



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Augusto Crecco v. Canada (Minister of Transport)*, 2023 TATCE 11 (Ruling)

**TATC File No.:** W-4734-38

**Sector:** Aviation

### BETWEEN:

**Augusto Crecco**, Applicant

- and -

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

**Heard by:** Written submissions

**Before:** Tracy Medve, Member

**Rendered:** March 8, 2023

### RULING

**Held:** The applicant's motion to postpone the review hearing scheduled for April 27 and 28, 2023, is denied.

## **I. BACKGROUND**

[1] This is a motion brought by the applicant Mr. Crecco to postpone a review hearing on the matter of a Notice of Assessment of Monetary Penalty.

[2] A Notice of Assessment of Monetary Penalty was issued to Mr. Crecco on June 22, 2021, for failing to comply with the instructions of a crew member with respect to wearing a face mask as required by section 35 of the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 8. A review by the Transportation Appeal Tribunal of Canada (the Tribunal or TATC) was requested by Mr. Crecco on August 11, 2021. Following a case management conference (CMC) held on June 16, 2022, a review hearing was scheduled for October 6, 2022. Following a second CMC held on July 28, 2022, the hearing scheduled for October 6, 2022, was postponed.

[3] On the basis of a number of preliminary matters, Mr. Crecco filed a motion for dismissal of the Notice of Assessment on September 16, 2022. The TATC's ruling to deny the dismissal was rendered on February 15, 2023. The ruling was provided to Mr. Crecco by the TATC Registry on February 15, 2023, asking for availability for the review hearing on any of the following dates: April 3, 4, 5, 6 or 13, 2023. On the same day, Mr. Crecco advised that the dates for the hearing needed to accommodate the dates when he has his son. His email noted:

... I don't have my son on the weekend of the 14th of April and every other weekend after that....April 28th, May 12th, May 19th, etc. Please provide me with two days, Thursday and Friday that coincide with the already agreed upon commitment.

[4] On February 15, 2023, the Minister confirmed availability "on all of the alternative dates proposed by Mr. Crecco except for April 14." On February 16, 2023, at 7:45 a.m., the TATC Registry replied advising:

Thank you both for your replies. The Tribunal would be able to schedule the 2 day hearing as early as March 16-17, 2023. However if this doesn't work, we will look at dates from April 27-28 onward.

The Registry went on to request confirmation of both parties' availability for a hearing on March 16 and 17, 2023.

[5] Mr. Crecco confirmed on February 16 at 7:48 a.m. that he would be unavailable on those dates by saying: "I am not available those days. Sorry. I provided the days I am available."

[6] On February 16 at 2:30 p.m., the TATC Registry emailed Mr. Crecco and the Minister as follows:

The Tribunal would be able to schedule the review hearing on April 27-28, 2023 starting at 11:30 am EDT. Can both parties please confirm that this date and time works. Once I receive your confirmations, I will issue the Notice of Hearing.

[7] On February 21, 2023, at 1:28 p.m., the TATC Registry again emailed the parties asking for confirmation of availability on April 27 and 28, 2023. The Minister confirmed availability for those dates by return email to the Registry at 2:33 p.m. Having received no confirmation from

Mr. Crecco, the Registry sent a follow-up email on February 22, 2023, at 3:04 p.m. asking about his availability for the April dates. Mr. Crecco did not respond to this email.

[8] On February 28, 2023, the TATC Registry provided Mr. Crecco, the Minister and the review member with a Notice of Hearing to take place on April 27 and 28, 2023, starting at 11:00 a.m. EDT. Mr. Crecco was asked to acknowledge receipt of the Notice of Hearing by responding to the email containing the notice or by returning a signed and dated copy of the notice.

## II. ANALYSIS

[9] At 7:50 a.m. on March 3, 2023, Mr. Crecco emailed the TATC Registry indicating as follows:

I never agreed to this date and your allegation that I have is egregious. I cannot do April 27 to 28th. Please provide another date and unless you can show me proof that I agreed to this date then an apology would be appreciated.

[10] That same morning at 7:59 a.m., the TATC Registry emailed Mr. Crecco as follows:

You provided your availability on February 15 and those dates were part of the dates you had proposed. The hearing is now officially scheduled for April 27 and 28, 2023. If you are no longer available on those days, you can submit a request for postponement as per the Policy on Postponements/Adjournments.

[11] Later that morning at 10:08 a.m., Mr. Crecco responded by email with a screenshot included, which stated:

As you can see below, I was unable to answer anyone and make confirmation for dates due to a severe back injury which kept me bed ridden for nearly a week and now causing me to do rehab. I have not fully recovered and have several scheduled appointments in that regard. Consider this while making your decision. I was not trying any delay tactics. My schedule has filled up dramatically due to the injury and lost time at work. I'm trying to play catch up.

The screenshot provided below the email appears to be a text message dated February 20, 2023, at 12:43 p.m., sent by Mr. Crecco to Al Aiello (and two others), indicating that Mr. Crecco suffered an injury to his back during a move on February 19, 2023.

[12] The Minister's position on the request for a postponement is that the issues have been fully explored and that the only issue remaining is whether Mr. Crecco "failed to comply with the instructions of a crew member on Air Canada flight 169 from Toronto to Edmonton on September 25, 2020, with respect to wearing a face mask as required by s.35 of the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*." The Minister also submits that the hearing dates of April 27 and 28 are sufficiently far away to provide adequate time to prepare and confirms that the Minister is ready to proceed, having arranged for their witnesses to be available for those dates.

[13] I find that Mr. Crecco did imply in his email of February 15, 2023, to the TATC Registry that April 27 and 28 were dates that would work in his schedule to hold the hearing. He further reinforced this in his February 16, 2023, email which stated, "I provided the days I am available," which dates included April 28. It was on this basis that the Registry initially asked for

confirmation from both parties of their availability for these dates in their email of February 16. Mr. Crecco did not respond to that request for confirmation, even though his back injury did not occur until February 19. Mr. Crecco is now relying on the injury to his back as the basis for the postponement because he has not yet recovered and has scheduled appointments for rehabilitation. However, he has not provided the Tribunal with any evidence of such appointments conflicting with the hearing dates. If Mr. Crecco had initially asked for the postponement based on his back injury when he received the formal Notice of Hearing on February 28, 2023, instead of suggesting that the April 27 and 28 dates were never ones he agreed to, his request would have more credibility. It is Mr. Crecco who has made the application for the hearing in the first instance. He has known since the middle of February that it was the intention of the TATC Registry to schedule the hearing for April 27 and 28. The Minister is ready to proceed and has arranged for witnesses to be available on those dates.

[14] As referenced in the TATC *Policy on Postponements/Adjournments*, scheduling a time and a place for a hearing involves many complexities for the Tribunal. The Tribunal's caseload and the availability of its part-time members are factors which are considered when determining whether a postponement is warranted. This policy notes that such complexities render postponements and adjournments unlikely.

### **III. DETERMINATION**

[15] The applicant's motion to postpone the review hearing scheduled for April 27 and 28, 2023, is denied.

March 8, 2023

(Original signed)

Tracy Medve  
Member

Representations

For the Minister: Micheline Sabourin  
For the Applicant: Self-represented