ATTORNEY-GENERAL v WATSON

Supreme Court Apia
28 August 1972
Rothwell CJ

STATUTORY OFFENCES (Civil Aviation Regulations 1953 (NZ)) - Breach of Regulation 36 (Dangerous operation of aircraft) - Defendant charged with two counts of operating his aircraft in a restricted area at a speed which would constitute a hazard to men and equipment working in the area - Both charges dismissed on defendant satisfying the onus shifted to him by the Regulation of proving no hazard existed in that no men or equipment were in the restricted area at the relevant time.

- Breach of Regulation 65 (Runway utilisation) - On a third charge of failing to start his take-off at a point on the runway making available sufficient length to meet the aeroplane take-off performance requirements defendant was convicted and fined $40. The fact that there was no danger to anybody by his entry of the restricted area to complete his take-off did not entitle him to disregard the Regulation and make his own rules.

Hay for informant.
Clarke for defendant.

ROTHWELL CJ (orally). These prosecutions fall into two classes, Information No. 277 and Information No. 279 charge the defendant on two separate dates with operating an aircraft in a manner whereby avoidable danger to life or property was likely to ensue contrary to Regulation 36 of the Civil Aviation Regulations 1953 (N.Z.). The same factors apply to both these prosecutions and I propose to deal with them together because the surrounding circumstances were the same in each case, there being a matter of only a few days between the two days on which the two alleged offences were committed. Now the danger to life or property is alleged to have arisen by reason of the fact that from 1,500 feet of the western end of the runway was temporarily and from time to time with variation treated as a taxiing area and not as ordinary runway, and the effect of that was to reduce the available space - the available width - from 150 feet to 75 feet. The restricted area was marked with gable marking boards which indicated that the threshold for the time being at any rate was in a different position, and not at the extreme limit of what a layman would call a runway. The allegation by the prosecution is that the defendant used his aircraft on this area at a speed which would constitute a hazard to people working in that area and to plant, which was being used in that area. But the evidence discloses that in fact the men who were there and the trucks which were there were not on the runway, but in the words of one witness were "in the vicinity". That makes a substantial difference to the hazard which might exist, and it is clear that other aircraft using the airport during that period seemed to be of the opinion that there was no particular hazard, because according to the evidence of Mr Harbroe, "We found the planes tended to speed up before coming to the taxi markers. We put new markers in to show the narrowing restriction, but these were first used about a week later." So what probably should have been done in the first place was to have some markers on the runway itself showing the width that was usable. This might well have been at

the inception instead of later on when it appeared that the restriction was not being complied with. Regulation 36 shifts the onus of proof on to the defendant as far as the question of danger to life or property is concerned, but the standard of proof required of him is not so stringent as the standard required of the prosecution. The prosecution is required to prove whatever lies in its obligation beyond reasonable doubt because this is a penal provision, but where the onus shifts in that way the defendant is not bound by that stringent standard, but merely what he wants to prove or disprove according to the balance of probabilities; and having heard the evidence of the condition at the airport, I am satisfied that he has discharged that onus and that there was no substantial hazard, or danger to human life, or to property on account of the fact that the entire 150 feet was clear of workmen and plant, and accordingly those two Informations will be dismissed.

But the third Information No. 278 relates to his activities on the 20th April in that contrary to Regulation 65 of the Civil Aviation Regulations 1953 (N.Z.) he did not ensure that the take-off was started from a point on the runway which made available sufficient length to meet the aeroplane take-off performance requirements, considering the effects of wind, air temperature, altitude, and runway slope. I think it is fair to say that the evidence before the Court of anything in the nature of wind, air temperature, and runway slope, if not entirely missing, is negligible, and the matter is to be considered from the point of view of the length of runway used by the defendant: whether that length of runway was adequate considering the performance of his aircraft, which, by common consent, is agreed to be an unusual type of aircraft and in fact the only one known to be used for passenger carrying. Now I might be in some difficulty if I had to deal with all the technical information that has been produced in evidence, but what it boils down to really is this. Mr Corrich giving expert evidence, (and his qualification is not disputed), says that the safe take-off distance of the Fletcher aircraft is 2,350 feet and of course that relates to an aircraft carrying a full certifiable load, or the full load to which the certificate is issued, and would be reduced when the load is something less than that. And I think it is also common ground that on the 20th April the load was something less than the full weight to which the aircraft was certified. But there is substantial difference of opinion between Mr Corrich and the defendant, who says that having had some fairly considerable experience of operating this Fletcher that it has a take-off run of considerably less than Mr Corrich says is established by the official specifications for this aircraft. That is exactly the point at which I would find myself in considerable difficulty if I did not think that the matter was covered from another practical angle. Mr Wilson, who was no doubt a fair distance from the runway, but nevertheless I find as a fact had the runway well within his view, says that he saw the aircraft under the control of the defendant taxiing down to the east and turning at a point which he fixed at about 1,000 feet from the end of the runway as marked by the marker boards, which restricted the use of the runway on that day. That, if accepted, means that there was 1,000 feet in which the defendant had to get his aircraft to the point where there was sufficient speed to get it airborne and get 50 feet off the ground to comply with the requirements for safe take-off. On his own evidence, that is apparently an insufficient distance, and certainly on the evidence of Mr Corrich it is far below a sufficient distance. Now Mr Wilson goes on to say in his evidence, "The aircraft made the turn and was moving fast on the ground over the threshold (that is the western threshold) moving into the taxiing area. I did not see it become airborne. It went behind the hill." And this is estimated, of course, he said it crossed the western threshold at something in the vicinity of 60 miles per hour. Mr Corrich deposed to a conversation with the defendant a few days after the day after the second offence, and he says that the defendant said that there was too much runway available for his use considering his aircraft and he thought he was wasting time taxiing to the required point. The defendant says that he has no recollection of saying that, if we disregard that there is other evidence which supports the matter. It is not denied that the safe take-off means the taking of the wheels off the

ground and attaining a height of 50 feet, and what the defendant says to repel that is, "that, (and these are his precise words), the plane was airborne before the marker boards as far as I can tell." Now there was considerable examination and cross-examination as to what he really was prepared to depose to definitely, and the court accepts that it may be difficult for a pilot to see at what precise point he leaves the ground and that is where he is airborne, but that is very different from being able to see that he was 50 feet above ground and that is the defence raised by the defendant, and is in my view not sufficient. He does not dispute the presence of the marker boards. He does not dispute their function. He says that, "the boards are there to indicate that you can't use an area; that it is not available for take-off or landing", and in my view the offence charged in Information 278 is proved beyond reasonable doubt. But there are ameliorating features associated with the matter, which may be taken into account in assessing the penalty. On that Information the defendant will be convicted.

I think that the defendant has been a little bit cavalier in his approach to the restrictions because the same features apply to this particular prosecution as applied to the other two; that he came to the conclusion that there was no substantial danger to anybody in his not using the full length of the runway that he could have used because he saw 1,500 feet more, and he fell into the trap which everybody has to guard against, and that is the trap of making your own rules. If rules are made you have got to comply with them; not to say to yourself, I won't bother to comply. This is regrettable in a case of a pilot, who has otherwise a blameless reputation and history, but I am not here to fail to enter a conviction where I think the charge has been proved, and all I can do is by way of ameliorating the penalty which I now do. He is convicted and fined $40.00.