

[Guilbault v. Canada \(Minister of Transport\), \[2017\] C.T.A.T.D. No. 19](#)

Canada Transportation Appeal Tribunal Decisions

Canada Transportation Appeal Tribunal

Mississauga, Ontario

Panel: Franco Pietracupa, Member

Heard: March 29, 2017.

Decision: June 7, 2017.

Docket No.: H-4275-68

MoT File No.: 5802-424879

[2017] C.T.A.T.D. No. 19 | 2017 TATCE 19 (Review)

IN THE MATTER OF the review hearing requested by Jean Guilbault 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 Jean Guilbault, Applicant, and Minister of Transport, Respondent

(74 paras.)

Case Summary

Tribunal Summary:

Held: The Minister of Transport has proven, on the balance of probabilities, that the applicant did not demonstrate the required standard for the issuance of a pilot proficiency check. The Minister's decision is confirmed.

Appearances

For the Applicant: Jean Guilbault (self-represented).

For the Respondent: Shahana Khan.

REVIEW DETERMINATION AND REASONS

I. BACKGROUND

1 The Minister of Transport (Minister) issued a Notice of Refusal to Issue or Amend a Canadian Aviation Document (Notice) to the applicant, Mr. Jean Guilbault, on August 29, 2016, pursuant to paragraph 6.71(1)(b) of the *Aeronautics Act*, R.S.C., 1985, c. A-2 (*Act*).

2 Appendix A of the Notice alleged that the qualifications or conditions necessary for issuance were not met or

fulfilled on the following grounds:

During the flight test that occurred on 26 August 2016, you demonstrated that you did not meet the required standard for a Pilot Proficiency Check (PPC). In accordance with TP14727, your attempt to receive a PPC was assessed as FAIL due to "Technical skills and knowledge reveal unacceptable levels of technical proficiency and/or depth of knowledge", as described in the attached Flight Test report.

II. STATUTES, REGULATIONS AND POLICIES

3 The basis for the refusal to issue is established under paragraph 6.71(1)(b) of the *Act*, which states:

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; [...]

4 Paragraph 705.106(1)(c) of the *Canadian Aviation Regulations, SOR/96-433*, reads as follows:

705.106 (1) Subject to subsection (3), no air operator shall permit a person to act and no person shall act as the pilot-in-command, second-in-command or cruise relief pilot of an aircraft unless the person

[...]

- (c) has successfully completed a pilot proficiency check, the validity period of which has not expired, for that type of aircraft, in accordance with the *Commercial Air Service Standards*; [...]

5 Transport Canada's Pilot Proficiency Check and Aircraft Type Rating Flight Test Guide (Aeroplanes), First Edition (11/2007), TP 14727E (Flight Test Guide), provides the following guidance:

THE PPC

A PPC enables the candidate to demonstrate the knowledge and the skill with respect to;

1. the aeroplane, its systems and components,
2. proper control of airspeed, direction, altitude, attitude and configuration of the aeroplane, in accordance with normal, abnormal and emergency procedures and limitations set out in the AOM (where applicable), the aeroplane flight manual, the air operator's COM, the air operator's SOPs, the check list, and any other information relating to the operation of the aeroplane type,
3. departure, enroute and arrival instrument procedures (if applicable), and
4. adherence to approved procedures.

[...]

PARTIAL AND RETEST

Except for a situation that results in a simulator crash or as in the case of an airborne PPC, a situation that if allowed to continue could result in loss of control of the aircraft, the ACP may allow a candidate to repeat a failed item if no other sequence in the PPC is rated a "(2)" or "(1)."

[...]

FAILURE OF A PPC

When an ACP assesses at least one sequence or item as "(1)", the flight check will receive a General Assessment of "Failed".

[...]

4-POINT MARKING SCALE

When applying the 4-point scale, award the mark that best describes the weakest element(s) applicable to the candidate's performance. Remarks to support mark awards of 1 or 2 must link to a safety issue, a qualification standard (performance criteria), or an approved technique or procedure.

