

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

NAV CANADA

(“the Employer”)

- and -

**CANADIAN AIR TRAFFIC CONTROL ASSOCIATION,
CAW-CANADA, LOCAL 54 54**

(“the Union”)

**AND IN THE MATTER OF THE GRIEVANCE OF BRIAN PARKS RELATING
TO MAINTENANCE OF SALARY**

ARBITRATOR: Kenneth P. Swan

APPEARANCES:

For the Employer:

Jacques Emond, Counsel

Kecia Podetz, Counsel

George Donovan, Assistant General Counsel, NAV CANADA

Steve Cooper, Manager, Labour Relations, NAV CANADA

For the Union:

Abe Rosner, National Representative, CAW-Canada

Greg Myles, Secretary-Treasurer, CAW-Canada, Local 54 54

AWARD

A hearing in this matter was held in Ottawa, Ontario, on November 29, 2004. At the outset of the hearing, the parties were agreed that the arbitrator had been properly appointed, and that I had jurisdiction to hear and determine the matter at issue between them.

The grievance from which this matter arises was filed on November 27, 2003, by Mr. Brian Parks, an air traffic controller in Sudbury, Ontario. The grievance reads as follows:

On September 10, 2003, management advised that I was being placed on MOS effective September 1, 2003. Manager Roland Tschupruk stated, by letter, that I was being involuntarily removed from control duties as a result of my medical certificate not being renewed by Transport Canada. The MOS period lasted for 17 days.

This practice contravenes LOU 4-03 of the current collective agreement.

Consultation with management to date has not resulted in a solution to this issue.

The grievance relates to maintenance of salary (MOS) which, under the present collective agreement, is covered by Letter of Understanding 4-03, which is as follows:

This is to confirm an understanding reached during the current negotiations in respect of removal from active control duties for medical reasons.

Provided a controller has performed active control duties for NAV CANADA (or in the case of a “continued

employee” for NAV CANADA and Transport Canada) for a period of five (5) years and is no longer able to perform active control duties due to medical reasons, it was agreed that the individual involved would suffer no loss of his or her normal pay for a minimum of one (1) year. Subject to paragraph 4 this one (1) year period will commence on the date on which the medical endorsement of his or her air traffic controller licence is revoked or sixty (60) days following the first day that the employee ceased to exercise active control duties as a result of being on sick leave, whichever is earlier. This maintenance of salary would be conditional upon the employee first performing other duties related to his or her technical background and/or experience as assigned by NAV CANADA for which the employee is medically qualified. If the employee is unable to perform such duties because of medical reasons or if no alternate duties are available then he or she must utilize all earned leave credits during the maintenance of salary period referred to above.

The total maintenance of salary provided under this letter shall not exceed one (1) year during an employee's total period of employment within NAV CANADA and its predecessor the Public Service unless, through consultation on individual cases, the parties agree to an extension of salary maintenance.

An employee will not be placed on maintenance of salary if the employee has sufficient sick leave credits to cover the period of his or her absence and the employee's LVC is not affected.

The abbreviation “LVC” in the last sentence stands for “License Validation Certificate”, an expression that does not seem to appear anywhere else. The parties use this expression to mean the Medical Certificate which, as is more fully described below, is attached to an air traffic controller license and has the effect of validating the license for the period covered by the certificate. The same document is described in the second paragraph of the Letter of Understanding as “the medical endorsement of his or her air traffic controller licence”.

There is no dispute between the parties as to the facts on which this matter must be determined, although from the point of view of the arbitrator the facts as agreed seem somewhat incomplete. Mr. Parks was at all material times an operational air traffic controller with more than five years' service, and was thus in the category of air traffic controllers who could benefit from the maintenance of salary provisions of Letter of Understanding 4-03.

Air traffic controllers are required to possess a valid air traffic controller license issued by the Department of Transport. A part of that license is a medical certificate which is valid for a period of 24 months for an air traffic controller under the age of 40, and for 12 months for an air traffic controller of the age of 40 or older. Mr. Parks' then current medical certificate was due to expire on August 31, 2003, and in the ordinary course he would have attended at the office of a Civil Aviation Medical Examiner (CAME) to undergo a medical examination for renewal of his medical certificate some time before the expiry date.

