



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Stephen Walter Dodsworth v. Canada (Minister of Transport)*, 2023 TATCE 22 (Review)

TATC File No.: W-4772-68

Sector: Aviation

BETWEEN:

Stephen Walter Dodsworth, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on January 25 and February 13, 2023

Before: Keith Whalen, Member

Rendered: May 9, 2023

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport has not proven, on a balance of probabilities, that the applicant did not meet the qualifications or fulfil the conditions necessary for the issuance of a Canadian aviation document, per paragraph 6.71(1)(b) of the *Aeronautics Act*. Pursuant to subsection 6.72(4) of the *Aeronautics Act*, the decision to refuse to issue the document is referred back to the Minister for reconsideration.

I. BACKGROUND

[1] On December 23, 2021, Transport Canada (TC) issued a Notice of Refusal to Issue or Amend a Canadian Aviation Document (Notice) to the applicant, Mr. Stephen Walter Dodsworth. The Notice advised that the Minister of Transport (Minister) had refused to issue his B73C Pilot Proficiency Check (PPC) pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*. There is no information in the Notice referring to the date of the failed PPC or to the flight test report. The Notice only states: “Failure to successfully demonstrate pilot proficiency in accordance with Canadian Aviation Regulation 725.106 Schedule I (2)(h)(i) – ‘Pilot Proficiency Check (PPC)’.”

[2] The failed PPC occurred on December 10, 2021, and the flight test report from that date (Exhibit 4) indicated that the applicant had received a mark of “1” on Exercise 21 – Pilot Not Flying (PNF) Duties (also known as Pilot Monitoring [PM] Duties) that was conducted in a synthetic flight training device (simulator). The report stated:

21) PNF Duties – Technical skills and knowledge – Critical error – Unacceptable following of SOPs rules and regulations – Unable to demonstrate familiarity with procedures contained in the QRH – Ineffective ability to read and complete non normal checklist provided confusion which resulted in approximate 200’ altitude excursion – Unable to maintain situational awareness relating to master caution recall.

[3] On January 7, 2022, the applicant requested that the Transportation Appeal Tribunal of Canada (Tribunal) review the Minister’s decision.

II. ANALYSIS

A. Issue

[4] Is the refusal to issue the applicant’s Canadian aviation document (CAD) justified? Specifically, was the grade of “1” on Exercise 21 – Pilot Monitoring (PM) Duties justified given Mr. Dodsworth’s performance?

B. Legal framework

[5] Pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*, the Minister may refuse to issue a CAD if the applicant “does not meet the qualifications or fulfil the conditions necessary for the issuance or amendment of the document”.

[6] The Minister is alleging that the applicant failed to successfully demonstrate pilot proficiency in accordance with *Canadian Aviation Regulations* (CARs) Standard 725.106, Schedule I, paragraph (2)(h)(i), which reads as follows:

(h) Abnormal and Emergency Procedures

(i) The crew shall demonstrate use of as many of the air operator’s approved Standard Operating Procedures and abnormal and emergency procedures for as many of the situations as are necessary to confirm that the crew has an adequate knowledge and ability to perform these procedures.

[7] The Minister relied on pages 42 to 45 (Exhibit 8) of the TC manual TP 14727 – *Pilot Proficiency Check and Aircraft Type Rating Flight Test Guide (Aeroplane) (Flight Test Guide)* which provides the aim, description, and performance criteria of the PM duties assessment. In the description section, it states, “Each pilot will demonstrate PM duties sufficient to determine compliance with knowledge of, aircraft procedures and company SOP’s [Standard Operating Procedures]. This will include normal and abnormal procedures while operating as PM.” The Minister relied on the following three performance criteria: (d) demonstrate familiarity with the procedures contained in the Quick Reference Handbook (QRH) or paper checklist; (f) maintain situational awareness; and (g) effectively share cockpit workload.

[8] The Minister also relied on pages 44 to 50 (Exhibit 9) of the TC manual TP 6533 – *Approved Check Pilot Manual (ACP Manual)*, which incorporates the PPC test performance criteria and 4-Point Marking Scale – Grading Matrix.