4	Above Standard	Performance remains well within the qualification standards and flight management skills are excellent.	<ul style="list-style-type: none"> • Performance is ideal under existing conditions. • Aircraft handling is smooth and precise (i.e. well within limits). • Technical skills and knowledge exceed (i.e. consistently meet) the required level of competency. • Behavior indicates continuous and highly accurate situational awareness. • Flight management skills are excellent. • Safety of flight is assured. Risk is well mitigated.
3	Standard	Minor deviations occur from the qualification standards and performance remains within prescribed limits.	<ul style="list-style-type: none"> • Performance meets the recognized standard yet may include deviations that do not detract from the overall performance. • Aircraft handling is positive and within specified limits. • Technical skills and knowledge meet the required level of competency. • Behavior indicates that situational awareness is maintained. • Flight management skills are effective. • Safety of flight is maintained. Risk is acceptably mitigated.
2	Basic Standard	Major deviations from the qualification standards occur, which may include momentary excursions beyond prescribed limits but these are recognized and corrected in a timely manner.	<ul style="list-style-type: none"> • Performance includes deviations that detract from the overall performance, but are recognized and corrected within an acceptable time frame. • Aircraft handling is performed with limited proficiency and/or includes momentary deviations from specified limits. • Technical skills and knowledge reveal limited technical proficiency and/or depth of knowledge. • Behavior indicates lapses in situational awareness that are identified and corrected by the pilot/crew. • Flight management skills are effective but slightly below standard. Where applicable, some items are only addressed when challenged or prompted by other crewmembers. • Safety of flight is not compromised. Risk is poorly mitigated.
1	Below Standard	Unacceptable deviations from the qualification standards occur, which may include excursions beyond prescribed limits that are not recognized or corrected in a timely manner.	<ul style="list-style-type: none"> • Performance includes deviations that adversely affect the overall performance, are repeated, have excessive amplitude, or for which recognition and correction are excessively slow or nonexistent, or the aim of the task was not achieved. • Aircraft handling is rough or includes uncorrected or excessive deviations from specified limits. • Technical skills and knowledge reveal unacceptable levels of technical proficiency and/or depth of knowledge. • 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. • Safety of flight is compromised. Risk is unacceptably mitigated.

[...]

1. TECHNICAL KNOWLEDGE**Aim**

Determine the candidate's ability to demonstrate a practical knowledge of selected systems, components, normal, abnormal and emergency procedures and operate aircraft systems in accordance with the POH/AFM.

[...]

17. GO-AROUND (GOA)

Aim

Determine the candidate's ability to carry out a successful missed approach.

Description

Following an instrument approach, the candidate will conduct a missed approach at any time from intercepting final approach to touch down on the runway. Except where ATC amends it, the candidate must follow the published missed approach profile.

In addition, the candidate will demonstrate the proper programming and use of Flight Management Systems as applicable.

[...]

25-28. ABNORMAL/EMERGENCIES

Aim

Determine the candidate's ability to complete recommended checks and procedures in accordance with the POH, AFM, or other applicable publications in event of system malfunctions or other emergencies.

Description

System malfunctions will consist of a selection adequate to determine that the pilot has satisfactory knowledge and ability to safely handle malfunctions. The candidate will be required to demonstrate the use of as many simulated abnormal and emergency procedures as is necessary to confirm that the pilot has an adequate knowledge and ability to perform these procedures.

Performance Criteria

Base the assessment on the candidate's ability to:

- a. demonstrate adequate knowledge of the emergency procedures appropriate to the approved AFM (as may be determined by the ACP) relating to the particular aeroplane type;
- b. promptly identify the malfunctions;
- c. promptly apply correct checks and procedures in accordance with the POH/AFM, or other approved publication;
- d. consider and apply any restrictions or limitations to the operation of a system(s) and procedures in order to continue the flight;
- e. demonstrate knowledge and discipline in the use of the electronic checklist and alerting system, as applicable; and
- f. develop a reasonable course of action for the remainder of the flight.

III. EVIDENCE

A. Minister

(1) Tom Kuilder

6 Tom Kuilder is a national flight operations inspector for Transport Canada. His responsibilities and duties include

the oversight and issuance of delegations for approved check pilots (ACPs) that are embedded within commercial operators in Canada. Mr. Kuilder testified that he was familiar with the failed check ride that took place on August 26, 2016.

