the parties a schedule for submissions on November 8, 2022, noting that the appellant's reply was due by November 22, 2022. The Tribunal has received confirmation that the emails sent on July 19, 2022, and November 8, 2022, were delivered to the appellant's email address.

[14] The Tribunal notes that since the appellant filed his request for appeal by email, all Tribunal correspondence has been done by that same method for this appeal. Paragraph 6 of the Tribunal's Practice Direction #3, Electronic Service of Documents, provides that for documents served by the Tribunal by email, the date of service is the date the party receives the document by email. Since The Tribunal has received confirmation that the emails provided to the appellant were delivered, and since the Tribunal was not advised of any change in email address for the appellant, the Tribunal is satisfied that the appellant was served the minutes of the CMC with the schedule for submissions for the written appeal, as well as the submission schedule for this motion to dismiss.

[15] The Tribunal has not received any communication from the appellant since July 2022. It has not received a response to the two emails requesting submissions delivered to the appellant's address, nor any other communication from the appellant on any matter. The appellant has not provided any notice of change of contact information, has not asked for an extension of time to provide submissions, nor has he provided justification for his failure to provide submissions for the appeal or the motion to dismiss.

[16] The Tribunal finds that the dismissal of the appeal is appropriate in these circumstances. There is no information from the appellant on which we can proceed with the appeal, and the appellant has not responded to the Tribunal after the delivery of two emails. The Tribunal's policies confirm that submission dates must be respected, and that failure to appear for an appeal will result in its dismissal. Therefore, the Tribunal finds that the dismissal of the appellant's request for appeal is granted.

#### **IV. RULING**

[17] The Minister of Transport's motion to dismiss the appellant's appeal is granted. The appellant's appeal is dismissed.

[18] 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 ruling.

December 6, 2022

(Original signed)

Gary Drouin  
Acting Chairperson and Member

#### Appearances

For the Minister:	Eric Villemure
For the Appellant:	Self-represented