



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Andrew James Moore v. Canada (Minister of Transport)*, 2023 TATCE 23 (Review)

TATC File No.: RA-098-22

Sector: Aviation

BETWEEN:

Andrew James Moore, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on March 21, 2023

Before: Arnold Olson, Member

Rendered: May 10, 2023

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport has proven, on a balance of probabilities, that the applicant does not meet the qualifications or fulfil the conditions necessary for the issuance of the Canadian aviation document per paragraph 6.71(1)(b) of the *Aeronautics Act*.

I. BACKGROUND

[1] On August 23, 2022, Transport Canada (TC), on behalf of the Minister of Transport (Minister), advised Mr. Andrew James Moore, the applicant, that pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*, he did not meet the qualifications for the issuance of an Airline Transport Pilot Licence – Aeroplane.

[2] Appendix A of the letter indicated the following:

In reviewing your log book, it has been determined that you do not meet the qualifications for the issuance of an Airline Transport Pilot Licence – Aeroplane.

Specifically, CAR's section 421.34 (4) (a) requires 250 hours of pilot-in-command, 100 hours cross country including a minimum of 25 hours at night:

(4) Experience

(a) 250 hours pilot-in-command flight time in aeroplanes which shall include where applicable, a maximum of 100 hours pilot-in-command under supervision flight time completed in accordance with Section 421.11. The pilot-in-command and/or pilot-in-command under supervision flight time shall include a minimum of 100 hours cross-country flight time of which a minimum of 25 hours shall have been by night;

[3] On September 19, 2022, Mr. Moore requested that the Transportation Appeal Tribunal of Canada (Tribunal) review the Minister's decision.

II. PRELIMINARY ISSUE

[4] As a preliminary issue, the Minister's representative argued that the Tribunal did not have jurisdiction to hear this matter. He claimed that the applicant's real reason for requesting a review by the Tribunal was a profound unhappiness with how he had been treated by TC rather than the actual Minister's decision to refuse to issue the Airline Transport Pilot Licence (ATPL). For support, he referenced two emails written by Mr. Moore, as well as a National Post newspaper article Mr. Moore placed before the Tribunal. The first email was written to Minister Alghabra, dated September 8, 2022, in which Mr. Moore detailed his frustrations. A portion of that email provides the gist:

The unjustifiably lengthy time of service provided, the inaccuracy of the authorization received, the poor accessibility of information, the punishing process and the unbelievable staff behavior has made this process completely unacceptable for a department representing the Government of Canada.

[5] On November 9, 2022, a second email was written by Mr. Moore to Mr. Jamie Johnson, Regional Director of Civil Aviation, Pacific Region, which included the following statement:

If I don't meet the hour requirement under the TC guidance, I do not meet it. I cannot therefore legally obtain the license, simple as that. My concerns are the way in which these rules are communicated.

[6] The newspaper article published in the National Post on July 19, 2022, was titled, "‘Completely dropped the ball’: Transport Canada's endless delays ground pilots" with the

subtitle, “Certifications that should only take 30 to 40 days are taking a year or longer, say frustrated members of the aviation industry.”

[7] The Minister’s representative argued that these emails and the newspaper article establish two elements: first, that the applicant is very unhappy with TC and secondly, that Mr. Moore’s email to Mr. Johnson means that he has already agreed that he did not meet the experience requirements for issuance of a TC licence. Mr. Moore was just unhappy with his dealings with TC and did not dispute the Minister’s decision to refuse to issue the Canadian aviation document (CAD). The Minister maintained that for these reasons, the Tribunal did not have jurisdiction to hear this matter because it could not, and should not, properly be heard.

[8] In reply, I observed that the applicant’s unhappiness with TC merely placed him in the company of everyone else who requests a review by the Tribunal. This is the nature of the role of the Tribunal: we are a review mechanism for those who are unhappy with a Minister’s decision. Secondly, I noted that the Minister’s representative had not accurately quoted from Mr. Moore’s email; his comment to Mr. Johnson was predicated with the word “If.” This word simply pointed out the Minister’s burden – to prove that in fact the applicant did not meet the experience requirement for issuance of a CAD. For these reasons, I ruled that the matter could indeed be properly heard before the Tribunal and that I would hear it.