C. Parties’ positions

[9] The Minister’s representative argued that the applicant was unable to perform his PM duties and referred to two scenarios that warranted the overall grade of “1”. In both scenarios, the Minister cited noncompliance with Technical and Non-Technical Skill Elements. The first related to the applicant’s handling of the “DSPLY Source 1” non-normal fault, which the Minister claimed resulted in the aircraft climbing approximately 200 feet above the assigned altitude.

[10] The second argument was that the PM demonstrated a lack of knowledge with the procedures contained in the QRH, resulting in the flight crew being unable to assess the “Engine High Oil Temperature” non-normal scenario and respond in an effective and correct way.

[11] The Minister’s representative called one witness, Mr. Jeff Lancaster, a TC accredited Approved Check Pilot (ACP), employed with Flair Airlines (Exhibit 2) with 25 years’ experience as an ACP. Mr. Lancaster was the ACP for the PPC on December 10, 2021, and he entered 10 exhibits.

[12] The applicant, Mr. Dodsworth, argued that he did the checklists in accordance with the guidance from Flair Airlines and Boeing for the Boeing 737 aircraft type. He also argued that the PPC debrief was not done in accordance with the *ACP Manual*, relying on pages 57 to 85 of the manual (Exhibit 23).

[13] The applicant called one witness, but on the day of the hearing, this witness declined to testify noting that due to his position as a TC ACP and his lack of involvement in the actual PPC, it would be a conflict of interest to give testimony for the applicant. The applicant continued with his case without this witness, testified on his own behalf, and entered 19 exhibits.

D. PPC simulator flight portion – “DSPLY Source 1” non-normal fault

[14] In this scenario, the Minister argued that the PM’s lack of knowledge and ineffective ability to read and complete a non-normal checklist provided confusion and that the PM intentionally disconnected the autopilot resulting in an altitude deviation of approximately 200 feet, compromising the safety of the aircraft. The Minister argued that Mr. Dodsworth was

unable to meet performance criteria (d) demonstrate familiarity with the procedures contained in the QRH or paper checklists in the *Flight Test Guide* (Exhibit 8).

[15] I find that the Minister has not met the burden of proof to demonstrate that the applicant's knowledge was unacceptable related to the Technical Skills and Knowledge element.

[16] Mr. Lancaster introduced the B73C Recurrent PPC Script CF2 Captain/First Officer (Capt/FO) that was valid at the time of the PPC (Exhibit 3). He explained that this script outlined the conduct of the PPC and is written for a Capt/FO crew complement, with the captain having the final authority in determining what course of action is to be followed. Both the captain (Pilot Flying [PF]) and the First Officer (PM) advised Mr. Lancaster that they were ready for the PPC and that they had no questions during the PPC pre-briefing.

[17] The B73C Recurrent PPC Script called for the ACP to introduce a Display Source 1 non-normal fault once the after-take-off checklist is completed. The QRH (Exhibit-10) checklist item for this fault calls for the PM to read the condition statement and then choose the appropriate response.

[18] Mr. Lancaster testified that due to the PM's lack of knowledge, he diagnosed the problem incorrectly resulting in the PM intentionally disconnecting the autopilot and not advising the PF of his intentions to change the autopilot source, resulting in an altitude deviation of approximately 200 feet, and compromising the safety of the aircraft. In the QRH (Exhibit 10), Mr. Lancaster wrote next to the "DSPLY Source 1" non-normal checklist that the "A/P [autopilot] disconnected, no idea why." He also made a note that the autopilot was not selected to Source B as required by the checklist. Of interest is Mr. Lancaster's comment that selecting the other autopilot display source will disconnect the autopilot.

[19] Mr. Dodsworth testified that he chose the "DSPLY Source 1" non-normal checklist, and the PF confirmed that this was the correct checklist. He read and observed the conditions and notes associated with this emergency, moved to the next step, where he verified the flight director indications and annunciators and then selected autopilot B.

[20] I find Mr. Lancaster's testimony regarding the autopilot to have less weight, as the evidence shows that there are other possibilities as to why the autopilot disconnected. I conclude that the PM did not intentionally disconnect the autopilot. I also believe that the autopilot was selected to Source B, as the PPC continued and there was no evidence presented that the autopilot was not available to the PF during the remainder of this scenario.

