

Salvador v. Canada (Minister of Transport), [2017] C.T.A.T.D. No. 6

Canada Transportation Appeal Tribunal Decisions

Canada Transportation Appeal Tribunal

Halifax, Nova Scotia

Panel: James E. Macdonald, Member

Heard: November 29, 2016.

Decision: March 13, 2017.

2017 TATCE 06 (Review)

Docket: A-4185-68

MoT File No.: 5802-387681

[2017] C.T.A.T.D. No. 6

IN THE MATTER OF the review hearing requested by Fernando Miguel Salvador with respect to the Minister of Transport's refusal to issue a Canadian aviation document pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*, R.S.C., 1985, c. A-2. Between Fernando Miguel Salvador, Applicant, and Minister of Transport, Respondent

(31 paras.)

Case Summary

Tribunal Summary:

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

Appearances

For the Applicant: Mr. Fernando Miguel Salvador.

For the Respondent: Mr. Martin Forget.

REVIEW DETERMINATION AND REASONS

I. BACKGROUND

1 The notice of refusal to issue, dated March 24, 2016, states that qualifications or conditions necessary for issuance or amendment are not met or fulfilled as per paragraph 6.71(1)(b) of the *Aeronautics Act*. Details of the Minister's grounds for the decision are that on September 26, 2015, the applicant failed to meet the required

standards during a flight test conducted on BE02 flight simulator TC-65 at Flight Safety International, Downsview, Toronto, for the issuance of a pilot proficiency check (PPC).

2 On October 26, 2015, the applicant requested a review by the Transportation Appeal Tribunal of Canada (Tribunal) relating to a failed PPC.

II. STATUTES AND REGULATIONS

3 Paragraph 6.71(1)(b) of the *Aeronautics Act* reads as follows:

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; or

[...]

4 Transport Canada's *Pilot Proficiency Check and Aircraft Type Rating Flight Test Guide (Aeroplanes)*, First Edition (11/2007), TP 14727 (*Flight Test Guide*) provides that the following six elements are evaluated with a 4-point scale:

Performance

Aircraft Handling

Technical Skills and Knowledge

Situational Awareness

Flight Management Skills

Safety of Flight

5 Section 22 of the *Flight Test Guide* concerns pilot not flying (PNF) duties:

22. PNF DUTIES

Aim

Determine the candidate's ability to demonstrate proper division of PNF duties in accordance with the COM and SOP's.

Description

Each pilot will demonstrate PNF duties sufficient to determine compliance with and knowledge of, aircraft procedures and company SOP's. This will include normal and abnormal procedures while operating as PNF.

[...]

Performance Criteria

Base the assessment on the candidate's ability to:

- a. adhere to PNF duties as outlined in the COM and/or SOP's;
- b. complete necessary duties assigned by the pilot flying;
- c. maintain crew discipline during normal and abnormal procedures;
- d. demonstrate familiarity with the procedures contained in the QRH or paper checklist;

- e. demonstrate FMS inputs, as applicable;
- f. maintain situational awareness as a crew member;
- g. effectively share cockpit workload; and
- h. maintain crew awareness, or attention to flight mode annunciations.

III. EVIDENCE

A. Minister

(1) Mr. Glen Cooper

6 Mr. Glen Cooper was the Approved Check Pilot (ACP) during the simulator check ride. He stated he had been a pilot since 1969 and was employed on a part-time basis with Exploits Valley Air Services Ltd. (EVAS). Exhibit M-1 is a copy of Mr. Cooper's ACP application form dated May 7, 2014. Exhibit M-2 is a copy of the delegation of authority for Mr. Cooper dated August 11, 2014, which gave him approval to do the flight test on BE02 flight simulator TC-65.

7 Mr. Cooper testified that on September 26, 2015, he conducted a check ride on two candidates. Mr. Fernando Salvador was the pilot flying (PF) during the first half of the check ride and Mr. P. was the pilot not flying (PNF). During the second half, the roles were reversed.

8 Exhibit M-3 is a copy of the flight test report for Mr. Salvador dated September 26, 2015. Mr. Salvador received three marks of 2 and a 1 for PNF duties, and therefore failed his ride.

9 Exhibit M-4 is a copy of an email dated September 27, 2015, sent by Mr. Cooper to Mr. Paul Carter, who was the chief pilot of EVAS at that time. This was confidential information about the M-3 flight test report, so that the company could decide what to do with Mr. Salvador regarding the check ride results. It listed the weak points observed.

