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## Bryant and Anor and Civil Aviation Safety Authority [2013] AATA 641 (11 September 2013)

Last Updated: 11 September 2013

### [2013] AATA 641

Division                   **GENERAL ADMINISTRATIVE DIVISION**  
 File Number           **2013/3671**  
 Re                         **William Bryant**  
                               APPLICANT  
 And                        **Civil Aviation Safety** **Authority**  
                               RESPONDENT

File Number           **2013/3672**  
 Re                         **Bill Bryant Aircraft Engineering Pty Ltd**  
                               APPLICANT  
 And                        **Civil Aviation Safety** **Authority**  
                               RESPONDENT

### DECISION

Tribunal                 **Ms G Ettinger, Senior Member**  
 Date                     **11 September 2013**  
 Place                    **Sydney**

Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal refuses to grant a stay of the decision of CASA, of 17 July 2013, in regard to William Bryant’s Aircraft Engineer Licence.

Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal grants a stay of the decision of CASA, of 17 July 2013, in regard to the Certificate of Approval C2304 for Bill Bryant Aircraft Engineering Pty Ltd.

.....[sgd].....  
**Ms G Ettinger, Senior Member**

## CATCHWORDS

*AVIATION – civil aviation – cancellation of individual’s Aircraft Engineer Licence and company’s Certificate of Approval – application for stay of decisions – relevant considerations – hardship – public safety – prospects of success – stay refused in regard to the cancellation of the individual’s Aircraft Engineer Licence – stay granted with regard to the company’s Certificate of Approval*

## LEGISLATION

[Administrative Appeals Tribunal Act 1975 s 41\(2\)](#)

[Civil Aviation Act 1988 ss 30DC, 31A](#)

## CASES

← **Civil Aviation Safety** → *Authority v Hotop* [\[2005\] FCA 1023](#); [\(2005\) 145 FCR 232](#)

*Re AMT Helicopters Pty Ltd and* ← **Civil Aviation Safety** → *Authority* [\[2006\] AATA 314](#)

*Re Dekanic and Tax Agents’ Board of New South Wales* [\(1982\) 6 ALD 240](#)

*Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [\[1993\] AATA 274](#); [\(1993\) 31 ALD 380](#)

*Re Repatriation Commission and Delkou* [\[1985\] AATA 297](#); [\(1985\) 8 ALD 454](#)

## REASONS FOR DECISION

**Ms G Ettinger, Senior Member**

**11 September 2013**

## BACKGROUND

1. Mr William Bryant, who has been engaged in the aviation industry for more than 50 years, held an Aircraft Engineer Licence (Aircraft Maintenance Engineer (AME) Licence with Aviation Reference Number (ARN) 087872), until it was cancelled by the ← **Civil Aviation Safety** → Authority (CASA) on 17 July 2013. He is also the CEO, director, a shareholder and the controlling mind of Bill Bryant Aircraft Engineering Pty Ltd (the company), which held a Certificate of Approval, C2304. That Certificate of Approval was similarly cancelled by CASA on 17 July 2013. The Certificate of Approval had authorised the company to carry out maintenance of aircraft and maintenance of aircraft components. Mr Bryant was the Chief Engineer and Manager of the company’s aviation maintenance business located at Tamworth Airport.
2. In June 2012, CASA Airworthiness Inspectors carried out an airworthiness audit of the company, and concluded that the company was non-compliant with multiple provisions of the applicable aviation legislation, and with the provisions of its procedures manual, and, further, that it was maintaining standards of airworthiness substantially below that required for a Certificate of Approval holder.
3. CASA issued show cause notices which identified the following issues:
  - documentation and records not correctly maintained;
  - removal of an engine from a storm damaged aircraft and installed in another aircraft;
  - unauthorised modification of the air conditioning system of an aircraft;
  - false or misleading certification;

- backdating certification of maintenance of an aircraft;
  - failure to monitor seat belt time limits;
  - independent flight control systems inspection not carried out on an aircraft;
  - unlawful operation of an aircraft without satisfying safety requirements;
  - providing false or misleading information to CASA;
  - defects in maintenance which contributed to an in-flight fire.
4. Mr Bryant has exercised his right to apply to this Tribunal for a stay of those decisions until the substantive appeals from those decisions which he has appealed, can be heard.
  5. On the basis of the evidence before me, and taking into account the principles generally exercised in considering whether a stay should be granted, I have decided to stay the decision to cancel the Certificate of Approval, C2304, held by Bill Bryant Aircraft Engineering Pty Ltd. I have decided to refuse a stay in regard to the cancellation of Mr Bryant's Aircraft Engineer Licence. My reasons follow.

