



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Western Air Charter Inc. v. Canada (Minister of Transport)*, 2022 TATCE 60 (Ruling)

TATC File No.: RA-120-22

Sector: Aviation

BETWEEN:

Western Air Charter Inc., Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Written submissions

Before: Franco Pietracupa, Member

Rendered: November 15, 2022

RULING

Held: The applicant's request for a stay of the suspension is granted.

I. BACKGROUND

[1] On October 19, 2022, the Minister of Transport (Minister) issued a Notice of Suspension to the applicant, pursuant to section 6.9 of the *Aeronautics Act (Act)*, for an alleged violation of a notice issued under section 5.1 of the *Act*. The Notice of Suspension provides for the suspension of the applicant's air operator certificate beginning on November 26, 2022, and ending on December 30, 2022.

[2] On October 28, 2022, the applicant requested that the Transportation Appeal Tribunal of Canada (Tribunal) review the Minister's decision to suspend its air operator certificate. The applicant also requested that the suspension of the certificate be stayed, arguing that the crew adhered to all COVID-19-related requirements at the time of the flight in question.

[3] On November 1, 2022, the Minister responded that it did not oppose a stay of the suspension.

II. ANALYSIS

[4] The Tribunal may direct a stay of the suspension under subsection 6.9(4) of the *Act*, until the review of the Minister's decision has been concluded. A stay may not be granted if the member considering the matter is of the opinion that it would result in a threat to aviation safety or security, under subsection 6.9(5).

[5] In this case, the applicant appears to be contesting the alleged violation. If the suspension were to be imposed before the Tribunal conducts its review of the Minister's decision on the merits, the "penalty" would be imposed before the applicant had an opportunity consistent with procedural fairness and natural justice to have the decision reviewed. This could result in a prejudice to the applicant if the Tribunal finds, after its review, that the contravention had not been proven on a balance of probabilities, that the applicant had a successful defence, or that a shorter suspension was justified.

[6] In addition, the Minister did not raise, nor do I see, any evidence of any aviation safety or security concerns which would support denying the application for a stay pursuant to subsection 6.9(5) of the *Act*.

[7] Therefore, I direct that the suspension be stayed until the Tribunal completes its review of the Notice of Suspension, pursuant to subsection 6.9(4) of the *Act*. Following its review of the matter, the Tribunal will either confirm the Minister's decision or substitute it with its own determination.

[8] The Tribunal Registry will convene the parties to a pre-hearing case management conference to be held by videoconference as soon as possible to discuss the conduct of the review hearing.

III. RULING

[9] The applicant's request for a stay of the suspension is granted.

November 15, 2022

(Original signed)

Franco Pietracupa
Member

Representations

For the Minister:
For the Applicant:

Denise Aubin
Nathan Yenne