

164061 BC Ltd. Wabusk Air v. Canada (Minister of Transport), [2020] C.T.A.T.D. No. 15

Canada Transportation Appeal Tribunal Decisions

Canada Transportation Appeal Tribunal

Toronto, Ontario

Panel: Charles Sullivan, Member

Heard: November 4-7, 2019.

Decision: May 4, 2020.

TATC File No.: O-4526-09

[2020] C.T.A.T.D. No. 15 | 2020 TATCE 15 (Review)

Between 164061 BC Ltd. Wabusk Air, Applicant, and Canada (Minister of Transport), Respondent

(72 paras.)

Case Summary

Tribunal Summary:

Held: Pursuant to subsection 7.1(7) of the *Aeronautics Act*, the Transportation Appeal Tribunal of Canada confirms the Minister of Transport's decision to cancel the applicant's Air Operator Certificate on the grounds that the public interest and, in particular, the aviation record of the document holder, warrants it.

Appearances

For the Minister: Eric Villemure.

For the Applicant: Michael Hicks.

REVIEW DETERMINATION AND REASONS

I. BACKGROUND

1 On May 28, 2019, the Minister of Transport (Minister) issued a Notice of Cancellation (NOC) of Air Operator Certificate (AOC) no. 8536 to 164061 BC Ltd. (Wabusk Air), pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act*.

2 The NOC stated that the public interest in aviation safety warranted the cancellation due to the aviation record of Wabusk Air and multiple concerns identified with the operator's ability to properly maintain and record the maintenance of its aircraft. The NOC included a detailed list of alleged grounds to support the Minister's decision.

The cancellation came into effect on June 7, 2019 at 23:59 hrs. local time. On June 27, Wabusk Air filed a request for review with the Transportation Appeal Tribunal of Canada (TATC/Tribunal).

3 On October 21, 2019, the parties filed an Agreed Statement of Fact, in which the applicant admitted to 27 of 64 items in Part Two of the grounds appended to the Notice, and all three items in Part Three. The Agreed Statement of Fact stated that applicant reserved the right to make representations with respect to all of the grounds listed in the NOC. The Agreed Statement of Fact also indicated that items 21 and 22 of the detailed grounds should be disregarded as they were duplicates of items 8 and 18.

II. DISCUSSION AND ANALYSIS

4 The Tribunal learned through witness testimony and supporting documentary evidence that the Minister had become concerned with Wabusk Air's non-compliance with the *Canadian Aviation Regulations (CARs)* and the company's ability to carry out safe air operations.

5 Regarding the Minister's decision to cancel the applicant's AOC, paragraph 7.1(1)(c) of the *Aeronautics Act* states that the Minister may decide to suspend, cancel or refuse to renew a Canadian aviation document if the Minister is of the opinion that the public interest and, in particular, the aviation record of the document holder, warrants it. As it has been established in past case law from this Tribunal¹ and from the Federal Court², the analysis requires two steps: 1) establishing the record of the applicant, and 2) determining if those records and the public interest warrant the cancellation of the AOC; the public interest to which paragraph 7.1(1)(c) refers is the public interest in aviation safety³.

6 The Minister's decision to cancel the applicant's AOC is discretionary and demonstrating the justification for that decision rests with the Minister, on a balance of probabilities. After hearing the case, the Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration pursuant to subsection 7.1(7) of the *Aeronautics Act*.

7 The respondent adduced evidence from 52 exhibits and testimony from two witnesses. The Minister's first witness was Mr. Imtiazali Waljee, Director of Civil Aviation, Transport Canada (TC), Ontario Region. Mr. Waljee has worked in the aviation sector for over 44 years, the last 23 years with Transport Canada. The Minister's second witness was Mr. Fred Lowes, Civil Aviation Safety Inspector, from TC's Sudbury office. Mr. Lowes has worked in the field of aviation maintenance for over 43 years.

8 The applicant was represented by Mr. Michael Hicks, the Person Responsible for Maintenance (PRM) at Wabusk Air. Mr. Hicks has been employed in the aviation field for 14 years and with Wabusk Air as the company's PRM since 2016. Mr. Hicks adduced evidence from three exhibits and testified on behalf of Wabusk Air.

9 The Tribunal was required to consider the following issue: was the Minister's decision to cancel the applicant's AOC justified in the public interest and, in particular, based on the applicant's aviation record in the period of time leading up to the Minister's decision to serve Wabusk Air with an NOC, as per paragraph 7.1(1)(c) of the *Aeronautics Act*? Before the Tribunal was the Minister's case against the applicant regarding CAR 706.02 that states "no person shall operate an aircraft unless the aircraft is maintained in accordance with the maintenance control system" and the company's maintenance control manual (MCM).

10 The Tribunal was required to consider the applicant's aviation record from June 2016 to May 2019, the period leading to the Minister's decision to cancel Wabusk Air's AOC, which included non-compliance findings from the following events and activities:

- a. Program Validation Inspection, June to August 2016;
- b. Enhanced Monitoring Visit, November 2016;
- c. Enhanced Monitoring Visit, February 2017;

- d. Enhanced Monitoring Visit, March 2017;
- e. Notice of Suspension, May 2017;
- f. Two Administrative Monetary Penalties, August 2017;
- g. Program Validation Inspection, May 2018;
- h. Enhanced Monitoring Visit, December 2018;
- i. TCCA Oversight Advisory Board, February 2019;
- j. TCCA Oversight Advisory Board, May 2019;
- k. Agreed Statement of Fact between parties, October 2019; and,
- l. Submissions from the applicant regarding its aviation record and grounds for cancellation detailed in the NOC.

A. Wabusk Air Aviation Record -- Agreed Statement of Fact Between Parties

11 The Minister introduced Exhibit M-1, entitled "Agreed Statement of Fact", a document produced by the parties and based on the Notice of Cancellation and the "grounds for cancellation" appended to the NOC. The Tribunal noted from Exhibit M-1 that the applicant admitted to the following items listed in the grounds for cancellation:

- a. A total of 27 non-compliance items cited in Part Two of the grounds for cancellation, pages 2 to 6 of the NOC, specifically: items 1, 2, 3, 4, 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 23, 26, 27, 29, 31, 43, 48, 49, 50, 51, 56, and 57;
- b. Notice of Suspension cited in Part Three of the grounds for cancellation, page 7 of 7, specifically: The Minister suspended the applicant's AOC on May 11, 2017 pursuant to paragraph 7.1(1)(c) of the Aeronautics Act, and re-instated the AOC on June 2, 2017;
- c. Administrative Monetary Penalty (AMP) dated August 3, 2017, cited in Part Three of the grounds for cancellation, page 7 of 7, specifically: the applicant allowed an organization to perform and certify maintenance work on Wabusk Air aircraft when the contracted organization did not hold an approval rating for the maintenance work performed; and,
- d. An Administrative Monetary Penalty dated August 21, 2017, cited in Part Three of the grounds for cancellation, page 7 of 7, specifically: the applicant operated an aircraft that did not meet its type certificate requirements as required by its MCM, where the retractable landing gear was not functioning as required by the type certificate data sheet.

