TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Stéphan Huot v. Canada (Minister of Transport)*, 2023 TATCE 13 (Ruling)

TATC File No.: RA-135-22

Sector: Aviation

BETWEEN:

Stéphan Huot, Applicant

- and -

Canada (Minister of Transport), Respondent

[Official English translation]

Heard by:	Written submissions on December 22, 2022, January 6, 2023, and January 11, 2023
Before:	Yves Duguay, Member
Rendered:	March 16, 2023

RULING AND REASONS

Held: The late request for review is allowed.

I. BACKGROUND

[1] On September 22, 2022, Transport Canada (TC) issued a Notice of Assessment of Monetary Penalty (Notice) bearing number 4004-16-10-109729 to the applicant. The Notice referred to five violations of the *Canadian Aviation Regulations* (*CARs*) allegedly committed between December 10, 2021, and March 2, 2022. The Notice stated that failure to pay the fine or to present a request for review to the Transportation Appeal Tribunal of Canada (Tribunal or TATC) by October 27, 2022, amounted to a declaration of liability for the contraventions.

[2] On September 22, 2022, TC, on behalf of the respondent, sent the Notice by registered mail to the applicant's address, that is, the address stated in the Notice. The applicant's address is not in dispute.

[3] On September 23, 2022, Canada Post left a registered mail delivery notice at the applicant's residence.

[4] On September 28, 2022, Canada Post left a final delivery notice at the applicant's residence, advising the occupant that the item would be returned to sender if not claimed within the next 10 days.

[5] On October 11, 2022, Canada Post returned the Notice to TC, stating that the item had not been claimed.

[6] On October 17, 2022, TC, again on behalf of the respondent, sent a letter to the applicant, notifying him of the unsuccessful attempt to deliver the Notice to his residence by registered mail. The letter stated that the applicant had until November 17, 2022, to pay the fine or contest the Notice before the Tribunal. On the same day, a bailiff, acting on behalf of the respondent, attempted unsuccessfully to serve the Notice on the applicant in person at his residence.

[7] On October 18, 2022, the bailiff carried out a second and final attempt to notify the applicant in person of the decision by the Minister of Transport (Minister). Having received no answer, the bailiff left the Notice, the Canada Post delivery notices and the respondent's letter of October 17, 2022, in the applicant's home mailbox.

[8] On December 5, 2022, TC sent the applicant an email of "High Importance," advising him that a notice had been left at his residence on October 18, 2022, and that he now had until November 17, 2022, to pay the fine or contest the Notice before the Tribunal. Since no payment or request for review had been received, the applicant was advised that his file would be sent to TC's collection service.

[9] On December 6, 2022, the applicant replied to TC's email of December 5, stating that he had never received the Notice. In his email, the applicant left his cell phone number so that he could be contacted to discuss the case and the imposed fine.

[10] On December 7, 2022, TC sent an email to the applicant, informing him of all the steps carried out by the Minister since September 2022 to notify him. The applicant was advised in the

same email that it was still possible for him to submit a late request for review to the Tribunal. On behalf of the respondent, TC also undertook to defer a request for a certificate of non-payment until December 18, 2022.

[11] On December 17, 2022, the applicant sent the Tribunal a form to request a Tribunal review or appeal in relation to the notice issued by the respondent on September 22, 2022, in TC case number 4004-16-10-109729.

[12] On December 22, 2022, the applicant's representative sent the Tribunal a letter in support of the December 17, 2022, review request. The applicant's representative conceded that this was a late request, which he justified by his client's prolonged absence, including on the day of October 18, 2022, when a bailiff left the Notice at the applicant's residence.

[13] On January 6, 2023, the Tribunal received the respondent's written submissions concerning the request for an extension of time for filing a request for review. The respondent objected to the applicant's late request.

[14] On January 11, 2023, the applicant's representative submitted to the Tribunal the applicant's response to the respondent's submissions on the applicant's late request, asking the Tribunal to grant the request for an extension.

II. ANALYSIS

[15] The Tribunal must answer the following question in this case:

- Should the Tribunal allow the applicant's late request for review?

[16] In his request for review, sent to the Tribunal on December 22, 2022, the applicant confirms that his request is late. Both parties agree on this fact.

[17] Before analyzing whether this request is admissible, I will first address the respondent's submissions concerning the principle of finality of decisions and how, according to the respondent, this principle applies to the 30-day time limit for requesting a review of its decisions once the Minister has fulfilled the obligation to notify the applicant.

[18] The Minister's obligation is found in section 7.7(1) of the *Aeronautics Act* (the Act):

> **7.7 (1)** If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision.