Because of a medical condition requiring medication, Mr. Parks was prescribed a new medication regime to begin in July 2003. This information was reported to the Regional Aviation Medical Officer (RAMO) for the Ontario Region, whose office apparently provided telephone advice, and confirmed that advice by registered mail dated August 25, 2003. This letter reads in part as follows:

With reference to a recent telephone call, June 27, 2003, with you ... this office advised you about what course of action would need to be followed with respect to your duties as an Air Traffic Controller.

On July 25th, you informed us that your medication would start on July 26th. You were told that you could not be employed in active duties until a period of stabilization had taken place. As this would be only a temporary situation, it was felt that a formal suspension of your Medical Certificate would be unnecessary. We understand that you will be undergoing a renewal of your MC [medical certificate] with your CAME next week. You should take a copy of your [medical results] with you. He will be able to assess your progress and should be in a position to revalidate your MC and allow you to return to active duties at that time.

As it happens, however, Mr. Parks' medical certificate was not renewed prior to September 1, 2003, and as a consequence his air traffic controller license became, in effect, invalid as of that date. On September 10, 2003, as described in the grievance, his manager wrote to him to inform him that he was being involuntarily removed from control duties effective September 1, 2003, and placed on maintenance of salary effective that date. The medical certificate was renewed on September 18, 2003, and Mr. Parks then returned to active control duties.

The result of this application by the Employer of Letter of Understanding 4-03 is that Mr. Parks was paid 17 days during September 2003 under the maintenance of salary provisions of the Letter of Understanding. Since the total maintenance of salary available to an employee during his or her total period of employment cannot exceed one year, Mr. Parks' remaining career entitlement to maintenance of salary was thus reduced by those 17 days.

I note that there is no evidence before me which explains the delay in issuing the renewal of the medical certificate beyond the date apparently contemplated in the letter from the RAMO of August 25, 2003. The parties are agreed that it was not

renewed before its expiry, but they are seemingly unaware of precisely why there was a delay in the renewal process.

There is some history to this matter which must be briefly reviewed, although I do not think that it affects the outcome of this award in any way. In 2001, the parties argued a number of issues in relation to sick leave and maintenance of salary before the present arbitrator. In my award, *Re NAV CANADA and Canadian Air Traffic Control Association*, [2001] C.L.A.D. No. 338 (Swan), June 28, 2001, I discussed the question of when an air traffic controller's license is "affected" for the purposes of LOU 4-03, which is the central issue presented in the present arbitration. In paragraph 10, the following appears:

A license is affected when it is suspended, revoked or expired, and where that takes place for medical reasons, the effect is to remove an employee from the control of aircraft movements, and to commence the MOS protection found in [what is now LOU 4-03]. Not every illness will, however, affect the medical certificate. Section 404.06 of the Canadian Aviation Regulations prohibits the holder of a license from exercising the privileges of that license when circumstances exist which could "impair the holder's ability to exercise those privileges safely", which includes suffering from illness, injury or disability, taking a drug, or receiving medical treatment which has that effect. Such conditions, particularly where they are temporary and transient, need not affect the controller's medical certificate, but may require the controller to refrain from exercising the privileges of a license while those conditions continue.

This "definition" of the word "affected" in the first sentence is a paraphrase of the agreed issues placed before me by the parties in that arbitration. Paragraph 2 of the parties' joint submission as to the issues before me includes the words "(i.e. suspended, cancelled or not renewed)" as a parenthetical definition of the word

“affected”. Neither the informal explanation this constitutes, nor my paraphrasing of the words used, constituted an authoritative interpretation of the words of the letter of understanding.

In the course of negotiations for the current collective agreement, the Employer proposed to amend the letter of understanding by adding the following sentence at the end of the last paragraph quoted above:

For the purposes of this LOU, ‘affected’ means the suspension, cancellation, non-renewal or deferral of a medical certificate.