B. Wabusk Air Aviation Record -- Program Validation Inspection (PVI), June to August 2016

12 Mr. Waljee described non-compliance findings from a PVI carried out from June 21 to August 18, 2016 (TC letter dated September 1, 2016, Exhibit M-3), which included the following findings related to the quality assurance program and the maintenance control system:

- a. Finding 706-01, regarding CAR 703.16 and CAR 703.104, whereas the company failed to comply with company training and aircraft technical records as required by policies and procedures outlined in the company's MCM. The Tribunal noted that the finding also refers to the requirement for an operational control system and an MCM and cites CAR 706.08(3) which specifically refers to the obligation to comply with the MCM.
- b. Finding 706-02, regarding CAR 706.09(1)(a), where the company allowed two contracted maintenance organizations to perform and certify maintenance work on company aircraft when the contracted maintenance organizations did not hold ratings for the maintenance performed;

- c. Finding 706-03, regarding CAR 706.02, where the company failed to maintain company aircraft in accordance with the maintenance control system and track scheduled maintenance requirements as required by the company's MCM;
- d. Finding 605-01, regarding CAR 605.84(1)(a), where the company operated an aircraft beyond the life limit of the engine turbine disk, which was not in compliance with airworthiness requirements; and,
- e. Finding 605-02, regarding CAR 605.86(1), where the company operated aircraft when several maintenance tasks, as required by the approved maintenance schedule, were overdue.

13 In a letter dated November 7, 2016 (Exhibit M-4), the Tribunal noted that as a result of the demonstrated systemic failures discovered during the PVI Inspection (Exhibit M-3), the company was placed in an "Enhanced Monitoring" (EM) program, as described in Exhibit M-5. The letter outlined expected deliverables of the program, which included the implementation of a Corrective Action Plan (CAP), increased TC presence at company facilities, and mandatory bi-weekly company progress reports. The letter also identified Inspector Lowes as TC's EM manager and outlined the conditions that would permit the company to return to a *routine surveillance schedule* once the EM program had been successfully completed.

14 Under cross-examination, Mr. Waljee stated that the decision to place a company in EM is less quantitative and more qualitative in nature and considers the degree of maintenance control. Placing a company in EM can result from the type of deficiencies and the degree of non-compliance, such as, and in the case of Wabusk Air, serious deficiencies and the "presence of systemic failures of the maintenance planning and the maintenance control". Mr. Waljee agreed with the applicant that EM can be taxing on an organization and that addressing TC findings can be accomplished through the CAP process.

15 From the above-mentioned PVI, the Tribunal noted that TC issued Wabusk Air an Administrative Monetary Penalty dated August 3, 2017, which was paid uncontested and admitted to by Wabusk Air in the Agreed Statement of Fact. The AMP was related to Finding 706-02, where Wabusk Air allowed a maintenance organization to perform and certify maintenance work on Wabusk Air aircraft when the contracted maintenance organization did not hold a rating for the maintenance work performed.

16 The Tribunal considered a second AMP issued on August 21, 2017, that was related to Wabusk Air operating an aircraft that did not meet its type certificate requirements as required by its MCM, where the retractable landing gear was not functioning as required by the type certificate data sheet. The second AMP was paid uncontested and admitted to by Wabusk Air in the Agreed Statement of Fact.

17 During the review hearing, Mr. Hicks advised the Tribunal that Wabusk Air elected to pay the two TC AMPs rather than spend time or money challenging them before the Tribunal.

C. Wabusk Air Aviation Record -- Enhanced Monitoring Visit, November 2016

18 The respondent introduced a TC letter dated December 8, 2016, sent to Wabusk Air entitled "Notification of Results of Enhanced Monitoring Visit Nov 23-25, 2016" (Exhibit M-6). Mr. Waljee testified that as outlined in the letter, the results of the November EM visit were concerning due to the discovery of new non-compliance findings and the existence of previously identified deficiencies that had not been resolved. The letter also highlighted that based on the lack of progress in implementing the CAP, TC was concerned that the PRM did not have the human and financial resources necessary to fulfill his responsibilities.

19 The Tribunal learned from the Minister's second witness, TC Safety Inspector Lowes, that during the period of time between the first PVI carried out from June to August, 2016 and the EM visit at the end of November 2016, Wabusk Air was afforded time to demonstrate compliance through its CAP. However, as Mr. Lowes highlighted, significant concerns related to the tracking of maintenance tasks remained unresolved. The November EM visit also resulted in findings related to additional errors in maintenance tracking.

D. Wabusk Air Aviation Record -- Enhanced Monitoring Visit, February 2017

20 From a TC letter sent to Wabusk Air entitled "Notification of Results of Enhanced Monitoring visit February 7-10, 2017" (Exhibit M-7), the Tribunal noted that the February visit identified significant maintenance issues and that TC continued to have concerns with the company's progress.

21 From Mr. Lowes' testimony, the Tribunal noted the identification of a new issue - Wabusk Air's difficulty with its Progressive Maintenance Overhaul Program (PMOP), a program for overhaul extensions that required the company to conduct inspections more frequently and track maintenance trend data. Of concern to TC, Wabusk Air was non-compliant with PMOP inspection and trend tracking requirements. Pages three and four of Exhibit M-7 cited numerous findings that pointed to "a lack of maintenance control".

22 TC advised Wabusk Air that if meaningful progress was not demonstrated by the next EM inspection and in the mandatory bi-weekly EM reports, further action may be undertaken.

E. Wabusk Air Aviation Record -- Enhanced Monitoring Visit, March 2017

23 The respondent introduced Exhibit M-8, a TC letter dated April 11, 2017 sent to Wabusk Air entitled "Notification of Results of Enhanced Monitoring visit March 21 to 23, 2017".

24 The Tribunal learned from Mr. Lowes' testimony that observations and findings from the March 2017 visit led TC to conclude that Wabusk Air had not addressed the root causes of their regulatory non-compliance difficulties. Noteworthy from Exhibit M-8 was Finding 605-02, stating that Wabusk Air aircraft needed to be immediately removed from service due to non-compliance with CAR 605.86. The Tribunal also noted TC's concerns with aviation safety where maintenance tasks and inspections were overdue and technical records were either incomplete or missing. The visit also highlighted the fact that the PRM was running the show by himself, that he had started a new separate business, and another aircraft had been added to the fleet even though the others were not being properly maintained.

25 Mr. Lowes provided examples (Exhibit M-8) where maintenance tasks were overdue by significant amounts of time, which included: engine hose assembly task overdue by 636 days; rear bulkhead task overdue by 2,644 hours; inspection of elevator spar overdue by 276 hours; inspection of pedestal stop pin overdue by 155.5 hours; no record available of inspection of flight control pulley brackets; and no record available of igniter box overhaul replacement.

26 Due to the lack of progress in addressing maintenance control problems, TC concluded that the PVI planned for April 2017, which could have allowed Wabusk Air to end its EM program and return to a routine surveillance posture, had been postponed until the company could demonstrate satisfactory progress and an effective CAP.

27 Mr. Lowes stated that from the findings and observations from the March 2017 EM visit, TC realized that they were "back to square one" with regard to Wabusk Air's regulatory non-compliance. Mr. Lowes testified that as a result, TC had lost confidence in Wabusk Air's ability to conduct a safe air operation, as the company aircraft were not being maintained on a planned maintenance schedule pursuant to the MCM.

F. Wabusk Air Aviation Record -- Notice of Suspension (NOS) May 2017

28 A "Letter of Intent" to suspend the AOC sent to Wabusk Air, dated April 11, 2017 (Exhibit M-9), communicated to the company that TC was concerned with the company's ability to conduct safe air transport operations pursuant to the CARs. The letter included a summary of non-compliance findings and observations from the previous visits and inspections (Exhibits M-2 through M-8) and stated that TC was considering enforcement action that could lead to the suspension of the company's AOC. Wabusk Air was invited to provide additional information pertaining to the circumstances surrounding the aforementioned aviation safety concerns outlined in the letter within 10 days.