[9] I would add that subsection 6.72(1) of the *Aeronautics Act* specifically grants the Tribunal jurisdiction to review notices issued under paragraph 6.71(1)(b). In these reviews, subsection 6.72(4) of the *Aeronautics Act* provides that the Tribunal may determine the matter by confirming the Minister’s decision or by referring the matter back to the Minister for reconsideration.

III. ANALYSIS

A. Issue

[10] The issue to be determined is whether Mr. Moore has logged sufficient flight hours to meet the qualifications or conditions necessary for issuance of an Airline Transport Pilot Licence.

B. Legal framework

[11] Paragraph 6.71(1)(b) of the *Aeronautics Act* reads:

6.71 (1) The Minister may refuse to issue or amend a Canadian aviation document on the grounds that

[...]

(b) the applicant or any aircraft, aerodrome, airport or other facility in respect of which the application is made does not meet the qualifications or fulfil the conditions necessary for the issuance or amendment of the document; [...]

[12] *Canadian Aviation Regulations* (CARs) Standard 421, “Flight Crew Permits, Licences and Ratings,” is incorporated by reference into the CARs through section 401.01, which states:

401.01 Any reference in this Subpart to the personnel licensing standards is a reference to the *Personnel Licensing and Training Standards respecting Flight Crew Permits, Licences and Ratings*.

[13] Since this standard is incorporated by reference, it has the same authority as the CARs. ATPL requirements found under paragraph 421.34(4)(a), which states:

An applicant shall have met the training requirements for the issue of a Commercial Pilot Licence - Aeroplane that is not restricted to daylight flying and completed a minimum of 1500 hours total flight time of which a minimum of 900 hours shall have been completed in aeroplanes. The total flight time shall include a minimum of:

(a) 250 hours pilot-in-command flight time in aeroplanes which shall include where applicable, a maximum of 100 hours pilot-in-command under supervision flight time completed in accordance with Section 421.11. The pilot-in-command and/or pilot-in-command under supervision flight time shall include a minimum of 100 hours cross-country flight time of which a minimum of 25 hours shall have been by night; [...]

[14] The term “pilot-in-command under supervision” (PIC U/S) specified in paragraph 421.34(4)(a) above refers to Standard 421.11, “Airline Transport Licence Training (Pilot-in-command Under Supervision).” The relevant sections are as follows:

(1) All air operators using large aeroplanes may institute programs of supervision to allow co-pilots to credit flight time as pilot-in-command time.

[...]

(5) An applicant shall be credited flight time as follows:

(a) not more than 50% of the pilot-in-command under supervision flight time for a total of up to 100 hours in the case of an Airline Transport Pilot Licence - Aeroplane [...] may be credited toward pilot-in-command experience requirements; [...]

[15] Section 401.11 of the CARs states:

Airline Transport Licence — Training Program and Recording of Time

401.11 (1) No person shall record in a personal log the flight time acquired by a co-pilot while acting as pilot-in-command under supervision, unless the flight time

(a) was acquired in accordance with an airline transport pilot licence training program approved by the Minister pursuant to subsection (2) and carried out in accordance with the personnel licensing standards; and

(b) is recorded in the personal log in accordance with the personnel licensing standards.

(2) The Minister shall approve a training program referred to in paragraph (1)(a) if the applicable requirements set out in the personnel licensing standards are met.

C. Flight hour qualifications or conditions necessary for issuance of an ATPL

(1) *How many flight hours has Mr. Moore logged toward meeting the flight time requirement for issuance of an ATPL?*

[16] The Minister argued that Mr. Moore’s logbooks contain some flight hours that are eligible toward meeting the minimum experience requirements for issuance of an ATPL, as well as other logged flight hours not eligible for credit.

[17] Appearing for the Minister, Ms. Catherine Kettner is a TC Service Team Lead, Personnel Licencing. She stated that the reason for the Minister's refusal to issue the ATPL was based on her analysis that the applicant had not logged the required number of hours to meet the experience requirement. She contrasted the minimum experience required for an ATPL against the applicant's logbook (Exhibit 6). Of the minimum requirement for 250 flight hours pilot-in-command (PIC), the applicant had logged 226.4 eligible hours. Of the required 100 hours PIC cross-country, the applicant had logged 67.9 eligible hours. Of the required 25 hours of night PIC cross-country, the applicant had logged 13.3 eligible flight hours. She noted that these numbers of logged hours did not meet the minimum required number of hours for issuance of an ATPL.