[19] The respondent maintains that it met its requirement by sending the Notice by registered letter to the applicant's latest known address. The respondent justified its position by referring to the decision in *Ross v. Canada (Minister of Transport)*[1] in which, it argues, the Tribunal determined that the Minister's obligation "does not go beyond sending the notice" by registered

[1] *Alexander Ross v. Canada (Minister of Transport)*, 2019 TATCE 23 (Ruling).

mail and that "no onus is placed on the Minister to ensure that an applicant picks up his or her registered mail."

[20] Although the respondent did in fact meet its obligation, I note that in *Ross c. Canada (Minister of Transport)*, the Tribunal recognized "that there could be times when, despite proper notification by the Minister, the notice does not reach the applicant on time to request a review of the Minister's decision." The Tribunal was referring to extenuating circumstances which, under the TATC's *Policy on Late Applications*, allow it to review the admissibility of requests for review that are late, which applies in this case.

[21] In its written submissions, the respondent also raised the principle of finality by arguing that:

> [TRANSLATION]
>
> 41. The 30-day timeline for requesting a review before the Tribunal normally found in notices is justified by the principle of finality, a fundamental principle of administrative law. It is not a whim of the administrative decision-maker.
>
> 42. The principle of finality guarantees, on the one hand, the fairness of the decision-making process for citizens and, on the other, the effectiveness of the notice of administrative monetary penalty system provided for in the *Act* and the *CARs*.

[22] The fairness of the decision-making process cannot be compromised by an issue that has not yet been decided by the Tribunal, in this case, the substantive issue of the applicant's late request for review. Moreover, the discretion granted to us under subsection 7.91(1) of the Act allows us to grant a time limit greater than the 30 days provided for in the notice to file a request for review with the Tribunal.

[23] For these reasons, I am of the opinion that the principle of finality does not apply in this case, and I reject the respondent's argument.

Should the Tribunal allow the applicant's late request for review?

[24] In order to answer this question, I will begin by circumscribing the Tribunal's discretion and the manner in which the *Policy on Late Applications* frames this discretion. Following that, I will apply the four factors set out by the Federal Court in *Cyr v. Batchewana First Nation*[2] to determine whether I should grant an extension of time in this case.

(1) The Tribunal's discretion

[25] Subsection 7.91(1) of the Act gives me the discretion to allow further time, depending on my assessment of the applicant's request:

> **7.91 (1)** A person who is served with or sent a notice under subsection 7.7(1) and who wishes to have the facts of the alleged contravention or the amount of the penalty reviewed shall, on or before the date specified in the notice or within any further time that the Tribunal on application may allow, file a written request for a review with the Tribunal at the address set out in the notice.

[2] *Cyr v. Batchewana First Nation*, 2020 FC 1001.

(2) The Policy on Late Applications

[26] The use of this discretion is governed by the *Policy on Late Applications*, which can be found on the TATC website. The policy applies to requests for review that are received by the Tribunal five or more business days after the 30-day deadline specified in the notice. Thus, a request that is more than five business days late will not be accepted unless there are extenuating circumstances that may justify the request for review beyond the statutory 30-day deadline.

[27] When a request for review is received five or more business days after the deadline, as in this case, the Tribunal asks the parties to provide submissions. The Tribunal will, on the basis of the submissions made by both parties, decide whether or not extenuating circumstances justify an extension of the deadline.

[28] In order to assess the relevance of the mitigating circumstances raised in the applicant's request, I will apply the test set out by the Federal Court in *Cyr v. Batchewana First Nation*.

(3) The Cyr v. Batchewana First Nation test

[29] In *Cyr v. Batchewana First Nation*, the Federal Court noted that extensions of time are discretionary and are granted when they are in the interests of justice. The Federal Court thus established four questions,[3] which the Tribunal must answer in assessing the relevance of a delay in filing a request:

1. Did the moving party have a continuing intention to pursue the application?
2. Is there some potential merit to the application?
3. Has the respondent been prejudiced from the delay?
4. Does the moving party have a reasonable explanation for the delay?

[30] The Federal Court noted that not all of these four questions need be resolved in the moving party's favour. The overriding consideration is that the interests of justice be served.[4]

(a) Did the applicant have a continuing intention to pursue the request?

[31] The respondent maintains that it is impossible to infer any obvious or real intention on the part of the applicant to pursue his request between the time he allegedly became aware of the Notice, December 5, 2022, and the date on which he finally filed his request for review, December 17, 2022.