29 As indicated in TC's letter to Wabusk Air dated June 2, 2017, (Exhibit M-10), the Minister suspended the company's AOC on May 11, 2017 pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act*. The Tribunal noted that Wabusk Air admitted to the NOS in the Agreed Statement of Fact.

30 From Exhibit M-10, the Tribunal noted that Wabusk Air was successful in meeting the conditions of having its AOC re-instated, which included a root cause analysis and corrective action plan related to non-compliance findings outlined in the letter. The Minister re-instated Wabusk Air's AOC effective June 2, 2017.

31 In its letter dated June 6, 2017, (Exhibit M-11) TC advised Wabusk Air of the findings of an inspection carried out on May 30 and 31, 2017, which was to validate the company's response to the NOS and its corrective action plan to address non-compliance findings. The letter stated that Wabusk Air would remain in EM and that TC would continue to conduct inspections to monitor the progress of the company's implementation of corrective actions. TC also highlighted in the letter that a Program Validation Inspection would not be scheduled until Wabusk Air could demonstrate satisfactory progress.

32 In a letter dated December 13, 2017 (Exhibit M-12), TC communicated to Wabusk Air that based on an October 2017 EM inspection, which was carried out to review corrective actions that were developed to address items identified in TC's letter of June 6, 2017 and to verify compliance with the company's MCM, Wabusk Air would remain in EM and that a PVI inspection would not be scheduled until implementation of all corrective actions had been successfully completed. Mr. Lowes stated that the visit was encouraging with regard to changes to maintenance standards, however, the company's mandatory bi-weekly updates had become sporadic.

G. Wabusk Air Aviation Record -- Program Validation Inspection May 2018

33 The respondent introduced Exhibit M-13, a TC letter sent to Wabusk Air dated June 25, 2018, regarding the findings of a PVI carried out from May 7 to 11, 2018. The purpose of the PVI was to verify that Wabusk Air had a system in place to ensure on-going compliance with regulatory requirements. The letter advised Wabusk Air that based on PVI findings, the company would remain in EM pending the verification of corrective actions to address new non-compliance findings, specifically:

- a. Finding 605-01, where Wabusk Air failed to maintain technical records pertaining to the current status and changes to the weight and balance (W&B) on their aircraft in contravention of CAR 605.94(1); and,
- b. Finding 706-01, where Wabusk Air operated an aircraft when scheduled maintenance requirements were not controlled in accordance with the company's maintenance control system, or the MCM (CAR 706.08(3)).

34 The Tribunal noted that the PVI report included several other findings regarding regulatory non-compliance and airworthiness issues related to the two findings cited above. Mr. Lowes testified that Wabusk Air was unable to exit EM due to the discovery of these new findings.

H. Wabusk Air Aviation Record -- Enhanced Monitoring Visit December 2018

35 The respondent introduced a TC letter dated December 24, 2018 (Exhibit M-14), regarding the results of an EM Inspection carried out December 12, 2018, which, as the letter pointed out, was one of several on-going follow-up inspections to the PVIs carried out in June 2016 and May 2018.

36 The Tribunal noted that the letter identified four non-compliance findings related to the company's maintenance control system, all of which were outstanding and unresolved issues from previous PVIs, as follows:

- a. Finding 605-01, non-compliance related to W&B information, including configuration details not being carried over, which was the same non-compliance identified in the May 2018 PVI;
- b. Finding 605-02, failure to maintain the aircraft in accordance with the approved maintenance schedule (specifically, failure to record maintenance trend information);
- c. Finding 706-01, non-compliance with maintenance control system policies and procedures defined in the company MCM as required by CAR 706.08(3) related to the same non-compliances cited in September 2016 and June 2018 PVI reports;
- d. Finding 706-02, non-compliance related to operating aircraft when aircraft had not been maintained in accordance with the operator's maintenance control system; specifically, fasteners were missing in various locations on the aircraft, and an aircraft was operated without a valid W&B equipment list after the aircraft had been reweighed. This finding was related to the non-compliance identified in August 2018.

37 Mr. Lowes summarized the findings from the December 12th inspection, to include: non-compliance with weight and balance requirements; significant maintenance task over-runs; missing screws and fasteners that were not written up by aircrew or tracked by maintenance control; equipment list not carried on aircraft as required by the CARs; and, failure to track trend data for the Progressive Maintenance Overhaul Program. Mr. Lowes further testified that in the time immediately following the December inspection, TC realized that there had been no real change in Wabusk Air's maintenance practices or culture since they entered the EM program two years earlier, and that the PRM was not aware of requirements in their own maintenance schedule.

38 The Tribunal noted that the unsatisfactory results identified in the December 2018 PVI were significant, as they pointed to recurring themes of non-compliance regarding Wabusk Air's maintenance program. As a result, TC had lost confidence in Wabusk Air's ability to implement a maintenance program that would ensure the airworthiness of its aircraft. At TC's request, a meeting was convened on January 17, 2019 with the owner and PRM of Wabusk Air to convey their concerns. Exhibit M-15 provides a summary of the deliberations of the meeting.

39 Mr. Waljee testified that the purpose of the meeting was to discuss Wabusk Air's ongoing EM program and options to move the company forward. TC advised Wabusk Air that the company had not been successful in meeting regulatory compliance requirements. Mr. Waljee further highlighted that an EM program is typically carried out over a 90-day period to mentor a company towards achieving regulatory compliance. However, Wabusk Air's EM program had been ongoing for over two years without achieving compliance. As a result, Mr. Waljee elected to make a presentation to the TC Civil Aviation Oversight Advisory Board (TCCA OAB) to seek their guidance and direction. In preparation for the OAB presentation, Wabusk Air was invited to provide any additional information to the facts and findings reported in TC's PVI and EM inspection reports.

I. TCCA Oversight Advisory Board -- Record of Discussion

40 The respondent introduced Exhibit M-16, entitled "TCCA Oversight Advisory Board Record of Discussion (ROD)" dated February 22, 2019. As outlined in the ROD, the OAB, comprised of 13 senior officials from across TC's aviation directorates, convened to consider Wabusk Air's maintenance control issues. The main points considered by the OAB included:

- a. Despite EM since November 2016, Wabusk Air continued to experience difficulty in meeting regulatory requirements and achieving sound maintenance control;
- b. Two options considered by the OAB included: a second "AOC suspension", and the cancellation of the company's AOC;
- c. A previous AOC suspension in May 2017 was lifted on the basis that a period of time would be required to see if process changes developed during the suspension period would address the company's difficulties in achieving regulatory compliance. However, follow-on EM revealed that

maintenance process changes did not bring the company into compliance. The same non-compliance issues from June 2017 persisted and other new non-compliances were discovered. TC Ontario Region believed that a second AOC suspension would not be effective;

- d. The OAB saw the company's maintenance control system as the greatest safety concern and concluded that the resources required to ensure safety with the company were significant;
- e. The OAB also discussed certificate action against the Aircraft Maintenance Organization (AMO) under contract with Wabusk Air, which was a separate maintenance entity; and,
- f. The recommendation made by TC Ontario Region was to cancel Wabusk Air's AOC, which was unanimously supported by OAB members.

41 In a letter dated March 27, 2019 (Exhibit M-17), TC advised Wabusk Air that the Minister was considering the cancellation of the company's AOC due to ongoing concerns related to Wabusk Air's ability to safely operate an air transport service in accordance with the *CARs*. Mr. Waljee testified that TC used a graduated approach to encourage compliance, such as CAPs, AMPs, monitoring, and a suspension. In the letter, TC cited the systemic maintenance control failures and non-compliance findings, and observations related to: the September 2016 PVI report; the NOS dated May 2017; the PVI report dated June 2018; the December 2018 inspection report; two enforcement actions resulting in AMPs; and, 64 alleged instances of non-compliance with the company's approved maintenance control procedures and the *CARs*.

