In the Matter of an Arbitration

Between

NAV Canada

(Employer)

And

Canadian Air Traffic Control Association

(Association)

Before: M.B. Keller, Arbitrator

Appearances: J. Emond for the Employer
A. Rosner for the Association

Hearing in Ottawa, May 18 and June 12, 2001.

AWARD

The instant matter deals with the interpretation of article 32.23 of the collective agreement between the parties which expired on March 31st, 2001.

"32.23 **Classification System**

During the life of the present collective agreement, NAV CANADA shall introduce a new classification system and standards including the evaluation of positions in the bargaining unit. The new classification system and standards once agreed upon by NAV CANADA and the Association shall form the basis for joint consultation for the purposes of implementing the system and determining the appropriate annual rate of pay (Appendix "A"). Any disagreement between NAV CANADA and the Association concerning its application as it relates to salaries shall be subject to the grievance and arbitration procedure. Until such time as the new classification system and standards have been implemented and the salary structure determined, the classification system standards existing upon signature of the collective agreement shall remain in place.

32.23 **Système de classification**

Pendant la durée de la présente convention collective, NAV CANADA doit mettre en place un nouveau système de classification ainsi que de nouvelles normes de classification incluant l'évaluation des postes de l'unité de négociation. Une fois qu'ils auront fait l'objet d'un accord entre NAV CANADA et l'Association, ce nouveau système de classification et ces nouvelles normes de classification constitueront le fondement d'une consultation conjointe ayant pour objectif la mise en oeuvre du système et la détermination des taux de salaire annuels appropriés (Appendice A). Tout désaccord entre NAV CANADA et l'Association au sujet de l'application du système eu égard aux salaires doit être soumis à la procédure de réglement et d'arbitrage des griefs. Les normes et le système de classification en vigueur au moment de la signature de la convention collective demeureront en vigueur tant que le nouveau système de classification et les nouvelles normes de classification n'auront pas été mis en place et que la structure des salaires n'aura pas été établie."

It is common ground between the parties that the employer introduced on March 29, and the Association accepted on March 30, a new classification system and rates of pay. What is at issue is the date of the implementation of the new standards and rates of pay. The Association takes the position that it must be as of the time of their acceptance. The employer distinguishes between introduction and implementation, saying there is no agreement on the latter and therefore it may unilaterally specify the date subject to its obligation to act reasonably.

In fact, the issue of implementation was dealt with in the employer's letter of March 29, 2001 when it made its proposal to the Association. The relevant portion of the letter reads as follows:

"It is NAV CANADA's position that this proposal fully satisfies its obligations under this article. To the extent that the proposed classification system and standards results in increases in compensation for controllers, the amount of such increases will be included as part of the total negotiated adjustments to compensation in the current round of collective bargaining. As well, the effective date for implementation of this proposal would be upon the signing of the new collective agreement."

The following facts are relevant to this matter:

1. The Association, prior to March 29, 2001, attempted on numerous occasions to get the employer to introduce the new classification system. The employer rebuffed the attempts at the

Association while indicating it would live up to its commitment in article 32.23 to introduce it prior to the expiry of the collective agreement.

2. The language of article 32.23 was drafted initially by the employer and presented to the Association. There was no subsequent change to the language during collective bargaining.

3. The Association was very happy with the language

4. There was no discussion about when the changes would be implemented. The Association was satisfied it would be introduced during the life of the collective agreement.

5. Once the system and standards were agreed there would be joint consultation to establish rates of pay and decide on the implementation of the system that had been introduced.

6. The protection for the Association was that the old system would remain in effect until the new one was fully in place.

7. Two other collective agreements with the same employer are not as definitive with respect to the introduction of a new system providing the employer with the discretion to introduce.

Without meaning to oversimplify the arguments of the parties I believe they can be stated as follows:

For the Association: Both the English and French versions of the text have equal application so that even if the English text is ambiguous, the use of the terms "mettre en place" in the first sentence and "mis en place" in the last sentence of the French version make the point that the introduction and implementation are synonymous.

: The purpose of establishing a new classification system is to put it into place, fully functioning and this, in its totality, had to be done by March 31, 2001.