10 As PNF, Mr. Salvador took an excessive amount of time to find a "smoke" emergency check list and the safety of the flight was compromised. The ACP stated that while he did not time it with a stopwatch, time is crucial on any emergency check list, especially one concerning smoke. The PF asked for the emergency check list at the appropriate time. When it was not forthcoming, he took action, declared an emergency, climbed and got into clear skies, and therefore was in position to land at a nearby airport. In Exhibit M-5, the flight test report dated September 26, 2015, the PF was given a 2 on the same exercise. Mr. Cooper explained that because the PF managed the emergency in an appropriate manner, given that the emergency smoke check list was not forthcoming, he therefore did not fail this exercise.

(2) Mr. Edward James Tataryn

11 Mr. Tataryn works with the Flight Operations branch of Transport Canada in Moncton as a civil aviation safety inspector. He has worked in commercial aviation since 1970 and has been employed with Transport Canada for 25 years.

12 Exhibit M-6, a copy of extracts from the *Approved Check Pilot Manual*, was introduced. Mr. Tataryn explained that the ACP program allows individuals to conduct flight checks on pilots independent of having a Transport Canada civil aviation inspector present.

13 Exhibit M-7, a copy of *Pilot Proficiency Check and Aircraft Type Rating Flight Test Guide (Aeroplanes)*, First Edition, was introduced. Mr. Tataryn went on to explain the flight test report and noted that when Mr. Salvador was acting as PF, he received three marks of 2, which is not a failure. A fail is five marks of 2. As PNF, Mr. Salvador received a mark of 1 on the smoke drill, which is an automatic failure.

14 Exhibit M-8, a copy of the EVAS Beech 1900 D *Standard Operating Procedures* (SOP's), Amendment no. 9, was introduced. Mr. Tataryn pointed out that the check list on page 3-25, under "Electrical Smoke or Fire/Environmental System Smoke or Fumes", covered both electrical and environmental smoke, and was the check list in question.

15 Exhibit M-9, an extract from the *Canadian Aviation Regulations (CARs)*, section 704.108, was introduced. It states that according to the *Commercial Air Service Standards*, a flight crew member must successfully complete a pilot proficiency check.

16 Exhibit M-10, a copy of the CARs Part VII, *Commercial Air Service Standard 724* was introduced. Paragraph 724.108(1)(a) on Flight Crew Member Qualifications states that "*The pilot proficiency check (PPC) in an aeroplane shall be conducted in accordance with Schedule I or Schedule II of this section*".

17 Exhibit M-11, a copy of CARs Part VII, *Commercial Air Service Standard 724*, Schedule I on Synthetic Flight Training Devices was entered into evidence. This device, also known as a simulator, is the type used for the flight test. Subsection (1)(h) Abnormal and Emergency Procedures, explains the requirements.

B. Applicant

(1) Mr. Fernando Salvador

18 Mr. Salvador took the stand in his own defence. He stated that there were several discrepancies between his flight test and that of Mr. P.'s. He iterated that with regard to the smoke, he had completed the SOP's and the correct check list, and the issue was the matter of time. When cross-examined by Mr. Forget, he maintained that there was confusion over what kind of smoke and which check list was required. He also stated that it was a two-crew environment and that he failed, while Mr. P. was given a 2. He indicated that Mr. P. had called for the incorrect check list, however it was pointed out that according to the SOP's, the same check list is required for both situations (electrical smoke or fire, and environmental system smoke or fumes). Although the check list was eventually read, he agreed that it was not immediately read. He felt that it only took 20, 30 or 40 seconds and did not agree with Mr. Cooper's statement that it took an excessive amount of time. He pointed out that in some emergencies, it is necessary to act immediately, for example in an engine failure, or when control of the airplane is lost. He stated that fire is critical and should be dealt with in a timely manner, and in this instance, control of the aircraft never deviated.

IV. ARGUMENTS

A. Minister

19 Mr. Salvador failed his ride for PNF duties because he took an excessive amount of time to find a smoke emergency check list. Safety of the flight was compromised and risk was unacceptably mitigated, as stated by Mr. Cooper. According to the ACP program, you have to react rapidly because smoke is very dangerous and puts the safety of the flight in jeopardy. Although the check list was completed eventually, the time factor was the reason for the mark of 1. Mr. Cooper explained why the PF received a mark of 2 for the same exercise. It is possible for one pilot to fail a ride and the other pilot to pass, depending on how he handles the situation. It was pointed out that although Mr. Salvador felt it was not an excessive amount of time, perhaps 20 to 40 seconds, he was under stress at the time. However, Mr. Cooper's evaluation was undertaken in, what was for him, a non-stressful situation. Mr. Tataryn, who is a Transport Canada inspector, stated that the safety of the flight was compromised.