42 When given the opportunity to make submissions, Wabusk Air offered to ground their fleet of aircraft. Mr. Waljee testified that grounding their fleet was not accepted by TC, as there was nothing substantive that demonstrated that they had maintenance planning under control. Wabusk Air was urged to focus on a root cause analysis and develop a CAP to address deficiencies in its maintenance control system.

43 A second OAB, convened on May 6, 2019 (Exhibit M-18), resulted in a unanimous decision to recommend that the Minister cancel Wabusk Air's AOC.

J. Wabusk Air Admissions of Non-Compliance

44 Important to the Tribunal's review of the Minister's decision to cancel the applicant's AOC were 64 non-compliances with the *CARs* and the company's approved maintenance control procedures. Of the 62 non-compliance items cited in the Agreed Statement of Fact, the Tribunal noted that 27 items were admitted to by Wabusk Air, of which seven were related to significant overdue maintenance actions and 20 related to missing, incomplete and/or erroneous maintenance records. The Tribunal agreed with Mr. Lowes that the 27 items admitted to by the applicant represented significant failures of the company's maintenance control system. A summary of the 27 non-compliances admitted to by Wabusk Air are listed in the attached Annex.

K. Non-Compliance Items Not Admitted to by Wabusk Air

45 Mr. Lowes provided a detailed description of 35 non-compliance items, as delineated in Section Two of the Agreed Statement of Fact, to which Wabusk Air did not admit. The Tribunal found that the evidence of 22 of the 37 items identified failures in Wabusk Air's maintenance control system, nine items were minor record keeping errors, and four were the result of the TC inspectors misreading the maintenance records. Details of the 35 items not admitted to by the applicant, as presented and discussed during the review hearing, are outlined in the following sub-paragraphs:

- a. Item 5 (Exhibit M-1) related to failure in maintenance control and record keeping, whereas records for C-GAVI show that task 2700-001, the inspection of flight control pulley brackets, was not entered into the aircraft technical records. Further review by the company indicated that the task could not be verified as completed (Exhibit M-19). Mr. Lowes testified that completion of the maintenance task was not entered, and no verification of task completion could be found. The

Tribunal found that the evidence identified a **failure of the company's maintenance control system**;

- b. Item 7 (Exhibits M-1, M-20 page 1, para. 1) related to a failure in maintenance control, whereas there were no records to support the scheduled review of Airworthiness Directives (AD), Manufacturers Service Information or CARs changes, as required by the company's MCM. Under cross-examination, Mr. Lowes stated that the finding was cited in a TC letter dated June 6, 2017 (Exhibit M-20) and that there were no records to support a review. The Tribunal found that the evidence identified a **failure of maintenance control**;
- c. Item 9 (Exhibits M-1 and M-20) related to a failure of maintenance control, whereas the Wabusk Air review of a contracted AMO work package for C-GAVI did not identify and incorporate the Instructions for Continued Airworthiness (ICAs) applicable to the modifications into the scheduled maintenance tracking system. Mr. Lowes testified that the instructions are sometimes required for continued airworthiness and include additional maintenance requirements to ensure the safety of the installation. In this case, there was no record of a review of the instructions. The Tribunal noted that once TC identified the non-compliance on-site with the applicant, Wabusk Air acted and incorporated the missing instructions into the tracking program for scheduled maintenance. The Tribunal found that the evidence identified a **failure of maintenance control**;
- d. Item 11 (Exhibits M-1 and M-20, pages 2, 4 and 5) related to a failure of maintenance control, whereas vendor self-audit forms on file for several contracted AMOs did not show that those AMOs were appropriately rated to carry out the work requested by Wabusk Air in accordance with MCM section 9.0. Mr. Lowes testified that there was initially no vendor self-audit form at all, which was not in accordance with the MCM (Exhibit M-20, para. 4). When the non-compliance was identified by TC, Wabusk Air took action to address the issue. Notwithstanding, the Tribunal agrees with the respondent that the evidence pointed to a **failure of maintenance control**;
- e. Item 20 (Exhibit M-1, Exhibit M-21, page 3, para. 5, Finding 706-01) related to a failure of maintenance control, whereas the scheduled maintenance tracking system in use by Wabusk Air did not contain sufficient detailed information to ensure on-going accuracy and effectiveness as required by Section 8.4 of the Wabusk Air MCM. Several maintenance items did not identify part numbers, serial numbers, installation details, interval information or consistent terminology to ensure that the installed components could be identified and tracked. Mr. Lowes testified that serial numbers were not recorded, and spreadsheets were incomplete. The same findings were cited in the PVI report dated September 1, 2016 as Finding 706-03, when Wabusk Air aircraft were not maintained in accordance with the maintenance control system as required by the MCM. The Tribunal found that the evidence identified a **failure of maintenance control**;
- f. Item 24 (Exhibits M-1 and M-22, page 3, para 5, Finding 706-01), related to a failure of maintenance control, whereas defects on C-GAVI, log page 1432, were deferred by a contracted AMO and not the PRM, which is non-compliant with MCM Section 11.0. In cross-examination, Mr. Lowes admitted that he did not have evidence that the PRM did not authorize the AMO to make the deferral. The applicant argued that the PRM could have said to defer, which resulted in the AMO recording that the snag was deferred. The Tribunal found that **the evidence did not support a finding of non-compliance**;
- g. Item 25 (Exhibits M-1, M-14 and M-23) related to a failure of maintenance control, whereas engine trend data was not captured in the journey logbook as required by the approved maintenance schedule requirements. Mr. Lowes testified that this item was related to Finding 605-02 cited in the EM Report dated December 24, 2018 (Exhibit M-23). The Tribunal found that the evidence identified a **failure of maintenance control**;
- h. Item 28 (Exhibits M-1 and M-24, fifth bullet) related to a failure to comply with the company's MCM, whereas the company's procedure for requesting maintenance was verbal or via text message and was not in accordance with the MCM. Mr. Lowes testified that there were no records for requested

maintenance action to the contracted AMO, which is not in accordance with the MCM, Section 11. The Tribunal found that the evidence identified a **failure to comply with the company's MCM**;