[18] Mr. Moore argued that his logbook also contains other flight hours that are eligible for credit toward the minimum requirements. These are "co-pilot" or "2nd pilot" flight hours that should be eligible for credit according to the "pilot-in-command under supervision" provisions specified in paragraph 421.34(4)(a) of the CARs. When these PIC U/S flight hours are properly included as PIC flight hours, he claimed to have logged 382.9 flight hours cross-country PIC, easily surpassing the 250-hour PIC and the 100-hour cross-country PIC minimum requirement; further, 191.7 of these flight hours are night PIC time and, therefore, exceed the 25-hour minimum.

[19] Mr. Moore takes the position that neither the regulations nor accompanying TC guidance documents exclude him from claiming this PIC U/S flight time for PIC credit.

(2) *What are the PIC U/S provisions of an airline transport pilot training program that is approved by the Minister?*

[20] Ms. Kettner explained that through an approved training program, as mentioned in Standard 421.11(5)(a) and incorporated by reference into the CARs, up to 50% to a maximum of 100 hours of logged co-pilot time, or 2nd pilot time, can be used toward the minimum 250 hours PIC requirement. The purpose of the program is to provide an enhanced pathway for experienced co-pilots to obtain an ATPL.

[21] Ms. Kettner also referred to paragraph 401.11(1)(a) of the CARs which specifies that for a person to log PIC U/S flight time, that experience must be acquired "in accordance with an airline transport pilot licence training program **approved by the Minister**" [emphasis added]. These programs are only provided by Canadian operators. In her experience, when an applicant is seeking to use PIC U/S flight time as PIC time, the application is also accompanied by a specific form letter to TC from the air carrier attesting that the flight time was acquired under a program approved by the Minister.

[22] The Minister's position is that Mr. Moore did not acquire his flight time through such a program approved by the Minister and therefore may not log PIC U/S flight time for PIC credit.

(3) *Is the crediting of PIC U/S flight hours available to pilots, such as Mr. Moore, who are logging time with foreign air carriers?*

[23] Ms. Kettner confirmed under cross-examination that TC accepts flight hours acquired with foreign air carriers. Exhibit 7 is a record of a lengthy email exchange with the applicant in which she stated, "We do however accept Foreign experience where the applicant holds an

equivalent ICAO licence.” She also confirmed that Exhibit 8, a TC guidance document titled “Licensing for foreign pilots” contains the section “Credit for foreign training and skills,” which states, “We will grant credits to foreign pilot licence holders if the foreign licence [...] comes from a country that is a member of the International Civil Aviation Organization (ICAO).” However, she clarified that, although TC will accept foreign flight experience credits such as Mr. Moore’s co-pilot experience toward total flight hours, it **will not** credit that experience as PIC U/S toward meeting the 100-hour PIC minimum requirement because that particular experience was not acquired under a program approved by the Minister, as specified by the regulations.

[24] Mr. Moore argued that he has, in fact, logged sufficient experience to be issued a Canadian ATPL. The co-pilot hours he has logged with an air carrier are from an ICAO country and should be accepted just as if they were logged with a Canadian air carrier. He points to the above-mentioned quotation from Exhibit 8, “We will grant credits to foreign pilot licence holders if the foreign licence [...] comes from a country that is a member of the [ICAO],” and notes that TC does not state a differentiation between some credits that are to be recognized and others that are not. Therefore, he takes the position that the regulations do not state that PIC U/S flight time can only be logged with a Canadian air carrier. As a result, his co-pilot hours should be credited as PIC U/S just as if they had been flown for a Canadian air carrier.

[25] Moreover, Mr. Moore maintains that the regulations make no mention that the Minister only approves programs by Canadian operators for recognition of PIC U/S flight experience. He points to Exhibit 9, a TC document titled “Co-pilot flight time criteria” that “harmonizes Canadian Requirements with ICAO’s equivalent Standard” and “provides additional guidance information for pilots with regard to the applying co-pilot time.” This document states:

YES a pilot who is qualified on type, and who is acting as first officer, **can legally log co-pilot flight time and credit** it towards an ATPL.