This amendment was not accepted by the union, and was ultimately withdrawn by the Employer. The e-mail withdrawing the proposed change, however, includes the following statement:

However, the Union should note that, upon ratification/conclusion of a new collective agreement, it is our intention to apply the following:

- * Controllers who receive a letter from a RAMO/Licensing Authority containing a statement that restricts them from exercising the privileges of their license (letter may or may not make reference to CARS 404.06) will be considered to have had their license ‘affected’ and be immediately placed on MOS, provided they are eligible for MOS.

It will be observed that the Employer’s notice to the Union is broader than what was actually applied in the case of Mr. Parks. He was not placed on MOS upon receipt of the letter from the RAMO on August 25, 2003, but only upon the expiry, without renewal, of his medical certificate after August 31, 2003. Therefore, the validity of the position taken by the Employer in negotiations for the present collective agreement

is not before me. The only issue which I must resolve is whether the effect of the expiry of Mr. Parks' medical certificate prior to renewal constituted a situation in which his license was affected for the purposes of the Letter of Understanding.

A number of statutory and regulatory provisions were referred to in argument. The *Aeronautics Act*, R.S.C. 1985, c. A-2, provides, in sections 7.1 and 7.2, for the powers of the Minister of Transport in relation to a Canadian aviation document, an expression which includes both air traffic controller licenses and the attached medical certificates:

Suspension, etc., on other grounds

7.1 (1) If the Minister decides to suspend, cancel or refuse to renew a Canadian aviation document on the grounds that

- (a) the holder of the document is incompetent,
- (b) the holder or any aircraft, airport or other facility in respect of which the document was issued ceases to meet the qualifications necessary for the issuance of the document or to fulfil the conditions subject to which the document was issued, or
- (c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder, as defined in regulations made under paragraph 6.71(3)(a), warrant it,

the Minister shall, by personal service or by registered or certified mail sent to the holder or the owner or operator of the aircraft, airport or facility, as the case may be, at their latest known address, notify that person of the Minister's decision.

Contents of notice

(2) A notice under subsection (1) shall be in such form as the Governor in Council may by regulation prescribe and shall, in addition to any other information that may be so prescribed,

- (a) indicate, as the case requires,
 - (i) REPEALED: S.C. 2001, c. 29, s. 37(2), effective June 30, 2003 (SI/2003-128).
 - (ii) the nature of the incompetence of the holder of the Canadian aviation document that the Minister believes exists, the qualifications necessary for the issuance of the document that the Minister believes the holder of the document or the aircraft, airport or facility in respect of which the document was issued ceases to have or the conditions subject to which the document was issued that the Minister believes are no longer being met or complied with, or
 - (iii) the elements of the public interest on which the decision of the Minister is based; and
- (b) state the date, being thirty days after the notice is served or sent, on or before which and the address at which a request for a review of the decision of the Minister is to be filed in the event the holder of the document or the owner or operator concerned wishes to have the decision reviewed.

Effective date of Minister's decision

(2.1) The Minister's decision to suspend or cancel a Canadian aviation document takes effect on the date of receipt of the notice under subsection (1) by the person on whom it is served or to whom it is sent, unless the notice indicates that the decision is to take effect on a later date.

Request for review of Minister's decision

(3) Where the holder of a Canadian aviation document or the owner or operator of any aircraft, airport or other facility in respect of which a Canadian aviation document is issued who is affected by a decision of the Minister referred to in subsection (1) wishes to have the decision reviewed, he shall, on or before the date that is thirty days after the notice is served on or sent to him under that subsection or within such further time as the Tribunal, on application by the holder, owner or operator, may allow, in writing file with the Tribunal at the address set out in the notice a request for a review of the decision.

Request for review not a stay of suspension, etc.

(4) A request for a review of the decision of the Minister under subsection (3) does not operate as a stay of the suspension, cancellation or refusal to renew to which the decision relates.

Appointment of review time

(5) On receipt of a request filed in accordance with subsection (3), the Tribunal shall forthwith appoint a time, as soon as practicable after the request is filed, and place for the review of the decision referred to in the request and in writing notify the Minister and the person who filed the request of the time and place so appointed.