[21] I am not convinced by Mr. Lancaster's argument that the problem was diagnosed incorrectly due to lack of knowledge, resulting in the PM intentionally disconnecting the autopilot. It appears to me that the checklist was followed, and the emergency scenario was completed in accordance with the Boeing 737 *Flight Crew Operations Manual* (FCOM) and the B73C Recurrent PPC Script.

[22] In any event, and regardless of whether the performance criteria has been met, I find that the Minister has not proven that the applicant's actions led to an approximate 200-foot altitude deviation that compromised the safety of the aircraft. There was no evidence provided by the Minister to confirm what the appropriate altitude ought to have been. Further, there was no

evidence presented by the Minister to support the occurrence of any deviation, other than Mr. Lancaster's statement, in passing, that it occurred. Therefore, I am not convinced, on the balance of probabilities, that a deviation took place or that the safety of the aircraft was compromised.

[23] The Tribunal further notes that upon completion of the checklist items, the ACP then ended the scenario and continued the PPC with both the PF and PM receiving a grade of "2" for the exercise, which Mr. Lancaster testified that he recorded in the column marked "Grade" in his personal notes (Exhibit 5). The Tribunal also notes that a grade of "2" is a pass in accordance with the *ACP Manual* (Exhibit 9). This grade is defined as a "major error" with poor practical understanding and poor following of Standard Operating Procedures (SOPs), rules and regulations. The provision of a grade of "2" is inconsistent with the Minister's argument that the applicant did not meet the performance criteria.

E. PPC simulator flight portion – #1 "Engine High Oil Temperature" non-normal fault

[24] The Minister argued that in this scenario, the PM identified the incorrect response to the non-normal fault and read the checklist like a "story book," which, in accordance with the *Flight Test Guide* (Exhibit 8), meant that he did not meet the following three performance criteria for Exercise 21 – PM Duties: (d) demonstrate familiarity with the procedures contained in the QRH or paper checklist; (f) maintain situational awareness; and (g) effectively share cockpit workload.

[25] I find that the Minister has demonstrated that the applicant failed to meet all three performance criteria.

[26] The ACP introduced a #1 "Engine High Oil Temperature" non-normal fault when climbing through 10,000 feet. The QRH checklist (Exhibit 10) for this non-normal checklist calls for the PM to read the condition statement and then chose the "one" appropriate response. In this case the temperature was at or above the red line which necessitated going to the "Engine Failure or Shutdown" checklist on page 7.14 of the Boeing 737 FCOM.

[27] In the "Condition" statement of the "Engine Failure or Shutdown" checklist, it states that if one of the four conditions are met, then you must choose one of the three options that followed. On page 7 of the QRH checklist (Exhibit 10), Mr. Lancaster highlighted the third condition which existed for this scenario, and the condition that the applicant should have selected: "Airframe vibrations with abnormal engine indications do not exist and an engine has not separated."

[28] Mr. Dodsworth testified that after selecting the "Engine High Oil Temperature" non-normal checklist on page 7.22 (Exhibit 17) of the Boeing 737 FCOM, he chose the first item which directed him to the "Engine Failure or Shutdown" checklist on page 7.18 (Exhibit 18). He then chose the first option again, "Airframe vibrations with abnormal engine indications exists." This selection then directed him to the "Engine Fire or Engine Severe Damage or Separation" checklist on page 8.2 (Exhibit 19). Note that the Minister's Exhibit 10 and the applicant's Exhibits 17 to 19 display the same information, but the page numbering is different.

[29] Mr. Dodsworth testified that he started to action the "Engine High Oil Temperature" non-normal checklist when he perceived that the engine failed due to high vibration. He advised the

PF (the captain) of the engine failure with high vibration and the PF told him to continue with the “Engine High Oil Temperature” checklist, even though (according to the PM) the engine had failed. To avoid a confrontation with the PF, he did complete the “Engine High Oil Temperature” checklist as directed. When the PF asked for the engine to be shut down, the PM went to the “Engine Fire or Engine Severe Damage or Separation” rather than Step 2 in the checklist which states, “Do an engine shutdown only when flight conditions allow.” The PM said he questioned the PF “in 3 different ways” regarding the fact that the engine had failed, but the PF appeared not to recognize that the engine had failed. In fact, the Tribunal notes that the evidence suggests that the engine continued to operate until it was shut down as part of the checklist procedures.