7 He introduced Exhibit M-1, the Transport Canada *Approved Check Pilot Manual*, Ninth Edition (11/2007), TP 6533E (*ACP Manual*). This document provides the guidance under which ACPs are expected to perform their activities as check pilots. It provides the criteria on how the check ride should be conducted, the aim of the check (including how to assess the candidate) and the marking scale to be used.

8 Mr. Kuilder explained that Mr. Jason Verhaeghe was a qualified ACP under Transport Canada's program (Exhibit M-2) and was approved to conduct the check ride on Mr. Guilbault. He also testified that a Notice of Refusal was issued to the applicant (Exhibit M-3) on August 29, 2016 based on the candidate not meeting the required standards for issuance of a pilot proficiency check (PPC) on the DH8 aircraft.

9 He went on to explain that the reason for the refusal to issue was that the applicant's technical skills and knowledge revealed an unacceptable level of proficiency and depth, which resulted in a score of "1" being assessed on item 17 of the flight test. The flight test report (Exhibit M-4) filled out by the check pilot identified the various skills and knowledge that were being assessed on Mr. Guilbault during the check ride, which was a captain upgrade, multi-crew assessment.

10 Mr. Kuilder testified that the TP 14727 *Flight Test Guide* (Exhibit M-5) provides the required performance standards that are being applied during the test. A score of "1" is a fail grade and the check pilot must provide a supporting explanation in the remarks section of the flight test report. The witness went on to explain that his office receives failed flight test reports and ensures that failures are properly supported in the form. In the case of Mr. Guilbault's flight test of August 26, 2016, the failure was properly documented.

11 As to what constitutes a failure on a flight test, Mr. Kuilder elaborated in that it can be attributed to a contravention of the regulations, an aircraft limitation being exceeded, a standard operating procedure not being followed or a performance criterion not being met.

12 In cases where the candidate fails an item, the check pilot has the discretion to proceed with a "partial and retest". It is not available when any other item has received a score of "1" or "2" and should only be used when warranted. Mr. Kuilder explained that the partial and retest can be used when a candidate has been performing well and an error is made that is unlikely to ever be committed on a line flight. If all the conditions are met and time permits, at the check pilot's discretion, the failed item can be repeated at the end of the check ride and if passed, it is then scored as a "2".

13 Mr. Kuilder testified that it would be normal for Transport Canada to contact the check pilot when a candidate has prevailed him - or herself of the right to go before the TATC. In this case this was done via an email (Exhibit M-6) that provided clarifications as to the failed event that had occurred.

14 He explained that the WestJet Encore Aircraft Operating Manual provides specific requirements to the crew when conducting category II approaches. Due to the limited weather conditions, the operating procedures require the approach to be discontinued in the event of an abnormality onboard.

15 In the check ride in question, when the abnormality was introduced on short final, the applicant elected to continue the approach, thus contravening this policy. The crew was expected to adhere to all the qualification criteria during the check ride, and these include procedures developed and used by the carrier.

16 Finally, Mr. Kuilder testified that the flight test can be conducted in an approved flight simulator and that the check pilot must use a Transport Canada-approved flight test script that includes the required mandatory items to be evaluated.

(2) Cross-examination of Mr. Kuilder

17 Mr. Kuilder was asked if he had been involved in the development of the *ACP Manual*. He responded that he had not. He was also asked if an ACP can conduct check rides for companies other than the one he or she is employed with. The witness stated that it is possible, but it would require permission from the other carrier.

18 Mr. Kuilder was asked if WestJet Encore had clear guidelines about the go-around during a category II approach. He testified that guidance was available.

(3) Re-direct of Mr. Kuilder

19 The issue of the assessment being made under item 17 (Go-around) was raised. Mr. Kuilder explained that the flight test report form is the standard form used during all pilot proficiency checks. The check pilot uses it to best capture the candidate's performance under the various items listed. In the case at hand, the missed approach procedure was embedded in the category II approach and linked to the crew's ability to demonstrate coordination and decision making during the abnormality, so the missed approach was assessed under item 17.

(4) Jason Verhaeghe

20 Jason Verhaeghe is an ACP for WestJet Encore airlines. His current role is assistant chief pilot. He went on to explain that he has been an ACP in various other companies and has assessed approximately 60 rides.