- i. Item 30 (Exhibits M-1 and M-25, Compliance Status Sheet) related to a failure of maintenance control, whereas the tracking sheet for aircraft C-GAVI, page 18, items P8 and P15, had engine combustion liner interval as 365 days or 400 hours, when the approved maintenance schedule combustion liner interval was "at any fuel nozzle removal". Mr. Lowes testified that as outlined in Exhibit M-25, second page, line P16, the approved maintenance schedule did not match the company's compliance status sheet. The Tribunal found that the evidence identified a **failure of maintenance control**;
- j. Item 32 (Exhibits M-1, M-26) related to the failure of maintenance control, whereas AD CF-1981-25R6 AMOC has termination conditions that were not tracked for aircraft C-GAVI. Mr. Lowes pointed out that as per Exhibit M-26, TC authorized an increase in the inspection interval, however, it was not tracked by the company. The Tribunal found that the evidence identified a **failure of maintenance control**;
- k. Item 33 (Exhibits M-1, M-27) related to maintenance control and record keeping, whereas AD CF-1981-25R6 AMOC requires inspection reports to be emailed to TC within 30 days. Mr. Lowes acknowledged that the applicant sent an email to TC advising that an inspection had been carried out on March 19, however it was not reported to anyone specific, only to the Airworthiness Directives main line, with no follow up. There were no formal records in the aircraft logs. The Tribunal found that the evidence indicated a **failure of maintenance control due to incomplete maintenance records**;
- l. Item 34 (Exhibits M-1 and M-28) related to maintenance control, whereas Beech maintenance requirement A33, page 206, item 40, engine mount inspection at engine TBO or 4,000 hours (Exhibit M-28), was not shown on the tracking report for aircraft C-GAVI. The Tribunal found that the evidence identified a **failure of maintenance control**;
- m. Item 35 (Exhibits M-1 and M-29) related to maintenance control, whereas the tracking report for aircraft C-GAVI, page 2, item ICA 1, antenna electrical bonding inspection, states completed 2017-05-01 TAT 23831.20, however, tech log entry on this date and TAT makes no mention of this inspection. The Tribunal found that the evidence identified a **failure of maintenance control** due to incomplete record keeping;
- n. Item 36 (Exhibits M-1 and M-30) related to maintenance control, whereas the tracking sheet for aircraft C-GAVI, page 5, item M16-3, life port oxygen bottle hydrostat, has no performed date. The Tribunal found that the evidence identified a **failure of maintenance control** due to incomplete record keeping;
- o. Item 37 (Exhibits M-1 and M-31) related to maintenance control in accordance with the MCM and incomplete record keeping, whereas the tracking sheet for aircraft C-GAVI, pages 6 & 7, item 011, L/H and R/H overspeed governors overhaul, shows performed 2014-06-25. The tech log entry on that date stated that these were used governors reinstalled. Mr. Hicks provided an explanation on how to interpret Winair software and highlighted that the printout showed all required information. Mr. Hicks introduced Exhibit A-3 and pointed out that the required maintenance was preformed, and the governors were installed/ overhauled, which recorded "zero" hours on 2014-06-25. The Tribunal found that the work was carried out and the printout showed the required information;
- p. Item 38 (Exhibits M-1 and M-32) related to maintenance control and record keeping, whereas the maintenance tracking report for aircraft C-GAVI, page 7, item 02, identifies L/H and R/H landing gear actuator serial numbers as AVILH and AVIRH. Tech log entry 2009-06-03 indicates serial numbers K1O and K09 in the tracking report. The Tribunal found that the evidence identified a **failure of maintenance control** and accurate record keeping;
- q. Item 39 (Exhibits M-1 and M-33) related to maintenance control and record keeping, whereas the tracking report for aircraft C-GAVI, page 10, item P12-2, fuel pump removal, shows performed on

2017-06-18, however, there was no maintenance release or technical logbook entry to support the work carried out. The Tribunal found that the evidence identified a **failure of maintenance control and accurate record keeping**;

- r. Item 40 (Exhibits M-1 and M-34) related to maintenance control and record keeping, whereas the tracking report for aircraft C-GAVI, page 11, L/H exciter box replacement, indicated time since overhaul as 0 on 2017-04-04. However, the tech log entry on the same date states that this item was removed as a used serviceable exciter box from aircraft C-GJJT. The Tribunal found that the evidence for Item 40 identified a **failure of maintenance control and accurate record keeping**;
- s. Item 41 (Exhibits M-1 and M-35) related to maintenance control, whereas the maintenance tracking report for aircraft C-GAVI, page 11, R/H exciter box replacement, shows overhaul as 0 on 2018-05-26. However, the tech log entry on the same date states this item had 1,786.8 hours. The Tribunal found that the evidence identified a **failure of maintenance control and accurate record keeping**;
- t. Item 42 (Exhibits M-1 and M-36) related to maintenance control, whereas the tracking report for aircraft C-GAVI, page 17, items P6-7 RGB and AGB, borescope inspection, states performed 2018-08-17. However, the tech log entry does not indicate that these inspections were carried out. Under cross-examination, Mr. Lowes testified that the exhibit confirmed that the inspection was completed on August 18, 2018 with "no faults found" in regard to the left and right-hand accessory, and propeller reduction gearboxes inspection. The Tribunal found that there was **no non-compliance or maintenance control failure**;
- u. Item 44 (Exhibits M-1 and M-37) related to maintenance control and record keeping, whereas the Beech Structural Inspection and Repair Manual requires annual re-greasing of exposed threads on wing bolts. However, the task was not listed in the maintenance tracking reports for aircrafts C-GFBC or C-GAVI. The Tribunal learned from the applicant's testimony, which was supported by Exhibit M-37, that the maintenance task was carried out and recorded under a different maintenance task. Mr. Lowes testified that the record of the other task was requested, however, one was not provided. The Tribunal found that Item 44 maintenance task was carried out, however, **documentation was not provided to TC inspectors**;
- v. Item 45 (Exhibits M-1 and M-38) related to maintenance record keeping, whereas the wing bolt re-torque maintenance action on aircraft C-GFBC, item AD CF-1981-25R6-RH, included incorrect information. The Tribunal found that the evidence for Item 45 indicated a **minor record keeping error**;
- w. Item 46 (Exhibits M-1 and M-39) related to maintenance record keeping, whereas the tracking sheet for aircraft C-GFBC, item S13, quoted AD 72-22-01, when the correct Airworthiness Directive for the rear bulkhead was 77-22-01. Mr. Lowes testified that small recurring record-keeping errors undermined TC's confidence in Wabusk Air's overall maintenance control. The Tribunal found that the evidence for Item 46 indicated a **minor record keeping error**;
- x. Item 47 (Exhibits M-1 and M-40) related to maintenance record keeping, whereas the tracking sheet for aircraft C-GFBC, item S4, lube retract chain/sprockets, states completed on Nov. 28, 2018, when the maintenance task was not in the tech log entry on the specified date. The Tribunal found that the evidence for Item 47 indicated a **minor record keeping error**;
- y. Item 52 (Exhibits M-1 and M-41) related to maintenance record keeping, whereas the tracking sheet for aircraft C-GFBC, fuel pump in situ inspection, states maintenance task was completed on Nov. 28, 2018, however, the tech log entry did not show that work was carried out. Mr. Lowes testified that there was a discrepancy in recorded hours. The Tribunal found that evidence for Item 52 indicated a **minor record keeping error**;
- z. Item 53 (Exhibits M-1 and M-42) related to maintenance control, whereas the tracking sheet for aircraft C-GFBC, item T4, engine 1 and 2, fuel pump removal drive coupling inspection, specifically

the tech log entry dated Aug. 22, 2017, does not detail the work performed. The Tribunal found that evidence for Item 53 indicated a **minor record keeping error**;

