



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Brooklyn Anderson v. Canada (Minister of Transport)*, 2023 TATCE 1 (Ruling)

**TATC File No.:** W-4775-68

**Sector:** Aviation

### BETWEEN:

**Brooklyn Anderson, Applicant**

- and -

**Minister of Transport, Respondent**

**Heard by:** Written submissions

**Before:** Deborah Warren, Member

**Rendered:** January 6, 2023

### RULING

**Held:** The Tribunal denies the Minister of Transport's request to postpone the hearing.

## **I. BACKGROUND**

[1] On December 14, 2021, the applicant failed a Pilot Proficiency Check (PPC) for the B73C aircraft administered by a Transport Canada (TC) Approved Check Pilot (ACP).

[2] On December 18, 2021, TC issued the applicant a Notice of Refusal to Issue or Amend a Canadian Aviation Document (Notice), TC File No. 5802-502104. The Notice provides that the decision not to issue the PPC may be reviewed by filing a request to the Transportation Appeal Tribunal of Canada (Tribunal) on or before January 28, 2022.

[3] On January 20, 2022, the Tribunal received the applicant's request for review of the Notice dated December 18, 2021.

[4] A case management conference (CMC) was held on May 12, 2022, to discuss the planning of a review hearing with the parties. During the CMC, the representative for the Minister of Transport (Minister) requested an opportunity to file a preliminary motion to argue that the Tribunal no longer has jurisdiction to conduct a review of the Notice and that the matter has become academic and moot. A decision rendered on October 14, 2022, held that the Minister's motion is dismissed, that the Tribunal has jurisdiction to conduct the review and that the applicant's request for review is not moot.

[5] A second CMC was held on November 30, 2022, for the parties to discuss the planning of a review hearing. The agenda for that CMC was issued November 23, 2022. The CMC minutes provide that the potential dates for a hearing were identified between January 24 and January 27, 2023. At the time of the CMC, the Minister could not confirm its availability but agreed to follow up within a week. Mr. Anderson stated he was prepared to proceed in January 2023, and that dates later in the year could not be confirmed due to the nature of the scheduling provided by his employer.

[6] On December 8, 2022, the Minister indicated that one of its witnesses most likely would not be available from January 24 to 27, 2023, and suggested moving the hearing date to February 2023. This correspondence was followed up by Mr. Anderson indicating that he could not guarantee availability in February, and that he would like to move forward with the proposed dates noted in the CMC minutes.

[7] On December 8, 2022, the Minister advised the Tribunal that it would like to tentatively set aside January 26 as a potential hearing date, subject to confirmation of both parties. On December 9, 2022, the Minister confirmed that it was ready to proceed with a hearing on January 26, 2023.

[8] On December 13, 2022, the applicant confirmed his availability for a hearing on January 26, 2023.

[9] On December 16, 2022, a notice of hearing was sent to the parties confirming the hearing scheduled for January 26, 2023.

[10] On December 19, 2022, The Minister informed the Tribunal one of its witnesses would be unavailable on the January 26 hearing date and inquired about the possibility of holding the hearing on January 24 or 25. The applicant replied that his witness is only available on January 26.

[11] On December 21, 2022, the Minister filed this request for postponement.

## **II. ANALYSIS**

### **(1) Issue**

[12] The Tribunal must determine if the hearing scheduled for January 26, 2023, should be postponed to a later date.

[13] The following provisions of the Tribunal's *Policy on Postponements/Adjournments* are applicable:

**3. Legal Authority:** The many transportation acts under which the Tribunal has jurisdiction state that the Tribunal shall determine a time and place for all review and appeal hearings and notify both parties in writing.

[...]

**4.3** Upon receipt of the request, the Tribunal will contact the other party and determine whether they agree with, or oppose, the postponement requested. If the other party opposes the postponement request, they must provide written reasons.

**4.4** The Tribunal will then take the parties' positions under consideration and decide whether the postponement should be granted.

**4.5** Consideration of a request for postponement does not mean that the request will automatically be granted, even where all parties give their consent.

### **(2) Minister's submission in support of a postponement**

[14] The Minister is requesting a postponement of the hearing because one of TC's witnesses is unavailable on January 26, 2023. The witness is unavailable due to scheduling by the witness's employer and will be out of the country for work-related reasons and other professional obligations.

[15] The Minister states that the TC witness is essential to ensure that the Minister is given a fair chance to be heard and to present its case fully.

[16] The Minister has requested that the Tribunal grant postponement to mid/end of February 2023.

[17] The Minister states that the request for postponement should not be construed as an attempt to unnecessarily delay the proceeding.