21 Mr. Verhaeghe introduced Exhibit M-7, the approved simulator script that was used during the captain upgrade check ride for Mr. Guilbault. The script is used to set up the simulator appropriately in order to then program the series of events and exercises that need to be evaluated during the ride. At no time did he deviate from this script.

22 He went on to explain that prior to conducting a check ride, the ACP ensures that the script used is valid and current, that the simulator is properly configured and reviews any technical faults in the device. The ACP verifies the training files and licences and briefs the crew on the weather to expect, instructs it to follow company standard operating procedures (SOPs) at all times and advises it that normal crew coordination is expected. In this particular check ride, Mr. Guilbault was the pilot not flying during the first part of the ride and the pilot flying during the second half. No issues or concerns were raised by either pilot prior to the check ride.

23 Mr. Verhaeghe explained that the applicant had been assessed several scores of "2": as pilot not flying, during the first half of the ride, for a lack of technical knowledge during an event in which he had activated two fire extinguishing bottles within a 10-second interval instead of waiting 30 seconds between activation, then for an excessive fuel imbalance (as per section 2.2.6 of the WestJet Encore DHC-8-400 Operating Manual, Exhibit M-8), which was rectified, and for a momentary deviation in heading tolerances during an engine failure event.

24 Mr. Verhaeghe then went on to describe item 17 on the flight test report, which was the item that led to a failing score of "1". He introduced the approach plate to a category II instrument landing system (ILS) approach to Runway 08 Left in Vancouver (Exhibit M-9). As per the script, an abnormal malfunction with the left transformer rectifier unit (TRU) was introduced at approximately 500 feet during the approach with the intention of having the crew execute a missed approach procedure.

25 He explained that the crew was advised of the malfunction by an annunciator master caution light. The pilot not flying then proceeded to identify the fault and the pilot flying, Mr. Guilbault, elected to continue the approach to the minimum altitude on the approach, which was 100 feet above the runway. Since the weather had been set in the simulator below the minimums for this approach, the crew upon acquiring no visible runway sighting elected to carry out the missed approach procedure. Once established on the go-around, Mr. Verhaeghe stopped the simulator and terminated the check ride since the go-around was not conducted as per the procedures found in the aircraft operating manual.

26 Section 3.20 of the DHC-8-400 Operating Manual (Exhibit M-10) states that an immediate go-around must be conducted inside the final approach fix (FAF) when any system failure or master caution that was not a result of any pre-existing condition occurs. He testified that since the flight was under instrument meteorological conditions and the fault was introduced inside the FAF, the crew should have commenced an immediate go-around and not continued to 100 feet. He explained that although this malfunction was not an emergency situation, the requirement for a go-around inside the FAF allows the crew to properly diagnose the situation and conduct the appropriate checklist before returning for a second approach. He stated that retesting this event was not an option.

27 Mr. Verhaeghe testified that, as stated in a company memo to ACPs dated March 2, 2015 (Exhibit M-11), a partial and retest is an option that can be used at his discretion under certain conditions. Since the crew had already been attributed a basic standard score of "2" on other items, this options was no longer available to him.

28 As to the nature of the fault introduced, Mr. Verhaeghe was asked if it was considered to be an emergency event. He testified that no "Mayday" calls were initiated nor was there discussion of an emergency situation between them.

29 Mr. Verhaeghe testified that when he was advised of the reason the check ride was failed, Mr. Guilbault raised the issue that the training he had received was contrary to what he was now being told. The pilot not flying said little. A report was then submitted to the chief pilot explaining what had occurred (Exhibit M-12).

(5) Cross-examination of Mr. Verhaeghe

30 Mr. Guilbault, in cross-examination of the witness, raised the issue of the Basic Standard score of "2" attributed to several of the items during the check ride. Regarding item 21, Mr. Verhaeghe was asked about his interpretation of an excerpt from the Quick Reference Handbook (QRH) (Exhibit A-1) in relation to the fire bottles being discharged. Referencing a dictionary definition of the phrase "up to" (Exhibit A-2), Mr. Guilbault specifically asked the witness about the upper and lower limits of the direction to "wait up to 30 seconds" before discharging the second bottle. He responded that he was unaware of how much time one is required to wait before discharging a second bottle, other than the 30 seconds found in the QRH.