Review procedure

(6) At the time and place appointed under subsection (5) for the review of the decision, the member of the Tribunal assigned to conduct the review shall provide the Minister and the holder of the Canadian aviation document or the owner or operator affected by the decision, as the case may be, with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations in relation to the suspension, cancellation or refusal to renew under review.

Determination of Tribunal member

(7) On a review under this section of a decision of the Minister to suspend, cancel or refuse to renew a Canadian aviation document, the member of the Tribunal who conducts the review may determine the matter by confirming the Minister's decision or by referring the matter back to the Minister for reconsideration.

Effect of decision pending reconsideration

(8) If a decision to suspend or cancel a Canadian aviation document is referred back to the Minister for reconsideration under subsection (7), the decision of the Minister remains in effect until the reconsideration is concluded. However, the member, after considering any representations made by the parties, may grant a stay of the decision until the reconsideration is concluded, if he or she is satisfied that granting a stay would not constitute a threat to aviation safety.

(9) REPEALED: S.C. 2001, c. 29, s. 37(4), effective June 30, 2003 (SI/2003- 128).

Right of appeal

7.2 (1) Within thirty days after the determination,

- (a) a person affected by the determination may appeal a determination made under subsection 6.72(4), paragraph 7(7)(a) or subsection 7.1(7) to the Tribunal; or
- (b) a person affected by the determination or the Minister may appeal a determination made under subsection 6.9(8) or paragraph 7(7)(b) to the Tribunal.

Loss of right of appeal

(2) A party that does not appear at a review hearing is not entitled to appeal a determination, unless they establish that there was sufficient reason to justify their absence.

Disposition of appeal

- (3) The appeal panel of the Tribunal assigned to hear the appeal may
 - (a) in the case of a determination made under subsection 6.72(4), paragraph 7(7)(a) or subsection 7.1(7), dismiss the appeal or refer the matter back to the Minister for reconsideration; or
 - (b) in the case of a determination made under subsection 6.9(8) or paragraph 7(7)(b), dismiss the appeal, or allow the appeal and substitute its own decision.

Effect of decision pending reconsideration

(4) If a decision to suspend or cancel a Canadian aviation document is referred back to the Minister for reconsideration under paragraph (3)(a), the decision of the Minister remains in effect until the reconsideration is concluded. However, the appeal panel, after considering any representations made by the parties, may grant a stay of the decision made under subsection 7.1(7) until the reconsideration is concluded, if it is satisfied that granting a stay would not constitute a threat to aviation safety or security.

Presumably, the relevant ministerial action here is a decision “to ... refuse to renew a Canadian aviation document on the grounds that ... the holder ceases to meet the qualifications necessary for the issuance of the document”. The word “affected” is used throughout this provision, and the Union argues that the statutory underpinning for the use of the word “affected” in the Letter of Understanding is found here. It must be observed, however, that the statute uses the word, in the context relevant here, to describe a holder of a Canadian aviation document who is affected by a decision, and not the license or its medical certificate itself.

In addition, reference was made in argument to the *Canadian Aviation Regulations* (CARs). The relevant provisions of Part IV, Subpart 4, which deal with the medical requirements, are as follows:

SUBPART 4 - MEDICAL REQUIREMENTS

DIVISION I - GENERAL

Interpretation

404.01 (1) In this Subpart, "CAME" means a Civil Aviation Medical Examiner appointed by the Minister to conduct medical examinations of applicants for the issuance or renewal of medical certificates pursuant to subsection 404.04(1).

(2) Any reference in this Subpart to the personnel licensing standards is a reference to the Personnel Licensing and Training Standards respecting Medical Requirements.

Application

404.02 This Subpart applies to

- (a) persons who hold or who apply for the issuance or renewal of a medical certificate for the purpose of exercising the privileges of a permit, licence or

- rating referred to in section 404.10; and
- (b) the physicians referred to in section 404.16.

DIVISION II - MEDICAL CERTIFICATE

Requirement to Hold a Medical Certificate

404.03 No person shall exercise or attempt to exercise the privileges of a permit, licence or rating unless the person holds a valid medical certificate of a category that is appropriate for that permit, licence or rating, as specified in section 404.10.