- aa. Item 54 (Exhibits M-1 and M-43) related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, item P13, engine 1 bleed valve, shows 0.00 time on July 19, 2018, which is inconsistent with the tech log that shows the bleed valve had 2,982.1 hours TSO on July 19, 2018. The Tribunal learned from Mr. Hicks that the same compliance sheet was forwarded to TC, but in a different format, which caused confusion for TC. The Tribunal found that the evidence for Item 54 indicated that the non-compliance reported by TC was a **minor record keeping error**;
- bb. Item 55 (Exhibits M-1 and M-44) related to maintenance record keeping, whereas TC was unable to verify approximately 27 items on the aircraft C-GFBC tracking sheet due to missing times and dates when maintenance tasks were performed. The Tribunal found that the evidence for Item 55 identified a **failure in maintenance control due to incomplete record keeping**;
- cc. Item 58 (Exhibits M-1 and M-45) related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, items M1-4, M16, P4 and P12, for the bleed air heat 200 hr. inspection, showed that the four-phase inspections were completed on 2017-08-22, 2017-11-22, 2018-06-27 and 2018-11-28. Of concern to TC, there were no tech log entries showing this task had been completed on the dates specified. The Tribunal found that the evidence identified a **failure in maintenance control due to incomplete record keeping**;
- dd. Item 59 (Exhibits M-1 and M-46) related to maintenance record keeping, whereas the tracking sheet for aircraft C-GJJT, item MSA 4,5 stated that the 24-month check was done on Nov. 29, 2018, however, the tech log entry stated the check was completed on Dec. 10, 2018. The Tribunal found that the evidence for Item 59 indicated a **minor record keeping error**;
- ee. Item 60 (Exhibits M-1 and M-47) related to maintenance record keeping, whereas the tracking sheet for aircraft C-GJJT, item MSA 15 states that HUIP inspection was performed on June 10, 2018, where the tech log has no entry stating the inspection was completed on this date. The Tribunal learned through the applicant's testimony that the entry was made in a different location, but not passed to TC. The Tribunal found that the evidence for Item 60 was a **minor record keeping error**;
- ff. Item 61 (Exhibits M-1 and M-48) related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GJJT, item MSA 16, regarding the Tanis Pre-heater inspection, states that the inspection was performed on June 10, 2018, however, the tech log has no entry stating the inspection was carried out on this date. The Tribunal learned through the applicant's testimony

that the entry was made in a different location, but not passed to TC. The Tribunal found that the evidence for Item 61 identified a **minor record keeping error**;

- gg. Item 62 (Exhibits M-1 and M-49) related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GJJT, item PMOP 3, left prop balance, states the maintenance was performed 2018-06-16, however, the tech log has no entry in the prop logs to show this task was performed. The Tribunal found that the evidence for Item 62 identified a **failure in maintenance control due to an incomplete record keeping error**;

- hh. Item 63 (Exhibits M-1 and M-50) related to maintenance control, whereas the tracking sheet for aircraft C-GJJT, under item A8, fire bottle squib, was tracked at 10 years, however, Beechcraft airworthiness limitations 04-00-00, page 621, states six years for the referenced maintenance action. The Tribunal found that the evidence for Item 63 identified a **failure in maintenance control**;

- ii. Item 64 (Exhibits M-1 and M-51) related to maintenance control, whereas the tracking sheet for aircraft C-GJJT, under item A9, oxygen cylinder, does not identify the type of bottle in the aircraft. Of concern to the TC inspector, there were three different oxygen bottles with different maintenance requirements. The Tribunal found that the evidence for Item 64 identified a **failure in maintenance control**;

46 Following the examination of the non-compliances not admitted to by the applicant, under cross-examination, Mr. Lowes further testified that the relationship between TC and Wabusk Air was respectful and professional. Mr. Hicks was generally responsive to TC findings and observations and tried to take action to address non-compliance findings. The Tribunal noted that when Wabusk Air's AOC was suspended in May 2017, the company satisfied the conditions to have the suspension lifted. The conditions included a root cause analysis and corrective action plan to address non-compliance findings. However, Mr. Lowes stated that the PVI visit in May 2018, which was intended as an EM exit inspection, noted that although there were less non-compliance findings, continued close monitoring was required for Wabusk Air to demonstrate compliance with the CARs on an ongoing basis. The Tribunal found that there had been improvements from 2016 to 2017 in addressing several non-compliance findings, however, follow-on visits and inspections in 2017 and 2018 found new and re-occurring non-compliances related to maintenance control.

47 Mr. Lowes acknowledged that some non-compliance issues could be traced back to the previous PRM, prior to when Mr. Hicks was appointed Wabusk Air PRM in 2016. Mr. Lowes stated that, in his opinion, the lack of resources in Wabusk Air's maintenance organization contributed to the company's poor maintenance control and record keeping. TC was concerned that the PRM didn't have the human and financial resources to fulfill his responsibilities. Mr. Lowes also noted that Mr. Hicks had started running a new company at the same time as he was trying to bring Wabusk Air into compliance. Mr. Lowes stated that new aircraft acquired by the company would deteriorate over time due to the lack of maintenance control.

48 Mr. Hicks pointed out that several non-compliance findings cited in 2016 and 2017 inspections and visits originated prior to his appointment as PRM, and that TC visits in 2017 and 2018 were reporting more favourable findings due to the company's progress in overcoming its maintenance control challenges. Mr. Hicks stated that he was surprised when the company's AOC was cancelled, although he understood the Minister's lack of confidence in Wabusk Air. Mr. Hicks stated that in his opinion, the no-notice visit in December 2018 was punitive and meant to gather information to support the cancellation of the company's AOC. Mr. Hicks stated that he regretted not being

available during the inspection to respond to TC findings. He also regretted not having trained his personnel to respond to TC observations and findings.

49 Mr. Hicks stated that he saw the TC EM program as a burden on the company as Wabusk Air did not have the resources to respond to TC requests for information. Mr. Hicks stated that the company chose to pay the two AMPs in 2017 rather than spend time and money challenging TC enforcement actions before the TATC. According to Mr. Hicks, the company preferred to devote its time and money towards improving safety.

50 The Tribunal noted Mr. Hick's testimony that Wabusk Air offered to voluntarily ground its fleet of aircraft as an alternative to cancelling the AOC. Mr. Hicks introduced Exhibit A-2, an email from Mr. Donald G. Gray, the applicant's retained counsel of Blakes Law Firm, Toronto, sent to Mr. Waljee supporting Wabusk Air's voluntary grounding of their fleet of aircraft. Included in Exhibit A-2 was a letter from Mr. Waljee dated June 7, 2019, clarifying TC's position regarding the NOC. Mr. Waljee and Mr. Lowes both testified on TC's position regarding Wabusk Air's voluntary grounding of its aircraft. Mr. Gray was not called as a witness.

51 Mr. Hicks presented Exhibit A-1, a series of email exchanges between Wabusk Air and TC from January to May 2019, which also included documents from 2018. Mr. Hicks did not point to any specific information in the 82-page exhibit, other than to say it demonstrated how busy the company was responding to TC requests for information. With regard to setting company priorities, Mr. Hicks used the expression "aviate-navigate-communicate" to indicate the company's priorities. The word "aviate" referred to the flying operation, and his first priority was to ensure items were in compliance. As for "communicate", Mr. Hicks emphasized that the last thing the company did was communicate, as the company did not have the resources to refute TC findings.

52 Mr. Hicks testified that TC was not forthcoming in acknowledging progress and improvements to Wabusk Air's maintenance operation in 2018; however, the Tribunal noted that Mr. Lowes recorded results of one visit that were encouraging. Mr. Hicks asserted that inspection results were better than expected and that TC carried out the no-notice December 2018 visit for the purpose of finding more non-compliances to support the cancellation of the AOC. According to Mr. Hicks, TC did not have the resources to continue the Wabusk Air EM program, and the wheels were in motion to cancel the company's AOC. Mr. Waljee and Mr. Lowes agreed that Wabusk Air's protracted EM program was taxing on TC and diverted time and resources away from other aviation companies for which they were responsible.

53 In a letter to Wabusk Air dated May 28, 2019 (Exhibit M-2), TC, on behalf of the Minister, advised that their AOC would be cancelled. The Minister acknowledged Wabusk Air's intended efforts to improve the company's maintenance program, which included an offer for more frequent internal audits, improving staff training, and implementing a Safety Management System. However, the letter stated that the Minister did not have confidence that the proposed actions would adequately address the safety issues identified by TC inspectors, nor did the Minister believe the proposed actions would be fully carried out, a conclusion borne out of Wabusk Air's failure to fully implement previous corrective actions to address deficiencies in the company's maintenance control system, which, according to the Minister, continued to be ineffective.