31 Mr. Verhaeghe was asked about the score of "2" given for item 22 in respect of the lapse in situational awareness resulting in the momentary fuel imbalance. Referencing Exhibit A-3 (another excerpt from the QRH), Mr. Guilbault asked the witness whether he recalled the pilot flying and the pilot not flying electing to transfer fuel and the pilot not flying carrying out this action. He responded that he did recall this action as well as the pilot not flying displaying the fuel page and starting the timer. Mr. Guilbault then asked him why he was graded a "2" on this exercise when in fact he had delegated the task to the pilot not flying and as such should not have been evaluated this low. Mr. Verhaeghe responded that any flight task or action performed by one pilot should be verified by the other and that both are responsible.

32 Asked what heading tolerance would apply in non-normal flight conditions, Mr. Verhaeghe responded that the tolerance for this exercise is 10 degrees and he had verified that this was exceeded momentarily by observing the pilot's instrument panel.

33 Mr. Verhaeghe was asked if it was possible that both pilots could have been unaware of the requirement in the company SOPs for an immediate go-around under the circumstances that occurred during the category II approach. He testified that this could have been the case but the pilots are still required to operate in accordance with the company operating procedures. He agreed that aircraft control was maintained and the problem was discussed, but that ultimately the appropriate action would have been for the crew to conduct an immediate go-around as per the manual regardless of the fault detected by the crew at that time.

34 Mr. Verhaeghe identified Exhibit A-6, section 2.5.6 of the Flight Operations Manual, and was asked whether the

captain's emergency authority took precedence over SOPs. He responded that under the circumstances and with the particular malfunction introduced, this authority would have been inappropriate.

35 Mr. Verhaeghe was asked if he could conduct a PPC ride with other companies within Canada. He responded he could but would need to be familiar with each company's procedures and SOPs. He was asked about the possibility of both pilots not having been familiar with the SOP in regard to carrying out an immediate go-around during the TRU failure event. Mr. Verhaeghe explained that this could have been possible but that they were still mandated to operate the aircraft in accordance with standard procedures.

(6) Re-direct of Mr. Verhaeghe

36 The Minister's representative asked Mr. Verhaeghe what he would expect from both the pilot flying and not flying with respect to monitoring the fuel transfer. He explained that ultimately both pilots are responsible to ensure proper aircraft monitoring. As to why the pilot not flying was not attributed a score of "2", he explained that he had already graded this task during the first half and did not re-grade it during Mr. Guilbault's portion of the ride.

37 Mr. Verhaeghe stated that in regard to item 24, the applicant had exceeded the 10-degree tolerance and that this had been annotated in writing after the termination of the check ride. He went on to explain that in order to properly assess the performance and actions taken during non-normal flight situations, the check pilot must give the candidate an appropriate amount of time. In some cases, a crew can rush to a conclusion but the normal time frame to identify and start addressing the problem, in his opinion, is between 5 to 10 seconds.

B. Applicant

(1) Jean Guilbault

38 Mr. Guilbault has been employed with WestJet Encore since 2015 and previously was semi-retired and operating a non-aviation related business. His flying experience includes employment with Bombardier and prior to that with the Department of National Defence.

39 Mr. Guilbault began his testimony by stating that the check ride was terminated after the go-around and a level-off of the aircraft, and after he had called for the appropriate QRH checklist for the left TRU failure. During the debrief, the check pilot referred both pilots to the applicable reference in the manual that required the crew to perform an immediate go-around after the fault light illuminated. He testified that once it was shown to him and the co-pilot, both agreed that they should have performed an immediate go-around.

40 He stated that a lack of knowledge of the SOP had led to his decision to continue the approach during the failed event. He went on to submit that when the malfunction came on, a risk assessment was carried out and based on his system knowledge of the TRU, he had determined that safety of flight was not affected and thus continued the approach to the decision altitude. Mr. Guilbault explained that the TRU failure did not affect the approach and thus he had elected to continue.

41 Mr. Guilbault was provided in the debrief with an opportunity to explain his actions, and when he did, the check pilot did state that he understood why he had elected to continue the approach but that he had not followed the SOP. Mr. Guilbault again re-iterated that the co-pilot had agreed when he informed him that he would continue the approach, which means either the co-pilot was also not aware of the wording in the SOP or he believed the captain was invoking the emergency procedures authority to continue.

