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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

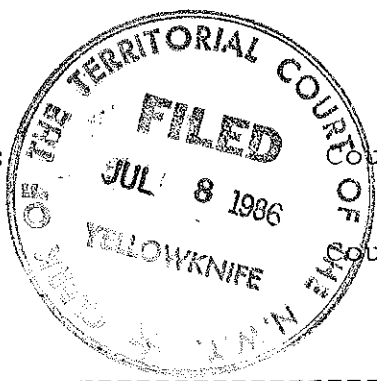
RAYMOND A. BAERT

Transcript of the Oral Judgment Delivered by His Honour
Chief Judge J. R. Slaven, sitting at Yellowknife in the
Northwest Territories, on Thursday, June 19th, A.D.,
1986.

APPEARANCES:

MR. J. SUTTON: Counsel for the Crown

MR. J. BAYLY: Counsel for the Defence



ADJUDICATION & DISPOSITION

CHARGE READ:
MAR 11 1986
 DATE JUDGE OR JUSTICE

CROWN ELECTION:
 Summary Conviction: Indictment:

ACCUSED ELECTION:
 Magistrate: Judge & Jur: Judge:

PLEA: Guilty: Not Guilty:

MAR 11 1986
 DATE JUDGE OR JUSTICE

FAILURE TO APPEAR:
 Bench Warrant Issued:

DISPOSITION
 Convicted: Dismissed: Withdrawn:

FINE: _____
J.P. COSTS: _____
POLICE COSTS: _____
RESTITUTION: _____
TOTAL: _____
DEFAULT: _____
TIME TO PAY: _____

SUSPENDED SENTENCE:
CONDITIONAL DISCH: **ABSOLUTE DISCH:**

PROBATION FOR: 1 year
IMPRISONMENT FOR: _____

June 19/86
 DATE JUDGE OR JUSTICE

COURT NUMBER
 121304

J.P. or Judge's Number
 297/6/8 495/6/8 401/6/5

THIS IS THE INFORMATION OF Col. ALLEN LOUIS LA ROCQUE
 (Insert full name, residence and occupation of informant)

A MEMBER OF THE ROYAL CANADIAN MOUNTED POLICE

OF YELLOWKNIFE, NORTHWEST TERRITORIES

A PEACE OFFICER HEREINAFTER CALLED THE INFORMANT

THE INFORMANT SAYS THAT
 (I have reasonable and probable grounds to believe and does believe that)

RAYMOND A. BAER

On or about the 26th day of February, 1986 A.D. at or near the City of Yellowknife in the Northwest Territories, did unlawfully leave the engine of Reecom Air Ltd. aircraft being Canadian Civil Aviation Registration C-GGSC running when the pilot's seat was not occupied by a person competent to control the aircraft in violation of Section 803(b) of the Air Regulations, C.R.C., c.2 and did thereby commit an offence under Section 6.3(3) of the Aeronautics Act, S.S.C. 1970. c. A-3.

CARD
 O/S
 T.T.P.
 D.B.S.
 J.P.
 M.V.B.

STATISTICS
 DATE OF BIRTH: 38-11-22 M F
 DRIVER'S LICENCE: 30452
 MARITAL STATUS: _____

Sworn before me this 28th day of February
 A.D. 19 86
 at Yellowknife, N.W.T.

A Judge or Justice of the Peace in and for the Northwest Territories

Allen La Roque
 Signature of Informant

Appearance Notice Promise to Appear Recognizance

confirmed _____, 19 _____ Justice of the Peace

1 THE COURT: Well, I won't review the evidence. It is
2 clear, and all the witnesses agree except for some minor
3 inconsistencies. I accept that the aircraft could not
4 have moved on its own power, and that no dangerous situation
5 was created by it having been left to run by itself, unless
6 there was some danger to the craft itself.

7 The wording of Section 818 has been in the Customs
8 and Fisheries Protection Act since at least 1927, or at
9 least it was still in force in 1931, and very likely goes
10 way back to legislation in England hundreds of years ago
11 and possibly similar things in the statutes of all maritime
12 nations.

13 The cases Mr. Bayly has kindly made available to
14 the court regarding ships were both decided in 1931; the
15 May case refers to the Elenor case, among others, regarding
16 urgent distress and I don't think I would apply that
17 interpretation regarding the ships of sea, storms, to a
18 situation such as I have before me today. It certainly
19 is a possibility. The pilot has a heart attack, and a
20 passenger might have to take over, and obviously that might
21 be urgent distress or other unavoidable cause, and it would
22 be a defence to that unlicensed person piloting the craft.
23 I am sure there are many other situations we could imagine
24 where Section 818 would come into play in defence of the
25 regulations.

26 The evidence before me is that if, while the plane
27 is warming up, someone sits inside it, the windshield and

1 the instruments become fogged up, frosted up, iced up,
2 and that the heater doesn't really work until the plane
3 has got off the ground, and it takes some time to get the
4 frost off the windshield. I haven't had personal experience
5 on a Single Otter. I don't go back that far, although
6 one radio station called me Judge Sissons a couple of weeks
7 ago. I think he had a lot of experience with Single Otters,
8 but I have with single Beavers and with the DC-3, and I
9 remember very well how they won't heat up on the ground,
10 certainly not like some Twin Otters today.

11 So I can see a situation where an aircraft with a
12 heater such as this and skis sets down and it sits while
13 its passengers do their business for so many hours, or
14 until cargo is taken off or possibly waiting for passengers
15 to arrive or whatever is going on. It sits there for so
16 many hours so that the skis become frozen to the ice and
17 snow that you are sitting on. I could see that when it
18 comes to take off time the craft would be started to warm
19 up preparatory to jacking it up and freeing the skis,
20 preparatory to taking off. In a case such as that, it
21 would be most desirable that the windows and instruments
22 be as clear and visible as possible. Accordingly, it would
23 be only common sense to leave the plane running for the
24 15 or 20 minutes required with no one inside it so that
25 the windshield would be clear and the instruments as visible
26 as possible upon take off after the jacking up of the skis
27 and the restarting of the engine.

1 In this case, however, there was no contemplation
2 of having the plane take off or even of moving it. There
3 is no evidence before me whatsoever that the frosting up
4 inside would cause any damage to the craft either temporarily
5 or permanently. So there was no immediate stress of weather
6 or other unavoidable cause that led to the contravention
7 of the regulations.

8 The witness, Neil Menzies, the chief engineer, mentioned
9 the fatigue factor both for pilots and other engineers
10 and or maintenance people in weather such as we have
11 here. It would be fatiguing to sit in that cold
12 craft for twenty minutes when one could be in the
13 office watching it and having a cup of coffee and doing
14 other office chores. So certainly in the circumstances
15 what Mr. Baert did was a sensible thing, but it is none
16 the less a contravention of the regulations, and I don't
17 think the circumstances were such as to persuade me that
18 the stress of weather or any other unavoidable cause were
19 such as contemplated to provide a defence to the charge.

20 Accordingly, I find Mr. Baert guilty as charged.
21 I may say if a pilot or anyone else was sitting in there,
22 in control of the craft, although he couldn't see to take
23 off, he none the less could shut off the engine if something
24 happened that required it, maybe a fire in the engine, or
25 revving up and vibrations that might cause damage to the
26 craft, and its being frozen in, but that is just conjecture,
27 and maybe watching it from the shed, from the office 30

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or 100 feet away, they could get to it quickly enough to take whatever measures someone inside the craft could have.

In any event, for the reasons I have given, I find him guilty as charged.

Certified a correct transcript,

Laurie Ann Young

Laurie Ann Young

Court Reporter