54 Mr. Hicks referred to Exhibit M-31 and stated that Mr. Lowes did not understand the presentation of the information in the report. Mr. Hicks also challenged Mr. Lowes' understanding of the Winair software used by Wabusk Air's maintenance organization. Mr. Lowes was recalled as a witness to respond to Mr. Hick's allegations that challenged his knowledge and expertise on the company's software and maintenance records. The Tribunal noted that there was a non-compliance item (Exhibit M-1, Part II, Item 20) where TC was not able to find some important maintenance information; however, the Tribunal was satisfied with Mr. Lowes' testimony, which established him as a competent TC inspector with expert knowledge of Winair software.

L. Conclusion

55 Wabusk Air was placed in EM in November 2016 as a result of serious systemic failures discovered during a

PVI in June 2016 and was due to non-compliances with the CARs and the MCM, which included serious maintenance over-runs and incomplete or missing maintenance records.

56 Both parties agreed that EM was taxing on Wabusk Air, as the responsibility of refuting non-compliance findings cited during TC inspections and visits rested with the company. A common point raised by both parties was that Wabusk Air did not have the resources it needed to respond to TC findings. An EM program typically lasts 90 days, after which time a company returns to routine surveillance. This was not the case for Wabusk Air, as the company had recurring difficulties in demonstrating sound maintenance control.

57 Wabusk Air was served with two AMPs in August 2017 that were paid uncontested and admitted to by Wabusk Air in the Agreed Statement of Fact. Both AMPs were related to serious non-compliance findings, which reflected negatively on the company's aviation record. The Tribunal finds it difficult to accept Wabusk Air's explanation that the company simply chose to pay the AMPs uncontested rather than spend time and money challenging the penalties before the Tribunal.

58 The results of the November 2016 EM visit were troubling due to the discovery of new non-compliance findings, errors in maintenance tracking, and the existence of previously cited deficiencies and aircraft defects that remained unresolved. From June to November 2016, Wabusk Air had the opportunity to demonstrate compliance through its CAP, however, the new findings had prompted TC to exercise greater scrutiny.

59 The February 2017 EM visit identified significant issues, most notably Wabusk Air's difficulty with its Progressive Maintenance Overhaul Program. The company was non-compliant with PMOP inspection and trend tracking requirements.

60 The March 2017 EM visit revealed that the company had not addressed the root causes of their non-compliance difficulties, which resulted in aircraft being removed from service due to non-compliance with the CARs. TC cited concerns where maintenance tasks were significantly overdue and where technical records were either missing or incomplete. The PVI planned for April 2017, which was intended to return the company to routine surveillance, was postponed as the company could not demonstrate satisfactory progress in achieving sound maintenance control and regulatory compliance.

61 Based on findings from the March 2017 EM visit, TC concluded that they were "back to square one" with Wabusk Air's regulatory compliance. TC had lost confidence in Wabusk Air's ability to conduct a safe air operation. The company did not have an effective maintenance control plan and its aircraft were not being maintained on a planned maintenance schedule pursuant to its MCM. Indeed, new aircraft acquired by the company deteriorated over time due to ineffective maintenance control.

62 Based on the list of non-compliance findings from the inspections and visits, the Minister suspended Wabusk Air's AOC in May 2017. Of note, the company chose not to challenge the suspension before the Tribunal and admitted to the details of the NOS in the Agreed Statement of Fact. Wabusk Air was successful in meeting the conditions to have its AOC re-instated, which included a root cause analysis and CAP to address non-compliance findings. Findings from an inspection at the end of May 2017 determined that although Wabusk Air could have its AOC re-instated, EM would continue until the company could demonstrate sustained satisfactory compliance with the CARs and its MCM.

63 An inspection in October 2017 determined that, once again, EM was still required to ensure compliance with the company's MCM and to verify that all corrective actions had been successfully implemented. Wabusk Air had shown some progress, most notably with changes to maintenance standards, however, the company's mandatory bi-weekly updates were sporadic.

64 Findings from a PVI in May 2018 cited several non-compliance and airworthiness issues related to the company's failure to maintain aircraft weight and balance technical records, and that an aircraft's scheduled

maintenance requirements were not controlled in accordance with the company's maintenance control system. The company was unable to exit EM due to these new non-compliance findings.

65 The December 2018 EM visit identified four non-compliance findings related to the company's maintenance control system, all of which were outstanding issues cited from previous PVIs. Of concern were weight and balance requirements; maintenance over-runs; missing screws and fasteners that were not written up by aircrew or tracked by maintenance control; equipment lists not carried on aircraft as required by the CARs; and, failure to track trend data for the PMOP.

66 Following the December 2018 inspection, TC came to realize that there had been no change in Wabusk Air's maintenance practices since they entered EM in November 2016. The Tribunal found that the results from the December 2018 PVI once again pointed to recurring themes of non-compliance that were detrimental to aviation safety and, therefore, the public interest.

67 TC elected to seek guidance from its Civil Aviation Oversight Advisory Board on Wabusk Air's maintenance control issues. The OAB considered the company's long-standing and ongoing maintenance difficulties. All possible options to help the company achieve regulatory compliance were considered. Based on the results of the previous NOS, TC did not see Wabusk Air's voluntary grounding of its aircraft as a viable option to address the company's non-compliances or improve its maintenance control. The OAB unanimously supported the cancellation of Wabusk Air's AOC. The Tribunal found that Wabusk Air's offer to voluntarily ground its fleet when faced with the cancellation of its AOC was consistent with the company's awareness of its non-compliance and maintenance control difficulties.

68 The 27 items admitted to by Wabusk Air in Part 2 of the Agreed Statement of Fact were significant, as they demonstrated failures of the company's maintenance control system with respect to maintenance over-runs and record keeping. The Tribunal found that 22 of the 35 items not admitted to by Wabusk Air identified failures in the company's maintenance control system; nine items were minor record keeping errors, and four were the result of the TC inspectors misreading the maintenance records.

69 When Wabusk Air's AOC was suspended in May 2017, the company was able to satisfy the conditions to have the suspension lifted. There had been improvements from 2016 to 2017 in addressing several non-compliance findings, however, follow-on visits and inspections from 2017 to 2018 found new and re-occurring non-compliances related to maintenance control. The lack of resources contributed to the company's poor maintenance control and record keeping. Of note, new aircraft acquired by the company deteriorated over time due to the lack of maintenance control.

70 The Tribunal noted that although Wabusk Air could initiate corrective actions once TC inspectors identified non-compliance issues, the company did not have the methods or means to identify non-compliance issues itself. In a letter to Wabusk Air in May 2019, TC acknowledged the company's intended efforts to improve its maintenance program; however, TC was not confident that proposed actions would address the identified safety issues, nor did TC believe the proposed actions would actually be carried out by Wabusk Air, as evidenced from findings and observations from previous PVI and EM visits.

71 After careful consideration of submissions from both parties on Wabusk Air's aviation record, the Tribunal finds that the company experienced difficulty with its maintenance control over a protracted period of time and that the Minister had become concerned with Wabusk Air's ability to establish and maintain sound maintenance control in support of its commercial flying operation. Wabusk Air did show some improvement and was able to correct some of the non-compliances identified by TC inspectors; however, based on findings from formal PVIs and EM visits, the Minister did not have confidence in Wabusk Air's ability to maintain a maintenance program on an ongoing basis that would ensure the airworthiness of its aircraft. The Tribunal supports the Minister's decision, as there is sufficient evidence, on a balance of probabilities, to cancel the applicant's Air Operator Certificate on the grounds that the public interest and, in particular, the aviation record of the document holder, warrants it.