**(3) Applicant's submission, opposed to the postponement**

[18] The applicant is opposed to a delay of the hearing and refers to subsections 7.1(5) and (6) of the *Aeronautics Act*:

(5) On receipt of a request filed in accordance with subsection (3), the Tribunal shall forthwith appoint a time, **as soon as practicable** after the request is filed, and place for the review of the decision referred to in the request and in writing notify the Minister and the person who filed the request of the time and place so appointed.

(6) At the time and place appointed under subsection (5) for the review of the decision, the member of the Tribunal assigned to conduct the review shall provide the Minister **and** the holder of the Canadian aviation document or the owner or operator affected by the decision, as the case may be, with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations in relation to the suspension, cancellation or refusal to renew under review [emphasis added].

[19] The applicant states that there is no contingency in the *Aeronautics Act* that requires witnesses to be present, only that both parties be present to make representations.

[20] The applicant states that as stated in subsection 7.1(5) of the *Aeronautics Act*, a case should be heard as soon as practicable. He points out that the date of the hearing was agreed to by both parties.

[21] The applicant states the Minister has denied the applicant procedural fairness and natural justice by continuing to delay and obstruct the evidence and presentations being made.

[22] The applicant refers to the Tribunal's *Guide for Applicants – Aviation* that addresses requests for postponement of hearings.

In the interest of fairness and natural justice to all parties and in an effort to conduct its hearings expeditiously, the Tribunal expects all parties to respect scheduled hearing dates. [...]

Occasionally, the Tribunal will direct that a hearing be postponed when absolutely necessary.

[23] The applicant states that it was the Minister who suggested the date of January 26 and that all parties agreed to that date. He suggests that the hearing has already been delayed due to a motion by the Minister to dismiss based on mootness and jurisdiction.

[24] The applicant does not concur the reason provided by the Minister is sufficient to postpone the hearing. The applicant proffers that videoconferencing is an option for those joining from out of country. He suggests the Minister has not demonstrated why the witness cannot attend via videoconference or provide written testimony. Additionally, he states that the dates proposed, January 24 to 27, 2023, have been known since November 23, 2022, when the agenda for the CMC was sent out to the parties.

[25] The applicant states that he and his witness have already made the effort to ensure availability for January 26, 2023, that he and his witness are not available for a hearing in February.

[26] The applicant states that the Minister is using the unavailability of the witness as a means to further delay the proceedings. The applicant also submits that delaying further only hurts the

applicant with respect to professional reputation, stress and family life and further financial penalty as laid out in the previous motion.

**(4) *Should the Tribunal postpone the hearing date?***

[27] Per section 4.4 of the *Policy on Postponements/Adjournments*, the Tribunal must take the parties' positions under consideration to determine whether the postponement should be granted. After considering those positions, I do not find that a postponement should be granted for the reasons that follow.

[28] The Minister is requesting the postponement on the basis that its witness is not available, a witness that is essential for the case to be presented fully. The Minister was first made aware of potential dates in January via the agenda for the CMC that was distributed on November 23, 2022. At the CMC, the potential dates for the hearing, January 24 to 27, 2023, although not confirmed, were tabled and the member asked the parties to ensure witnesses would be available.

[29] Per subsection 7.1(5) of the *Aeronautics Act*, the Tribunal shall forthwith appoint a time and place, as soon as practicable after the request is filed. The Tribunal set a hearing date of January 26, 2023, following confirmation from the applicant and Minister that the date was acceptable.

[30] The Minister has proposed that the hearing be moved to mid or late February. Since dates in February are not available to the applicant, any postponement of the January date would push the hearing date to March or beyond. I believe a delay of this nature coupled with the delays that have already occurred is not consistent with subsection 7.1(5) of the *Aeronautics Act* directing the Tribunal to set a review hearing as soon as practicable.

[31] The applicant stated that delays by the Minister have an impact on his reputation and family life and that he is financially penalized. This case has been delayed for over a year; however, I do not find that this request for postponement was an attempt by the Minister to deliberately delay the proceeding. Nonetheless, the applicant has made all efforts to secure the January 26, 2023, hearing date and expressed further delays would negatively impact him. Further, I note the applicant's reference to the *Guide for Applicants – Aviation* that "[i]n the interest of fairness and natural justice to all parties and in an effort to conduct its hearings expeditiously, the Tribunal expects all parties to respect scheduled hearing dates."

[32] The Tribunal recognizes that the Minister has stated that it needs the witness to present its case. However, the Minister has not provided any compelling reason why its witness could not be available for a short time via video, or why use of an affidavit could not be considered. With the possibilities of obtaining the witness testimony by various other means, I do not find the Minister has demonstrated that it would be prejudiced in making its case if the hearing was to go as scheduled.

### **III. RULING**

[33] The Tribunal denies the Minister of Transport's request to postpone the hearing.

January 6, 2023

(Original signed)

Deborah Warren

Member

Representations

For the Minister:     Alexandre Petterson

For the Applicant:    Self-represented