## ISSUE BEFORE THE TRIBUNAL

6. The only issue before the Tribunal at this time is whether the discretion to grant a stay of the decisions of CASA of 17 July 2013 should be exercised in favour of William Bryant and Bill Bryant Aircraft Engineering Pty Ltd.

## POWER TO GRANT A STAY

7. The relevant legislation in regard to a stay is [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#) (AAT Act) which relevantly provides:

*The Tribunal may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section referred to as the **relevant proceeding**), if the Tribunal is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or a part of that decision as the Tribunal considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.*

8. Siopis J explained in  [Civil Aviation Safety Authority v Hotop](#) [\[2005\] FCA 1023](#); [\(2005\) 145 FCR 232](#) at 240:

*The powers conferred on the Tribunal by s 41(2) of the AAT Act are to be exercised for the purpose of securing the effective hearing and determination of the review application.*

9. The power to grant a stay pursuant to section 41(2) of the AAT Act is quite a separate exercise to the automatic stay granted pursuant to section 31A of the CAA. The appropriate approach to stay applications in the AAT has been raised on many occasions. It was dealt with, for example, in *Re Repatriation Commission and Delkou* [\[1985\] AATA 297](#); [\(1985\) 8 ALD 454](#) in the context of a veteran's entitlement matter, and in *Re Dekanic and Tax Agents' Board of New South Wales* [\(1982\) 6 ALD 240](#) in regard to the registration of a tax agent, and was raised with particular reference to civil aviation matters comprehensively in *Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [\[1993\] AATA 274](#); [\(1993\) 31 ALD 380](#). Deputy President Forgie suggested in that case that the Tribunal consider at least the following matters:
  - the prospect of success of the application for review;
  - the hardship to the applicant and other parties affected by the decision if the stay order is not made;
  - whether public safety is likely to be imperilled if the stay orders are made; and

- whether the review application, if successful, would be rendered nugatory or pointless if the stay was not granted.
- 10. The power to grant a stay pursuant to section 41(2) of the AAT Act is to be exercised for the purpose of securing the effective hearing and determination of the review application. Ultimately, the discretion may be exercised if it is found to be desirable to do so after taking into account the interests of any persons who may be affected by the review.
- 11. The parties in the matter before me made written as well as oral submissions which addressed the main areas for consideration by me.

## **HARDSHIP OR PREJUDICE TO THE APPLICANTS OR OTHER PARTIES AFFECTED BY THE CANCELLATIONS**

- 12. The applications were heard by telephone link, and Mr Bryant, who did not speak at the hearing, was present with his representative, Mr John Glynn, solicitor, of Tamworth. Both Mr Bryant and Mr Glynn had sworn affidavits which were before the Tribunal. The Respondent was represented by Mr R Heap, Principal Lawyer, CASA.
- 13. In summary, Mr Glynn's affidavit dealt with his inability to make an appointment with CASA for a show cause meeting due to court commitments which he had disclosed to CASA on each occasion. In his oral submissions, he said that Mr Bryant and he had been ready to attend a show cause meeting with CASA, and when that had proven impossible, written submissions were made. Mr Heap commented that the written submissions largely consisted of legal objections to the cancellations rather than clarification by Mr Bryant of the items raised by CASA.
- 14. Mr Glynn also submitted that as CASA had found the company not to have appropriate up-to-date manuals, Mr Bryant had engaged Air Transport Management who had rewritten the Procedure Manuals for him. He had also ensured that the principal of Air Transport Management would continue to regularly update the manuals.
- 15. Mr Bryant's affidavit recited his background and training, stating that he is 66 years old and has had some health problems. He stated that it was his intention to ease himself out of the (aviation) business, which he had operated out of Tamworth for the past thirty years. He indicated that most of his assets were in the business and the hangar. He stated that in 2011 he sold the flying training, charter business and Aircraft Operators Certificate, (AOC), but continued to operate the aircraft maintenance facility.
- 16. Mr Bryant said that he was the Chief Engineer of the company, and without a licence the company would be unable to operate until a new Chief Engineer was employed. He added that in addition to himself, the company employs a full time engineer and a full time administrative assistant, as well as contracting personnel when required to carry out maintenance on particular aircraft.
- 17. Mr Bryant deposed that his only source of income was from aircraft maintenance and through the company, and if he could not operate, he would have no income which would cause severe hardship to his dependent wife.
- 18. Mr Bryant deposed that he had been in negotiations with prospective purchasers of the business and hangar over the past year, adding that those persons were aware of his situation vis-a-vis CASA, and that CASA knew who the persons were. Mr Glynn submitted that the sale was subject to the Certificate of Approval being current, and that without it, the business had no value. He told me that there were two prospective purchasers, one a local person, and another returning to Australia from overseas to re-establish. Commenting on the proposed sale of the business, Mr Heap noted that there was no contract for sale available.
- 19. Mr Glynn's affidavit also dealt with Mr Bryant's proposed sale of the company. He submitted that if the stay were not granted, Mr Bryant would not be able to continue with the sale of the business.
- 20. Mr Glynn also submitted that if the stay were not to be granted, it would render the hearing nugatory as the business would have shut down, the employees dismissed, and the clientele moved on. He emphasised the financial loss to Mr Bryant, his employees, his clientele, and the fact that Tamworth only has two organisations which carry out aircraft maintenance.