[30] Mr. Dodsworth objected to Mr. Lancaster’s statement, “you read the checklist like a story book.” Mr. Lancaster had indicated that the PM’s knowledge of the checklist led him to read the checklist in a fashion where he moved from an item to the next in line and didn’t provide verbal cues or feedback to the PF.

[31] I deduced from Mr. Lancaster’s testimony that reading a checklist is different from reading a story book in that with a checklist you are required to analyze the conditions and move around the checklist to locate the appropriate responses and communicate with the other crewmember. It appears that the applicant chose the first option in various checklists, possibly without having reviewed all the options in the checklist in their entirety to select the most appropriate item.

[32] The PM correctly identified the #1 “Engine High Oil Temperature” fault; however, he then selected the “Airframe vibrations with abnormal engine indications exists” checklist. While he identified the correct non-normal checklist, he did not appear to follow the flow of that checklist or read the checklist in its entirety to ensure the appropriate selection was made. This led to the incorrect subpart being chosen and demonstrates a lack of knowledge of these procedures.

[33] Therefore, I conclude that the Minister has demonstrated that Mr. Dodsworth displayed a lack of knowledge with the procedures contained in the QRH.

[34] Regarding the Minister’s argument that the PM did not demonstrate situational awareness as noted above, while the applicant initially selected the correct “Engine High Oil Temperature” checklist, he did not properly select the sub-checklist – he should have chosen “Airframe vibrations with abnormal engine indications do not exist and an engine has not separated.” The script (Exhibit 3) suggests that the engine did not fail because of the scenario, and I therefore find that the PM misidentified the condition where the engine had failed with abnormal engine indications and airframe vibrations. This demonstrates a lack of situational awareness relating to the current aircraft state.

[35] Regarding the allegation that the PM did not effectively share cockpit workload, I find that the applicant did not verify with the PF as to which part of the checklist to action and that there was a lack of coordination and cockpit workload sharing between the PF and PM regarding determining the status of the engine in the initial stages of the scenario.

[36] Mr. Lancaster assessed a grade of “2” for this exercise, which he recorded in the column marked “Grade” in his personal notes (Exhibit 5). I note that this evidence would support a “passing” grade for this scenario and would be inconsistent with the Minister’s argument that an overall failure was warranted. However, I find based on the evidence, and on a balance of probabilities, that the three performance criteria were not met. I agree with the Minister that the evidence supports that the applicant did not meet performance criteria (d), (f) and (g) for Exercise 21 – PM Duties.

F. Was the grade of “1” on Exercise 21 – PM Duties warranted?

[37] The Minister argued that a failing grade on Exercise 21 – PM Duties was warranted because of a Technical Skills and Knowledge critical error being made resulting from the PM’s overall performance up to the point of the termination of the PPC.

[38] The applicant disagreed that this performance warranted a score of “1” and believed that he had met the performance criteria in both scenarios.

[39] Mr. Dodsworth entered email evidence of a conversation in December 2021 between TC employees Joel Brown and Chris Orescan regarding the PPC (Exhibits 28 and 29). The discussion was about the clarity of Mr. Lancaster’s comments on the flight test report (Exhibit 4). Mr. Brown concluded that he and Mr. Orescan both agreed that “this was an error, and not a deviation” and is not worth further dispute. These two emails confirm that they agree with the ACP’s decision that the PM made an error in accordance with the 4-Point Marking Scale; however, there was no discussion on the emails as to the severity of the error. Although it’s not entirely clear which scenario the two are discussing, it is clear that the Minister has argued, and these letters support, that there was an error (as opposed to a deviation).

[40] Although not specifically argued at the hearing, there is some suggestion from the Minister that the alleged altitude deviation from the first scenario resulted in a critical error (safety of the aircraft was compromised). However, I have already found that there was no evidence to support the allegation of a deviation or that safety was compromised. Further, I have already found that there was not sufficient evidence to show that the applicant failed to demonstrate adequate knowledge of the QRH in the first scenario. Therefore, I will not be considering any alleged “error” from the first scenario and will only consider the second scenario in determining whether a grade of “1” was warranted.