42 Mr. Guilbault testified that once the decision was made to continue the approach, on reaching the minimums and with no visual acquisition of the runway, he performed the go-around procedure. In his view the missed approach was properly carried out and this procedure should not have been assessed a "1". The performance

criteria in relation to this item 17 had been met. He again stated that the scoring grade of "1" was assessed due to his lack of knowledge of the requirement to carry out an immediate go-around.

43 Mr. Guilbault testified that at no time was his situational awareness an issue. The autopilot was on, he had discussed the malfunction with the co-pilot and made the decision to continue the approach as he felt no systems were affecting the approach. He testified that when the malfunction was triggered he was within 30 seconds of landing. He was unaware at this stage that the weather had deteriorated.

(2) Cross-examination of Mr. Guilbault

44 Mr. Guilbault was asked if he was using the emergency discretion during the approach in question. He said he was not.

45 Mr. Guilbault was asked by the Minister's representative if he had recognized that the malfunction triggered was a TRU fault. He explained that as soon as the caution light illuminated he asked the pilot not flying what the problem was. The fault was properly identified and then discussed by the crew. He stated that from illumination of the fault light at 500 feet to the evaluation and decision to continue, the aircraft would have descended to approximately 200 feet. At this stage, both pilots had agreed to continue the approach.

46 When asked about the policy in relation to an immediate go-around, Mr. Guilbault responded that he did know the policy but did not recall that it contained the word "immediate". He relied on his experience and elected to continue since safety of flight was not compromised. He submitted that he does follow procedures that he is aware of and fully agrees that he has a duty to follow and operate the aircraft in accordance with the procedures and policies in place, but that he was, again, unaware that the word "immediate" was in the go-around policy. He did state that although the TRU malfunction did not affect safety of flight during the approach, knowing the wording in the policy today he would perform an immediate go-around.

IV. ARGUMENTS

A. Minister

47 The Minister's representative submitted that the Minister may refuse to issue the Canadian aviation document that the applicant was seeking to obtain pursuant to section 6.71(1)(b) of the *Aeronautics Act* as the qualifications necessary for issuance were not met.

48 The Minister's representative argued that the flight test was properly conducted in adherence to the *ACP Manual* and *Flight Test Guide*. The check pilot, Mr. Verhaeghe, was qualified and delegated to conduct the evaluation, and he did so fairly, adhering to all policies. She also submitted that the applicant did not challenge the majority of the PPC that was conducted on August 26, 2016. The items scored as "Basic Standard" were properly assessed and the ACP maintained these evaluations in testimony.

49 She argued that the WestJet internal policy in regard to failed check rides and the possibility of conducting a partial and retest (Exhibit M-11) state that this is not a guaranteed option. The ACP decides if the retest is warranted, and based on the performance of the crew in the case at hand, the option was not available. She also argued that the ACP had properly assessed the failed item 17 as the crew had elected to continue an approach when it should have elected to conduct a go-around, in violation of the applicable SOP, i.e. section 3.20 of the aircraft operating manual (Exhibit M-10).

50 She argued that a TRU malfunction was not an emergency failure. There was no imminent threat to the safety of the aircraft and the crew should have opted for an immediate go-around. The failure of the applicant to adhere to the approved procedure was an unacceptable deviation and thus was assessed properly as a fail.

51 In discussing why the exercise was marked under the go-around category and not the approach category, the Minister's representative argued that the approach had started well but failed at the go-around phase. Since the applicant had failed to adhere to the WestJet policy in regard to conducting an immediate go-around, he had demonstrated a lack of knowledge of the approved procedure. By his own admission, the applicant was unaware of the requirement for an immediate go-around.

B. Applicant

52 The applicant argued that the script for the check ride did call for the malfunction to be inserted at 500 feet and that the crew must not land. He submitted that had he known that the word "immediate" was in the company SOP, he would have executed the go-around procedure at that point.

53 Mr. Guilbault argued that his actions were right based on the information he had at the time. The only reason the item was graded a fail was the fact that the go-around was not done immediately. Situational awareness was maintained, crew resource management was properly used and the go-around was done as per the aircraft operating manual. Based on his experience and background, flight safety was not compromised.