21. Mr Glynn also submitted that had CASA considered Mr Bryant such an imminent threat to aviation safety, it could have taken action pursuant to section 30DC of the [Civil Aviation Act 1988](#) (the CAA) to suspend a civil aviation authorisation despite the show cause process having commenced.
22. Mr Glynn submitted that in order to alleviate the hardship and prejudice to Mr Bryant and his organisation, conditions could be imposed on the licences such as supervision by CASA airworthiness engineers who operated from a base at Tamworth airport.
23. Mr Heap, in addressing the hardship claimed, submitted that the extent of the financial loss Mr Bryant might suffer was not clear as there was no statement of his assets and liabilities before the Tribunal. Mr Heap noted that Starcage Pty Limited, Mr Bryant's business which owned and leased out aircraft, was sold in 2011, and submitted that, in any case, the safety of air navigation and the public, outweighed any personal hardship Mr Bryant might experience as a result of the cancellations. In that regard, Mr Heap referred to the deficiencies CASA had found in Mr Bryant's work, including, amongst others, breaches of regulations regarding failure to calibrate tools, lack of internal audits, problems when CASA audited in 2002, 2005, and 2007, and significant incidents such as installing an engine from a damaged aircraft, false and misleading certifications and a fire due to an exhaust system which was not properly installed.
24. I am mindful from the evidence and submissions before me, that CASA has expressed dissatisfaction with Mr Bryant's operation on numerous occasions over an extended period of time, and that whilst Mr Bryant has attempted to rectify certain matters such as engaging Air Transport Management to rewrite Procedure Manuals for him, and keep them up to date, many other serious dissatisfactions remain unaddressed.
25. I am mindful also that Mr Bryant and the company appear not to have been classed by CASA as a serious and imminent threat to air safety because CASA did not invoke its powers pursuant to [section 30DC](#) of the CAA which would have involved immediate suspension of Mr Bryant's licence and/or the company's Certificate of Approval.
26. I have noted Mr Bryant's evidence that aircraft maintenance and the work of the company are his only source of income, and that his employees and dependent wife would suffer if stays were not to be granted. I accept Mr Bryant's explanation that if stays were not to be granted, his employees would no longer have jobs because he would not be able to operate his business, and that this would cause irreparable damage to himself, the company, and his employees, and that the substantive hearing would be rendered nugatory because the business would have to immediately close down.
27. I am also mindful of Mr Glynn's submissions that the company would not have any value without a current Certificate of Approval, and that potential purchasers of it would not proceed if it were not intact.
28. Accordingly, in considering the hardship aspects of whether granting a stay is desirable after taking into account the interests of the persons who may be affected by the review, I give greater weight to retaining the company's Certificate of Approval pursuant to a stay than granting a stay to Mr Bryant on account of his Aircraft Engineer Licence.

## ISSUE OF PUBLIC SAFETY

29. The issue of the safety of air navigation must be the most important in the consideration of whether it is desirable to exercise the discretion to grant a stay: *Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [1993] AATA 274; (1993) 31 ALD 380.
30. Mr Glynn, referring to [section 30DC](#) of the CAA, emphasised that CASA had the power, if Mr Bryant had been a serious and imminent threat to air safety, to take immediate action to suspend the relevant civil aviation authorisations. CASA had not done so, and Mr Glynn accordingly asked the Tribunal to assume that that was not the situation which CASA found.
31. Mr Heap referred to a dysfunctional safety culture in Mr Bryant's organisation. He submitted that the 2012 audit of Mr Bryant's work raised serious functional issues such as falsification of certificates and an inflight fire.
32. As to Mr Bryant's Aircraft Engineer Licence and the company's Certificate of Approval; CASA found in its 2012 audit that the company was non-compliant with multiple provisions of the

applicable aviation legislation and with the provisions of the procedure manual, and was maintaining airworthiness standards substantially below that required for a Certificate of Approval holder. There were:

- certification failures;
  - removal of an engine from a storm damaged aircraft which was installed into another aircraft without certification of its airworthiness;
  - unauthorised modification of an air conditioning system in an aircraft;
  - failure to monitor seat belt time limits;
  - independent flight control systems inspection not carried out;
  - provision of false and misleading information to CASA.
33. CASA also submitted that for the purposes of reg 269(1)(c) of the [Civil Aviation Regulations 1988](#), Mr Bryant failed in his duty as an Aircraft Engineer Licence holder with respect to matters affecting the safe navigation or operation of an aircraft on multiple occasions. CASA also found that Mr Bryant was not a fit and proper person to be the holder of an Aircraft Engineer Licence.
34. My primary concern, as CASA's must be, is to consider uppermost, the safety of air navigation. I note that CASA did not exercise its power to suspend Mr Bryant's licence and the company's certificate pursuant to section 30DC of the CAA as it could have if it considered that the conduct of either of the Applicants were a serious and imminent risk to air safety. However, CASA has found a pattern of non-compliance over some years. In July 2013, following the 2012 audit, and what it considered unsatisfactory responses to its proposal to cancel Mr Bryant's licence and the company's certificate for which it gave Mr Bryant and his lawyers ample opportunity to attend show cause meetings, and/or provide written responses, CASA cancelled the relevant licences.
35. In considering whether to grant a stay in regard to one or both of the CASA decisions to cancel Mr Bryant's licence and the company's certificate, I must consider the impact on safety of the non-compliance on which CASA has based its cancellation decisions. As I have already noted, the non-compliance was not so serious or posed such imminent danger to air safety that immediate suspension of the licences was desirable.
36. As I am inclined to grant a stay to the company in order for it to be able to be sold, and no stay to Mr Bryant in his capacity as the holder Aircraft Engineer Licence, I also intend to maintain that position in regard to the consideration of safety of air navigation. The company would require a licensed Chief Engineer to replace Mr Bryant in order to apply again to operate.

## PROSPECTS OF SUCCESS OF THE APPLICATIONS ON REVIEW

37. The prospect of success of the applications on review was not canvassed orally at the stay hearing, and the Applicants relied mainly on the hardship Mr Bryant would suffer if the Tribunal did not grant stays of the decisions.
38. The Respondent did not make submissions about the prospects of success of the applications except to recite principles to be taken into account.
39. I am mindful of what Senior Member McCabe said in *Re AMT Helicopters Pty Ltd and Civil Aviation Safety Authority* [2006] AATA 314 which is:

*It is not necessary that I conduct a mini-trial of the issues to determine whether or not the applicant is likely to succeed at the hearing.*

40. There are few documents before me in order to assist, and in any case the application for a stay is an interlocutory matter with a hearing to follow. I am unable to provide any views on the prospects Mr Bryant and the company have at hearing.

## CONCLUSIONS

41. I have considered all the evidence and case law, and the factors relevant to exercise of the discretion to grant a stay pursuant to section 41(2) of the AAT Act.

- 42. The safety of air navigation and the public must be of the utmost concern to this Tribunal. I have had to consider the impact on safety of the non-compliance on which CASA has based its cancellation decisions. As I have already noted, it was not so imminent that immediate suspension of the licences was desirable. As I am inclined to grant a stay to the company in order for it to be able to be sold, and no stay to Mr Bryant in his capacity as the holder Aircraft Engineer Licence, I also intend to maintain that position in regard to the consideration of safety of air navigation.
- 43. As to the issue of hardship to Mr Bryant and other parties; I am satisfied that although financial hardship is not the only issue which must be considered when considering the exercise of the discretion to grant a stay, Mr Bryant would suffer genuine financial hardship, and future lost opportunity, particularly in regard to the sale of Bill Bryant Aircraft Engineering Pty Ltd if a stay were not to be granted. Having taken into account all the evidence, I am satisfied that it is desirable to permit a stay of CASA's decision to cancel the Certificate of Approval held by the company.
- 44. However, notwithstanding the hardship that has been pleaded, I am not persuaded that a stay should be granted to William Bryant in regard to his Aircraft Engineer Licence.
- 45. In regard to the prospects of success of the application for review of the decision, I am unable on the documents before me to provide any views on the prospects Mr Bryant and the company have at hearing.

**DECISION**

- 46. Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal refuses to grant a stay of the decision of CASA, of 17 July 2013, in regard to William Bryant's Aircraft Engineer Licence
- 47. Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal grants a stay of the decision of CASA, of 17 July 2013, in regard to the Certificate of Approval C2304 for Bill Bryant Aircraft Engineering Pty Ltd.

I certify that the preceding 47 (forty -seven) paragraphs are a true copy of the reasons for the decision herein of Ms G Ettinger, Senior Member

.....[sgd].....  
Associate

Dated 11 September 2013

Date of hearing	<b>29 August 2013</b>
Solicitor for the Applicant	<b>Mr J Glynn, McMahon Broadhurst Glynn</b>
Solicitor for the Respondent	<b>Mr R Heap, CASA</b>