



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Prapaharan Gunapalasingam v. Canada (Minister of Transport)*, 2023 TATCE 20 (Review)

TATC File No.: Q-4788-33

Sector: Aviation

BETWEEN:

Prapaharan Gunapalasingam, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on March 10, 2023

Before: Franco Pietracupa, Member

Rendered: April 20, 2023

REVIEW DETERMINATION AND REASONS

Held: Contravention 1: The Minister of Transport has proven, on a balance of probabilities, that the applicant contravened paragraph 602.31(1)(a) of the *Canadian Aviation Regulations*. As such, the administrative monetary penalty of \$750 is upheld.

Contravention 2: The Minister of Transport has not proven, on a balance of probabilities, that the applicant contravened section 602.71 of the *Canadian Aviation Regulations*. Consequently, the penalty of \$750 imposed by the Minister is dismissed.

The total amount of \$750 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 determination.

I. BACKGROUND

[1] On February 3, 2022, the Minister of Transport (Minister) issued a Notice of Assessment of Monetary Penalty (Notice) to the applicant, Mr. Prapaharan Gunapalasingam, pursuant to section 7.7 of the *Aeronautics Act*. Schedule A of the Notice stated:

On May 12, 2021, at or about 13:50 UTC (Coordinated Universal Time), at Montreal St-Hubert Airport (CYHU), Quebec, or thereabouts, as the pilot-in-command of aircraft model Cessna R172K, bearing Canadian registration marks C-GTON, you failed to comply with air traffic control instructions to land on runway 06L, that had been given to you, and received and acknowledged by you, thereby contravening paragraph 602.31(1)(a) of the *Canadian Aviation Regulations* (CARs).

Administrative monetary penalty: \$ 750

On May 12, 2021, at or about 11:17 UTC (Coordinated Universal Time), at Toronto Buttonville Municipal Airport (CYKZ), Ontario, as the pilot-in-command of aircraft model Cessna R172K, bearing Canadian registration marks C-GTON, before commencing the flight, failed to familiarize with the available information that is appropriate to the flight toward Montréal St-Hubert Airport (CYHU), thereby contravening paragraph 602.71 of the *Canadian Aviation Regulations* (CARs).

Administrative monetary penalty: \$ 750

Total administrative monetary penalties: \$ 1500

[2] On February 25, 2022, the applicant requested a review of this Notice by the Transportation Appeal Tribunal of Canada (Tribunal).

II. ANALYSIS

A. Issues

[3] The Tribunal must determine whether the applicant contravened paragraph 602.31(1)(a) of the *Canadian Aviation Regulations* (CARs).

[4] The Tribunal must also determine whether the applicant contravened section 602.71 of the CARs.

B. Legal framework

[5] Pursuant to subsection 7.7(1) of the *Aeronautics Act*, the Minister can issue a monetary penalty if it believes on reasonable grounds that a person has contravened a designated provision.

[6] In this case, the designated provisions are paragraph 602.31(1)(a) and section 602.71 of the CARs:

Compliance with Air Traffic Control Instructions and Clearances

602.31 (1) Subject to subsection (3), the pilot-in command of an aircraft shall

(a) comply with and acknowledge, to the appropriate air traffic control unit, all of the air traffic control instructions directed to and received by the pilot-in-command; and

[...]

Pre-flight Information

602.71 The pilot-in-command of an aircraft shall, before commencing a flight, be familiar with the available information that is appropriate to the intended flight.

[7] The maximum penalty, for an individual, for contraventions of both subsection 602.31(1) and section 602.71 is \$3,000 each, as per Schedule II of Part I, Division VI and section 103.08 of the CARs.

[8] Subsection 7.91(4) of the *Aeronautics Act* provides that the burden of establishing the contravention lies with the Minister.

C. Did the applicant contravene paragraph 602.31(1)(a) of the CARs?

[9] During the hearing, the applicant, Mr. Gunapalasingam, admitted to this contravention and provided no evidence or testimony during the review hearing regarding any mitigating circumstances to this violation.

[10] The Tribunal considered the monetary penalty of \$750, as set by the Minister pursuant to subsection 7.7(1) of the *Aeronautics Act*, appropriate as this was the applicant's first contravention under paragraph 602.31(1)(a) of the CARs. The Tribunal did not receive any substantive mitigating or aggravating factors that affected the monetary penalty amount.

D. Did the applicant contravene section 602.71 of the CARs?

[11] In accordance with subsection 7.91(4) of the *Aeronautics Act*, the Minister has the burden of proof to establish that the applicant contravened section 602.71 of the CARs. Therefore, I will determine whether the Minister has proven the following elements of the alleged contravention:

- a. The contravention occurred on or about May 12, 2021, at 11:17Z, at Toronto Buttonville Municipal Airport (CYKZ) Ontario.
- b. The applicant was the pilot in command operating a Cessna R172K bearing registration marks C-GTON.
- c. Before commencing the flight, the applicant failed to familiarize himself with the available information that is appropriate to the flight towards Montreal Saint-Hubert Airport (CYHU).