IF

1. The aircraft is **required to be operated** with a co-pilot....

OR

2. The **minimum flight crew is 2 pilots**.... [emphasis in the original]

He argued that he has acquired his co-pilot time with Cathay Pacific, an ICAO-certified airline, and that he is flying a Boeing 777, obviously a multi-crew aircraft. Thus, according to the TC guidance document, he should be able to legally log his co-pilot time just as if these hours were acquired with a Canadian air carrier and be credited toward an ATPL. With those credits included, he easily exceeds the specified flight hour minimums for issuance of an ATPL.

[26] The Minister maintained that Mr. Moore does not properly understand that Canadian air regulations generally apply only to Canadian flight operations. If a particular regulation is also to be applied to a foreign country it would include the phrase, “a contracting state.” The relevant regulations do not include that phrase and are therefore not applicable to the foreign airline through which Mr. Moore has logged the co-pilot flight time. However, the central issue remains: the Minister has not approved a program for the foreign air carrier that would provide for the crediting of PIC U/S flight experience.

[27] As analysis, I have examined Mr. Moore’s pilot logbook and have considered the applicability of the TC guidance documents. I note that as of August 30, 2019, Mr. Moore’s name appears in his logbook as “Co-pilot” or “2nd pilot” on the left side of the page for flight information purposes but appears as “First Pilot” on the right side of the page for the purpose of logging flight hours. This practice appears to be for the purpose of using co-pilot flight time as PIC U/S flight time. However, I note that no evidence was introduced indicating that Cathay Pacific airlines, a foreign air carrier, has a program approved by the Minister that would permit the crediting of PIC U/S flight hours. In the absence of such evidence, I therefore find that the Minister has not approved such a program.

[28] The regulation is clear – paragraph 401.11(1)(a) of the CARs states:

401.11 (1) No person shall record in a personal log the flight time acquired by a co-pilot while acting as pilot-in-command under supervision, unless the flight time

(a) was acquired in accordance with an airline transport pilot licence training program approved by the Minister [...]

Therefore, I find that Mr. Moore’s PIC U/S flight time may not be credited toward the PIC minimum requirements for issuance of a Canadian ATPL.

[29] I have also examined the two TC guidance documents that the Mr. Moore relies on to support his position that his foreign flight hours should be credited the same as if they were acquired through flying with a Canadian air carrier. I note that the section of the document “Co-pilot flight time criteria” to which Mr. Moore referred concerns whether operation of a particular aircraft, either by virtue of a Private Operators Certificate (POC) or Air Operator Certificate (AOC) requires a co-pilot. This section is not relevant to whether these co-pilot hours can be credited as PIC U/S flight time. It is true that these documents indicate that co-pilot flight hours from ICAO countries can be credited toward an ATPL, but it cannot be said that these documents allow for co-pilot hours to be credited as PIC U/S and, therefore, translated to PIC credits in the absence of a program authorized by the Minister. Unfortunately, neither of these guidance documents refer to section 401.11 of the CARs which, as mentioned above, disqualifies Mr. Moore from using PIC U/S flight time for the purpose of meeting PIC requirements of an ATPL.

[30] For the reasons above, I find that without the benefit of being able to log PIC U/S flight time Mr. Moore does not meet the minimum flight time requirements for issuance of an ATPL. I therefore confirm the Minister’s decision to refuse to issue the CAD.

[31] Still, I would note that it would be beneficial for foreign pilots if TC were to add clarification to the two guidance documents “Licensing for foreign pilots” and “Co-pilot flight time criteria” by adding a reference to section 401.11 of the CARs thereby informing them that a pilot with a foreign air carrier is disqualified from using PIC U/S flight time for PIC credits if the Minister has not approved the program. That key limitation is not apparent from a plain reading of these documents.

IV. DETERMINATION

[32] The Minister of Transport has proven, on a balance of probabilities, that the applicant does not meet the qualifications or fulfil the conditions necessary for the issuance of the Canadian aviation document per paragraph 6.71(1)(b) of the *Aeronautics Act*.

May 10, 2023

(Original signed)

Arnold Olson

Member

Representations

For the Minister: Martin Forget

For the Applicant: Self-represented