[32] The respondent states that the latest the applicant would have become aware of the Notice was December 6, 2022, yet he did not communicate his intention to request a review to the Tribunal or the Minister of Transport until December 17, 2022. According to the respondent, this 10-day period before filing his request demonstrates that the applicant did not have a continuing intention to pursue his request.

[3] *Cyr v. Batchewana First Nation*, paragraph 41.
[4] *Cyr v. Batchewana First Nation*, paragraph 42.

[33] In his submissions to the Tribunal, the applicant maintains that it was always his intention to file a request for review with the Tribunal and that there is a reasonable explanation for his delay in filing the request. He claims that he was unable to respond to the notice left at his residence on October 18, 2022, as he had been away for an extended period of time. The applicant adds that he stepped up his efforts as soon as he received the email from the respondent's representative on December 5, 2022.

[34] After an exchange of emails and telephone calls with the respondent's representatives, the applicant was informed of the details of the Notice on December 7, 2022, and was advised that it was still possible to submit a late request to file a request for review to the Tribunal. On December 17, 2022, the applicant filed a request for review or appeal form with the Tribunal.

[35] In examining the chronology of this case, I note that the applicant, through his actions and communications with the respondent's representatives, had a continuing intention to pursue his request from the moment he was informed of the existence of the Notice on December 5, 2022, until he filed his request on December 17, 2022.

[36] I do not doubt, as the respondent points out, that the applicant showed a certain carelessness in managing his mail, but I nevertheless conclude that the applicant had a continuing intention to pursue his request from the moment he was informed of the contraventions of which he was accused.

(b) Is there some potential merit to the request?

[37] The respondent asserts that the applicant has not substantiated his claim that he has valid and compelling arguments to put forward in support of his challenge of the Notice. The respondent adds that the applicant has given no indication as to the type of defence he wishes to avail himself of in the event of a hearing before the Tribunal.

[38] The applicant, for his part, refers to *CN v. Canada (Minister of Transport)*,[5] in which the Tribunal concluded that it was not necessary to address the issue of the basis for substantive infractions at the interlocutory stage:

> At the interlocutory stage, the Tribunal is concerned with whether an extension of time (to file a review application) is warranted, as opposed to undertaking a full assessment on the merits of the defence which is a task left to the Tribunal when hearing the review application.

[39] I am of the opinion that it will indeed be up to the Tribunal, in the context of the review hearing, to decide the substantive issue of whether an extension of time should be granted.

(c) Has the respondent been prejudiced from the delay?

[40] The respondent maintains that it would suffer serious prejudice if an extension of time were granted to the applicant. It asserts that automatically allowing anyone to extend a time limit does nothing for the sound and proper administration of justice and completely disregards the fundamental principle of finality. As mentioned in paragraph 23 above, I am of the opinion that

[5] *Canadian National Railway Company v. Canada (Minister of Transport)*, 2022 TATCE 48 (Ruling).

the principle of finality does not apply in this case. However, I will address the issue of prejudice raised by the respondent.

[41] In this regard, the applicant again refers us to the Tribunal's decision in *CN v. Canada (Minister of Transport)*, where the Tribunal rejected a similar argument, concluding that the Minister would not suffer prejudice, as he would always have the opportunity to prove the alleged violations at a subsequent hearing.

[42] I agree that the respondent must have incurred significant public expense to inform the applicant of its decision. I conclude, however, that the respondent will not suffer any prejudice as a result of the late filing of the request, as it will be able to prove the alleged violations at a hearing before the Tribunal.

(d) Does the applicant have a reasonable explanation for the delay?

[43] The respondent is of the opinion that it appears rather improbable that the applicant failed to effectively manage his mail for a period extending from September 22, 2022, to December 5, 2022. In anticipation of such a long absence, he could have taken steps to manage his mail effectively.

[44] According to the respondent, the delay rather reflects an apparent lack of diligence and rigour that no extenuating circumstances can justify in this case. Moreover, the respondent points out that the applicant has presented no documentary evidence to indicate the duration of his absence from home.

[45] The applicant claims that he was absent from his residence for an extended period of time and thus could not have been informed of the issuance and receipt of the Notice until December 5, 2022, when TC contacted him by email.

[46] My assessment of the facts and of both parties' arguments in relation to the four questions set out by the Federal Court in *Cyr v. Batchewana First Nation* leads me to exercise my discretion and grant this late application for review. I believe that the interests of justice are best served by a review hearing before the Tribunal. It will allow the applicant to be heard, and the respondent to prove the alleged violations.

III. RULING

[47] The late request for review is allowed.

March 16, 2023

(Original signed)

Yves Duguay
Member

Representations

For the Minister:	Alexandre Petterson
For the Applicant:	Marc James Tacheji