: If the article has the meaning attributed to it by the employer the article is meaningless as there can be indefinite delay in its implementation.

: The employer intends to bargain the implementation in the next round of bargaining and that was never the intent of the parties.

For the employer: Article 32.23 has to be read in its entirety to properly interpret its meaning.

: The article provides joint consultation for the purposes both of determining the appropriate rates are pay and for the purposes of implementing the system. The former was completed; the latter was not. Failing agreement following joint consultation the employer is free to implement as it sees fit subject to the bona fides of the implementation and providing it has acted reasonably.

: The effective date of the new collective agreement is reasonable because there is nothing in the current collective agreement specifying an implementation date.

: Because the Association never insisted on a time frame there is none.

After thoroughly reviewing the evidence tendered, the testimony of the witnesses and the arguments of counsel I am satisfied that the language in article 32.23 does not have the meaning ascribed to it

by the Association, regardless of whether the English or French text is used.

The English text clearly distinguishes between introduction and implementation. There's no question the employer has done the former. Once it has done so there is then the obligation to consult to implement, a clear and distinct phase of the process. That distinction is also made in the last sentence of article 32.13. The old system and standard remains in place until there is implementation of the new system and standard something that has not yet occurred.

Although the French text uses "mettre en place" and "mis en place" as argued by the Association it also uses the phrase "mise en oeuvre" with respect to the consultation that must be carried out. Whereas "mis en place" may be akin to introduce, "mise en oeuvre", a distinct phrase is more closely akin to implement. As in the English text the parties have distinguished between introduction and implementation. Thus, in either text there is the obligation with respect to implementation. It is not reasonable to conclude, therefore, that the old system remains in place only until the introduction of the new system when the text specifically distinguishes between introduction and implementation. Given the distinction in the text, and given the language regarding consultation, having failed to specify an implementation date, the Association cannot now claim that one exists as it suggests.

The employer submits that failing agreement after consultation it has the unilateral right to implement subject to the two structures stated above. I am prepared, for the purposes of this award to accept that. The question then is whether the employer has acted reasonably with respect to its choice of an implementation date. I have concluded they have not.

The employer acknowledged its general duty to implement in a reasonable manner. That, I would suggest means within a reasonable period of time once there is agreement on the part of the Association on the system, standards and wage rates.

Article 32.23 was bargained as part of the expired collective agreement. The employer, in its letter of March 29, 2001 takes the position that in the next round of collective bargaining the cost for what has already been negotiated and agreed to will be included as part of the total negotiated adjustments to compensation. Counsel for the employer submits that is nothing more than "costing". With respect, I cannot agree. I believe that one can assume that there is, at the very least, a possibility that a new classification system can lead to higher costs. That is the very nature of reclassification. The possibility should have been considered by the employer at the time and dealt with. If it was considered and not raised or dealt with it should have been. To now try to tie implementation of what was agreed to the next round of bargaining falls short of the acknowledged need to act in a reasonable matter. In my view the employer is now attempting to establish a condition that was never contemplated at the time nor one, I can assume, that would have been agreed to by the Association at the time. The commitment to introduce the new classification system carries with it a concomitant obligation to implement that system. The period proposed by the employer could never have been reasonably contemplated by the Association. Had it been suggested by the employer at the time I believe it is reasonable to assume that it would have led to a difference of opinion and at the very least, an attempt on the part of the Association to establish a different implementation date.

Semantically the employer can attempt to argue that costing and the date of implementation are different: a reading of the March 29, 2001 letter suggests otherwise. The employer has inextricably linked the two and that, plus the delay which is indeterminate, makes it unreasonable.

The grievance succeeds in part. The employer was under no obligation to implement the new system and standards by March 31, 2001. However, its date of implementation is not reasonable. I

am not in a position to determine what would be a reasonable period of time not having heard submissions on that issue. The parties are hereby given 15 days from receipt of this award to hold joint consultation on implementation. If there is still an issue on an implementation date I will be prepared, in an expedited fashion, to consider what is reasonable should the matter be referred back to me by either party.

In any event, I remain seized to deal with any issue arising from this award.

Ottawa, this 15th day of June, 2001.

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M.B. Keller, Arbitrator