[12] The respondent adduced evidence through 16 exhibits and testimony from one witness. The respondent's witness was Sylvain Melançon, Civil Aviation Safety Inspector with the Aviation Enforcement Branch of Transport Canada.

[13] The applicant adduced no exhibits but did testify during the review hearing.

[14] Throughout the hearing, there were several matters that were generally agreed on for both the Minister and the applicant. There is no question that the applicant, Mr. Gunapalasingam, operated aircraft C-GTON on May 12, 2021, from Toronto Buttonville Municipal Airport to Montreal Saint-Hubert Airport.

[15] As such, the main issue to review is evidence and testimony regarding whether, before commencing the flight, Mr. Gunapalasingam failed to familiarize himself with the available information that is appropriate to the flight towards Montreal Saint-Hubert Airport (CYHU).

[16] Subsection 7.91(4) of the *Aeronautics Act* provides that the burden of proof for establishing the contravention of a designated provision is on the Minister and subsection 15(5) of the *Transportation Appeal Tribunal of Canada Act* provides that the standard of proof in any matter before the Tribunal is on a balance of probabilities. The elements of a contravention of subsection 602.71 of the CARs, as alleged in the Notice, must be proven through evidence and testimony presented to the tribunal.

[17] I have carefully considered all the evidence and have found that the testimonies of the Minister's witness and that of the applicant were credible and sincere. However, the Minister has provided inadequate evidence to establish, on a balance of probabilities, that Mr. Gunapalasingam failed to familiarize himself with the procedures and information prior to commencing the flight to Saint-Hubert, thereby contravening section 602.71 of the CARs.

[18] The evidence offered by the Minister's representative specifically refers to the contravention of paragraph 602.31(1)(a) of the CARs. In reviewing the Exhibits 1 through 16 and the Minister's witness's testimony, the only conclusion is that the evidence is not compelling enough for me to determine that Mr. Gunapalasingam failed to familiarize himself with the procedures and information prior to commencing the flight to Saint-Hubert because the evidence did not pertain to the contravention of section 602.71 of the CARs and for the reasons set out below.

[19] The applicant testified under oath that he had prepared for this flight by reviewing the documentation in relation to the Saint-Hubert airport procedures and by speaking with other pilots who had been at Saint-Hubert. I have no reason to doubt his testimony. He was able to properly establish communication with Saint-Hubert air traffic control (ATC) and communicate his intention to land. Once in the airport control zone, the applicant had issues trying to follow the ATC instructions.

[20] During the applicant's cross-examination, the Minister's representative drew a cause-and-effect presumption that the only plausible explanation of the applicant landing on TAXIWAY E instead of RWY 06L is that the applicant did not prepare adequately for this flight. Without any evidence to corroborate this position, the argument, in my opinion, is flawed.

[21] In reviewing the written ATC transcript (Exhibit 12) between ATC and Mr. Gunapalasingam and the ATC RADAR screen picture (Exhibit 13), the applicant was clearly having issues understanding the controller's instruction to follow a geographical landmark (highway) and trying to locate a traffic landing before him.

[22] The applicant requested some assistance from the controller in trying to position the aircraft for landing. He was able to properly align with the RWY 06L initially, but from testimony and evidence, we can determine that his situational awareness and stress during the approach were elevated. This can be attributed, as per his testimony, to a passenger that was

interrupting during the radio transmissions, his unfamiliarity with this new airport and attempting to acquire a traffic visually.

[23] To argue that this approach by the applicant is directly related to his planning before commencing the flight is difficult to state, and even more so when no corroborating evidence is produced. During the Minister's cross-examination, the applicant clearly stated that he had prepared for this flight. I would agree with this. There is no definitive evidence presented by the Minister's representative that the applicant did not familiarize himself with the available information that was appropriate to the flight to Montreal Saint-Hubert Airport.

[24] The Minister of Transport has not proven, on a balance of probabilities, that the applicant contravened section 602.71 of the *Canadian Aviation Regulations*. Consequently, the penalty of \$750 imposed by the Minister is cancelled.

III. DETERMINATION

[25] Contravention 1: The Minister of Transport has proven, on a balance of probabilities, that the applicant contravened paragraph 602.31(1)(a) of the *Canadian Aviation Regulations*. As such, the administrative monetary penalty of \$750 is upheld.

[26] Contravention 2: The Minister of Transport has not proven, on a balance of probabilities, that the applicant contravened section 602.71 of the *Canadian Aviation Regulations*. Consequently, the penalty of \$750 imposed by the Minister is dismissed.

[27] The total amount of \$750 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 determination.

April 20, 2023

(Original signed)

Franco Pietracupa
Member

Appearances

For the Minister:	Michel Tremblay
For the Applicant:	Self-represented