[41] Mr. Lancaster stated that his overall assessment of the Technical Skills and Knowledge is based on a “critical error” which is defined in the 4-Point Marking Scale – Grading Matrix (Exhibit 9) as “Unacceptable practical understanding” and “Unacceptable following [of] SOPs, rules and regulations.”

[42] The *ACP Manual* (Exhibit 9) defines the marking scale for the Technical Skills Elements on which the PM was assessed and, ultimately, on which the refusal to issue the applicant’s CAD was based. This document defines an “error” as “a qualitative assessment of an action or inaction by a flight crew that leads to a variation from flight crew intentions or expectations.” It also defines the error severity for critical and major. A “critical error” is “[a]n action or inaction that is consequential to the completion of a task, procedure, or manoeuvre; **and** Undesired Aircraft

State (UAS) occurred” [emphasis added]. The only difference between the critical and major severity is that a UAS did not occur for the major severity.

[43] Subsection 5.14(2) of the *ACP Manual* defines “UAS” as “an aircraft position, speed, attitude or configuration that results from a flight crew error, action or omission which clearly reduces safety margins.”

[44] I agree that, in the second scenario, the applicant demonstrated a lack of familiarity and knowledge of the QRH; however, I am not convinced that it could be characterized as “unacceptable” practical understanding and following of SOPs, rules and regulations. As I read the grading matrix, for the applicant’s performance to be assessed as a critical error, a UAS would have had to have taken place.

[45] The Minister did not allege any UAS stemming from the second scenario; therefore, I cannot find that a critical error has been established.

[46] Further, Mr. Lancaster assigned a passing grade of “2” (Exhibit 5) for both non-normal scenarios which, is inconsistent with the criteria of a critical error, in accordance with the *ACP Manual* (Exhibit 9).

[47] Mr. Lancaster testified that the PM demonstrated Non-Technical Skill Elements as defined in section 5.19 of the *ACP Manual* (Exhibit 9). These behaviours, found in paragraphs 5.19(3)(b), (d), (f), (h) and (i), included situational awareness, communications, task saturation, sharing of information, aircraft status and mode changes and potential distractions. Although Mr. Lancaster referred to Non-Technical Skill Elements as a basis for the failing grade, I did not give any weight to this testimony as the Notice of Refusal and the grading of “1” for the performance of the PM duties on the flight test report were based solely on Technical Skills and Knowledge. Subsection 5.19(4) of the *ACP Manual* states that the minimum mark that can be assigned to a Non-Technical Skill Element is a mark of “2”.

[48] The Minister did not present any evidence that the aircraft was put in a UAS resulting from the actions of the PM. An error where a UAS did not occur is defined as either major or minor severity and a mark of “1” is not warranted in either of these two severity ratings. A mark of “1” does not accurately reflect Mr. Dodsworth’s overall performance on his PPC and, therefore, was not justified.

G. Post-flight debrief

[49] Mr. Dodsworth argued that he was very concerned that the debrief was not completed in accordance with the *ACP Manual* (Exhibit 23). He said that the ACP did not explain why he failed the PPC, didn’t advise that he had a right to appeal the decision and generally did not follow the traditional debrief guidelines. A traditional debrief should include an overall assessment of the flight check; performance strengths and weaknesses; questions and feedback; and specific actions for improvement.

[50] There was insufficient evidence presented for me to determine the content or extent of the debriefing that took place, and the two parties had different recollections of the debrief.

[51] I conclude that the debrief did take place after the PPC, as it there is an annotation on Mr. Lancaster's personal notes (Exhibit 5) stating such. I acknowledge the applicant's concerns; however, I find that there is no need to determine whether or not the debrief was conducted according to the manual, as this matter has no impact on my decision regarding the scoring of "1" for the PPC on Exercise 21 – PM Duties.

III. DETERMINATION

[52] The Minister of Transport has not proven, on a balance of probabilities, that the applicant did not meet the qualifications or fulfil the conditions necessary for the issuance of a Canadian aviation document, per paragraph 6.71(1)(b) of the *Aeronautics Act*. Pursuant to subsection 6.72(4) of the *Aeronautics Act*, the decision to refuse to issue the document is referred back to the Minister for reconsideration.

May 9, 2023

(Original signed)

Keith Whalen

Member

Representations

For the Minister: Michel Tremblay

For the Applicant: Self-represented