III. DETERMINATION

72 Pursuant to subsection 7.1(7) of the *Aeronautics Act*, the Transportation Appeal Tribunal of Canada confirms the Minister of Transport's decision to cancel the applicant's Air Operator Certificate on the grounds that the public interest and, in particular, the aviation record of the document holder, warrants it.

Charles Sullivan
Member

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ANNEX A

TATC Review Determination *164061 BC Ltd. Wabusk Air v. Canada (Minister of Transport)*

April 1, 2020

The Tribunal noted that of the 27 non-compliance items admitted to by Wabusk Air (Exhibit M-1), seven were related to significant overdue maintenance actions and 20 related to missing, incomplete and/or erroneous maintenance records. The Tribunal found that all of these items were failures of the company's maintenance control system. A summary of the 27 items admitted to by Wabusk Air are as follows:

- a. Item 1 related to maintenance control, whereas maintenance tasks related to the replacement of the left and right engine hose assemblies on aircraft C-GFBC, in accordance with task 7200-0006, were 636 days overdue;
- b. Item 2 related to maintenance control, whereas records for C-GFBC showed inspection of rear bulkhead structure task SI AD 72-22-01, in accordance with MSA P2295SUD and FAA AD 77-22-01, was 2,644 hrs. overdue;
- c. Item 3 related to maintenance control and record keeping, whereas records for aircraft C-GFBC showed inspection of elevator spar structure task SI AD 82-23-02, in accordance with MSA P2295SUD and FAA AD 82-23-02, was 276 hrs. overdue;
- d. Item 4 related to maintenance control, whereas aircraft C -GAVI was operated 155.5 hours past the due time for stop-pin inspection;
- e. Item 6 related to maintenance control and record keeping, whereas records were not available to support igniter box overhaul/replacements on aircraft C-GAVI, as required by the PT6 approved maintenance schedule (MSA) PAH-8938-PTSA;
- f. Item 8 related to maintenance control and record keeping, whereas technical records for aircraft C-GFBC did not contain sufficient detail to determine the status of compliance and scheduling provisions for ADs CF2013-33R1 and CF2014-33;
- g. Item 10 related to maintenance control and record keeping, whereas there was no "vendor self-audit form" available for work conducted by a contracted AMO as required by MCM Section 9.1;
- h. Item 12 related to maintenance control and record keeping, whereas the Wabusk Air 2016 internal audit Corrective Action tracking sheet listed only three of eight findings;
- i. Item 13 related to maintenance control and record keeping, whereas information contained in the scheduled maintenance tracking program for aircraft C-GFBC did not state the correct overhaul interval, performed time of task, part number, or serial number;
- j. Item 14 related to maintenance control and record keeping, whereas errors identified in the scheduled maintenance tracking program for aircraft C-GFBC were not tracked, which included

engine fuel nozzle inspections, engine mid-life inspections, nacelle splice plate replacement at 20,000 hours, and engine oil filter replacement at 1,500 hours;

- k. Item 15 related to maintenance control and record keeping, whereas the left engine technical logbook for aircraft C-GFBC contained errors of approximately 518.6 hours and 749 cycles in the TSO/CSO;
- l. Item 16 related to maintenance control and record keeping, whereas two scheduled maintenance tasks for aircraft C-GAVI, items 49 and 50 of the special inspection program, as added by the aircraft manufacturer in February 2017 and referenced in the approved maintenance schedule, were not identified in the scheduled maintenance tracking program;
- m. Item 17 related to maintenance control and record keeping, whereas aircraft C-GAVI did not have two technical records for each engine, in accordance with the approved engine maintenance schedule which indicated that each engine on the program will have two technical records;
- n. Item 18 related to maintenance control and record keeping, whereas tasks identified in the Pratt and Whitney Maintenance Manual, Table 601, as referenced in the approved maintenance schedule, were not set up and tracked on the scheduled maintenance tracking program for aircrafts C-GAVI and C-GFBC;
- o. Item 19 related to maintenance control and record keeping, whereas checklists used to conduct the 2016 internal audit, as required by MCM Section 20.1 Evaluation Program, did not cover all functions defined or required within the approved MCM and maintenance schedules as required by CAR 706;
- p. Item 23 related to maintenance control and record keeping, whereas defects on aircraft C-GAVI, log page 1432, were deferred on August 30, 2017 and carried past subsequent phase inspections, which is not in accordance with MCM Section 11.0;
- q. Item 26 related to maintenance control and record keeping, whereas life port special inspections, five-year hydro-static inspection of oxygen bottles, and three-year high-pressure oxygen gauge inspections, were not recorded and tracked on the computerized tracking program;
- r. Item 27 related to maintenance control and record keeping, whereas MCM Section 9.1 states contractors and vendors will be audited, however, contractors are audited but not vendors;
- s. Item 29 related to maintenance control and record keeping, whereas the procedure for requesting maintenance was verbal or via text message and was not as required by the MCM, as there is no record of requests;
- t. Item 31 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GAVI, page 15, item P14-7, incorrectly identified CT blade replacement for the left engine at 5,000 hours; the approved maintenance schedule requires 3,000 hours when used blades are installed;
- u. Item 43 related to maintenance control and record keeping, whereas the tracking report for aircraft C-GAVI, page 18, item S1 S13/13, stated performed at 23760.4 TAT, where the tech log entry stated completed at 23752.0 TAT, an error of 8.4;
- v. Item 48 related to maintenance control and record keeping, whereas the task tracking sheet for aircraft C-GFBC, items P6, 7, 9, 10 and 17 for left and right engine, stated completed on Aug. 22, 2018 TAT 18049.4, where the tech log entry showed it was completed on Aug. 23, 2018 TAT 18052.6;
- w. Item 49 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, item T3, fuel pump in situ inspection, quoted table 601, where the tech log entry stated it was inspected to table 602;

- x. Item 50 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, #1 engine, item T3, fuel pump in situ inspection, showed completed at TSO 4778.30 on Nov. 28, 2018, where the engine tech log entry stated a TSO time of 4753.7 on Nov. 28, 2018, a difference of 24.6 hours;
 - y. Item 51 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, #2 engine, item T3, fuel pump in situ inspection, showed completed at TSO 4778.3 on Nov. 28, 2018, where the engine tech log entry stated a TSO time of 4768.3 on Nov. 28, 2018, a difference of 10 hours;
 - z. Item 56 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, item T1, engine 1 and 2 CT blade replacement at 5,000 hours, was an incorrect time for used blades, where 3,000 hours was the correct replacement time; and,
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- aa. Item 57 related to maintenance control and record keeping, whereas the tracking sheet for aircraft C-GFBC, engine 2 overspeed governor O/H, task number CS, stated task completed on November 3, 2018, where there is no entry in the tech log to show this task was completed on the date stated.

1 *Nexjet Aviation Inc. v. Canada (Minister of Transport)*, (2006) C.T.A.T.D. No. 33.

2 *Canada (Attorney General) v. 2431-9154 Québec Inc.* (F.C.), (2009) 3 F.C.R. 317; paragraph 65-78;

3 *Canada (Attorney General) v. 2431-9154 Québec Inc.* (F.C.), (2009) 3 F.C.R. 317; paragraph 65.