C. Minister in Reply

54 The Minister argued that the lack of knowledge of the SOP was the reason for the failure.

V. ANALYSIS

55 I find that the flight test was, in general, conducted fairly and in accordance with the *Flight Test Guide* and the *ACP Manual*.

56 Subsection 15(5) of the *Transportation Appeal Tribunal of Canada Act*, S.C. 2001, c. 29, provides that the standard of proof in any matter before the Tribunal is proof on the balance of probabilities. The burden of proof in this case is on the Minister to show that Mr. Guilbault did not meet the qualification or conditions necessary for the issuance or amendment of a Canadian aviation document as required by paragraph 6.71(1)(b) of the *Aeronautics Act*.

57 Documents such as the *ACP Manual*, the *Flight Test Guide*, the QRH, the DHC-8-400 Operating Manual, and the Flight Operations Manual are not law. The Tribunal is not bound by them, but may apply them insofar as they further the purpose of section 6.71 of the *Aeronautics Act*, that being to ensure aviation safety and security. The Tribunal finds that these documents further the purpose of the said provision and will apply them to the case at hand.

58 In this analysis, I will address three main issues raised and discussed by the Minister and the applicant, in testimony and documentary evidence, in order to determine whether or not Mr. Guilbault did meet the qualifications or conditions necessary for issuance of a PPC on the DH8.

(1) Was the failing grade of "1" assessed in item 17 (Go-around) justified?

59 Both parties have agreed to the fact that the technical go-around procedure itself was not the issue but rather the decision NOT to conduct the go-around when required as per section 3.20 of the WestJet Encore DHC-8-400 Operating Manual(Exhibit M-10).

60 The Transport Canada *Flight Test Guide* describes the evaluation that the check pilot must perform when conducting a PPC, which includes assessing the candidate's knowledge and skill with respect to "proper control [...] of the aeroplane, in accordance with normal, abnormal and emergency procedures and limitations set out in the

AOM (where applicable), the aeroplane flight manual, the air operator's COM, the air operator's SOPs, the check list[and] adherence to approved procedures".

61 It is critical that we understand the sequence of events once the captain was informed of the nature of the malfunction by the pilot not flying. In testimony, we heard that the ACP, following the approved script, introduced the left TRU fail at 500 feet in altitude during a category II IMC approach into Vancouver airport. The applicant testified that the malfunction was properly identified and discussed between both pilots, and that a decision to continue with the approach was made by the time they reached approximately 200 feet in altitude. Upon reaching the minimums for this category II approach (radar altitude 113 feet or 100 feet AGL), no visual contact was made with the runway and the crew executed a go-around.

62 The DHC-8-400 Operating Manual (Exhibit M-10) states the following:

An immediate go-around shall be conducted under the following circumstances, if required visual reference is not established or cannot be maintained:

[...]

- * Inside the FAF [final approach fix], any system failure or master caution that is not the result of a pre-existing condition or a radio or instrument failure occurs or instrument crosscheck shows significant deviation

63 Mr. Guilbault acknowledged that he was unaware of, or had forgotten, the word "immediate" in the Operating Manual and insisted that had he known of the requirement, he would have executed the go-around immediately. As the check pilot must evaluate the pilot's technical skills in relation to the company operating procedures, a grading score of "1" was assessed. The *Flight Test Guide* provides guidance and examples as to what constitutes a "1" score. This includes a performance where the pilot performs a task or event with unacceptable deviations from the standard that are "beyond prescribed limits or not recognized or corrected in a timely matter" as well as technical skills and knowledge that reveal "unacceptable levels of technical proficiency and/or depth of knowledge".

64 The applicant has admitted to not being aware of the go-around policy as far as how it related to a master caution system failure inside the FAF on an approach. This reveals an unacceptable level of technical knowledge. In my opinion, the grade of "1" was fair and the exercise was properly evaluated.

65 The issue of having this event assessed under item 17 of the flight test report was raised by the applicant. Although the actual technical flying skills and execution of the go-around were within standard, the decision of when to perform the skill was not. I have no issue with the ACP grading the event under item 17.

(2) Was the Partial and Retest provision in the Flight Test Guide properly administered by the ACP?