B. Applicant

20 Mr. Salvador stated that in an emergency situation with cabin smoke, the PF calls for memory checks. These were completed in a timely manner. Finding the appropriate check list took "an amount of time" because of

confusion between the pilot flying and pilot not flying. In the end, the correct check list was completed and the only issue was time. Control of the airplane was never lost.

V. ANALYSIS

21 The Minister argued that the grounds for refusing to issue a PPC to the applicant were that, pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*, the individual did not meet the qualifications or conditions necessary for the issuance. The Minister has created various guidelines, like the TP 14727 *Flight Test Guide*, that provide for the qualifications or conditions necessary for the issuance. The Tribunal is not strictly bound by TP 14727 but may apply it insofar as it furthers the purpose of paragraph 6.71(1)(b) of the *Aeronautics Act*. The Tribunal determines that TP 14727 furthers the purpose of the said provision and will apply its standards to the case at hand.

22 TP 14727 provides that the PNF must follow the SOP's, which provide specific calls to make in a smoke situation. TP 14727 provides that a PNF will fail where the performance is below standard, described as follows:

1	Below Standard	Unacceptable deviations from the qualification standards occur, which may include <i>excursions beyond prescribed limits that are not recognized or corrected in a timely manner.</i>	<ul style="list-style-type: none"> • Performance includes deviations that adversely affect the overall performance, are repeated, have excessive amplitude, <i>or for which recognition and correction are excessively slow</i> or nonexistent, or the aim of the task was not achieved. • Aircraft handling is rough or includes uncorrected or excessive deviations from specified limits. • <i>Technical skills and knowledge reveal unacceptable levels of technical proficiency and/or depth of knowledge.</i> • Behavior indicates lapses in situational awareness that are not identified or corrected by the pilot/crew. • Flight management skills are ineffective, unless continuously challenged or prompted by other crewmembers. • <i>Safety of flight is compromised. Risk is unacceptably mitigated.</i>
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[Emphasis Added]

23 According to the four-point marking scale in the *Flight Test Guide*, recognition and correction was excessively slow. Mr. Salvador made the admission that he had difficulty locating the correct check list.

24 This indicates that his technical skills and knowledge revealed unacceptable levels of technical proficiency and/or depth of knowledge.

25 I have no doubt that the testimony heard from all the witnesses is credible and sincere. Mr. Salvador's position revolves around one issue: time. He stated that after the memory check was completed, he estimated that he took 20, 30 or 40 seconds to procure the correct check list. The fact that the PF elected to take alternative action shows that the correct check list was not produced in a timely manner.

26 The ACP, Mr. Cooper, stated that Mr. Salvador took an excessive amount of time to find a "smoke" emergency check list. That was his evaluation of the time frame.

27 Time is crucial in a smoke situation and in Mr. Cooper's assessment, the excessive time he took to access the correct check list compromised the safety of the flight. Once Mr. Salvador had the check list, he had difficulty finding the correct page. The PF was getting frustrated, and the ACP stated that the situation was getting serious.

28 The PNF stated that there was confusion over which check was required. There is only one check list for "electrical smoke or fire" and/or "environmental system smoke or fumes" according to the SOP's for the EVAS Beech 1900 D. As per the performance criteria for PNF duties in the *Flight Test Guide*, the candidate should have the ability to demonstrate familiarity with procedures in the Quick Reference Handbook (QRH) or paper check list. Mr. Salvador's statement that the aircraft was under control does not mean that safety of the flight was not in jeopardy. Smoke is a very serious emergency that requires an immediate reaction.

29 I feel that Mr. Cooper's assessment of the time frame is believable as, under the circumstances, he was not the one in a stressful situation. Mr. Salvador stated that for him, it was a stressful situation.

30 Based on the above considerations, the safety of the flight was jeopardized by the PNF when he failed to procure the emergency check list in a timely manner.

VI. DETERMINATION

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

March 13, 2017

(Original signed)
James E. Macdonald
Member

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