66 The *Flight Test Guide* outlines the conditions that would allow an ACP the option of re-testing an item that was failed during a PPC check ride. First and foremost, it is important to note that this option is at the discretion of the ACP and not an automatic privilege for the pilot that failed the item. The conditions that must exist in order for a retest to occur are clearly outlined in the *Guide* (page 8): "...the ACP may allow a candidate to repeat a failed item if no other sequence in the PPC is rated a '(2)' or '(1)."

67 Testimony from the ACP during the review indicated that he did not have the option of a retest since Mr. Guilbault did have three items rated a "2" prior to the failed event. The applicant did raise these three "Basic Standard" scores during the hearing, so it would be important that I address them here.

(a) Item 21 (PNF Duties)

68 During an engine fire drill, the applicant discharged both fire extinguishing bottles in contravention of the applicable QRH procedure (Exhibit A-1), which requires the pilot to wait "up to 30 seconds" prior to discharging the

second bottle. Mr. Guilbault testified that the term "up to" can include any period of time between 1 to 30 seconds and that discharging both bottles within 10 seconds of each other was not in violation of the procedure. This reasoning, however, does not account for all that the QRH procedure specifies, i.e. that after discharging the first bottle, "If fire persists, wait up to 30 seconds", then the second bottle should be discharged. This implies that the crew should take the time to verify the condition of the fire (whether it is persisting or not) before discharging the second bottle. The ACP noted that the applicant discharging both bottles within 10 seconds was a deviation from the checklist, and I agree that the score of "2" was warranted.

(b) Item 22 (Engine Failure)

69 In this event, the crew allowed a fuel imbalance situation to develop in-flight following an engine failure drill. The applicant testified that the checklist was followed correctly and that the fuel page had been called up on the MFD (multi-flight display) in order to monitor the fuel condition. He also testified that the pilot not flying would have been responsible for monitoring the fuel condition and that the score of "2" should have been attributed to the pilot not flying rather than to him. I disagree. The *ACP Manual* at section 4.3.3 states that flight checks are conducted under the "flight crew concept". The DH8 is a multi-crew aircraft operated by a two-pilot crew. Furthermore, the WestJet Encore DHC-8-400 Operating Manual (Exhibit A-4) at section 1.7.3 also specifies that any flight task or action performed by one pilot should be verified by the other pilot. Allowing the fuel imbalance to exceed 600 lbs., contrary to section 2.2.6 of the DHC-8-400 Operating Manual (Exhibit M-8) would warrant attributing a score of "2" to both pilots as both retain a responsibility not to exceed this limitation.

(c) Item 24 (Engine)

70 From the testimony of Mr. Verhaeghe, the applicant had exceeded the acceptable heading control tolerance during a V1 engine failure. Mr. Guilbault's cross-examination of the Minister's witness in regard to this issue basically questioned how the check pilot was able to properly assess the deviation from his position in the simulator. Mr. Verhaeghe responded that he had no problems observing the heading deviation from his position and that it did demonstrate a "Basic Standard" performance (i.e. a score of "2"). The Tribunal was given no reason to believe that Mr. Verhaeghe would have been unable to properly assess this exercise.

71 Having carefully considered all of the evidence and testimony heard, I agree that the Partial and Retest provision was not available to the ACP as the applicant had been assessed a "2" in several other items.

(3) Could the applicant rely on the captain's emergency authority procedure found in the Flight Operations Manual?

72 The WestJet Encore Flight Operations Manual (Exhibit A-6) at section 2.5.6 defines the captain's emergency authority as follows :

In emergency situations that require immediate decisions and actions, the Captain is authorized to take any course of action he deems necessary by the circumstances and information he has available. He may, in such situations, deviate from procedures established by, or instructions received from, the appropriate authorities to the extent required by the consideration of safety.

73 Based on the testimony and evidence provided, the Tribunal has been given no reason to believe that the left TRU malfunction was categorized as an emergency situation. Accordingly, the provision regarding emergency situations is inapplicable to this case.

VI. DETERMINATION

74 The Minister of Transport has proven, on the balance of probabilities, that the applicant did not demonstrate the required standards for the issuance of a pilot proficiency check. The Minister's decision is confirmed.

June 7, 2017

(Original signed)
Franco Pietracupa
Member

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