Issuance, Renewal and Validity Period of Medical Certificate

404.04 (1) Subject to subsection (2) and subsection 404.05(1), the Minister shall issue or renew a medical certificate on receipt of an application therefor if

- (a) where the applicant is applying for a medical certificate in connection with an application for a student pilot permit-aeroplane, pilot permit - recreational, pilot or student pilot permit - ultra-light aeroplane, a pilot licence - glider or student pilot permit - glider, the applicant has completed and submitted a medical declaration, in accordance with the personnel licensing standards, that attests to the fact that the applicant is medically fit to exercise the privileges of the permit or licence that is applied for; or
- (b) in any case not referred to in paragraph (a), it is established, by means of a medical examination conducted by a physician referred to in section 404.16, that the applicant meets the medical fitness requirements specified in the personnel licensing standards.

(2) The Minister

- (a) may request an applicant for the issuance or renewal of a medical certificate to undergo, before a specified date, any medical tests or examinations that are necessary to determine whether the applicant meets the medical fitness requirements

specified in the personnel licensing standards;

- (b) shall not issue or renew a medical certificate until the applicant has undergone all of the tests and examinations requested by the Minister pursuant to paragraph (a); and
- (c) may suspend, or refuse to issue or renew, the applicant's medical certificate if the applicant fails to comply with the request referred to in paragraph (a) before the specified date.

(3) The Minister may

- (a) request the holder of a medical certificate to undergo, before a specified date, any medical tests or examinations or provide any additional medical information, as necessary to determine whether the holder continues to meet the medical fitness requirements specified in the personnel licensing standards; and
- (b) suspend, or refuse to renew, the holder's medical certificate if the holder fails to comply with the request referred to in paragraph (a) before the specified date.

(4) A medical certificate is subject to any restrictions or limitations that have been endorsed on the certificate in accordance with subsection 404.05(2).

(5) Subject to subsection (6), a medical certificate is valid until the date specified on the certificate by the Minister in accordance with the personnel licensing standards.

(6) The maximum period of validity of a medical certificate is

- (a) 12 months for the holder of an airline transport pilot licence - aeroplane or helicopter;
- (b) 12 months for the holder of a commercial pilot licence - aeroplane or helicopter;
- (c) 24 months for the holder of a student pilot permit - helicopter or a private pilot licence - aeroplane or helicopter;
- (d) 60 months for the holder of a student pilot permit -

- glider or a pilot licence - glider;
- (e) 60 months for the holder of a student pilot permit - aeroplane or a pilot permit - recreational;
 - (f) 24 months for the holder of a pilot licence - balloon;
 - (g) 12 months for the holder of a flight engineer licence;
 - (h) 24 months for the holder of an air traffic controller licence;
 - (i) 60 months for the holder of a flight instructor rating - glider or ultra-light aeroplane; and
 - (j) 60 months for the holder of a student pilot permit or pilot permit - ultra-light aeroplane.

Prohibition Regarding Exercise of Privileges

404.06 (1) Subject to subsection (3), no holder of a permit, licence or rating shall exercise the privileges of the permit, licence or rating if

- (a) one of the following circumstances exists and could impair the holder's ability to exercise those privileges safely:
 - (i) the holder suffers from an illness, injury or disability,
 - (ii) the holder is taking a drug, or
 - (iii) the holder is receiving medical treatment;
- (b) the holder has been involved in an aircraft accident that is wholly or partially the result of any of the circumstances referred to in paragraph (a);
- (c) the holder has entered the thirtieth week of pregnancy, unless the medical certificate is issued in connection with an air traffic controller licence, in which case the holder may exercise the privileges of the permit, licence or rating until the onset of labour; or
- (d) the holder has given birth in the preceding six

weeks.

(2) No holder of a permit, licence or rating who is referred to in paragraph (1)(b), (c) or (d) shall exercise the privileges of the permit, licence or rating unless

- (a) the holder has undergone a medical examination referred to in section 404.18; and
- (b) the medical examiner has indicated on the holder's medical certificate that the holder is medically fit to exercise the privileges of the permit, licence or rating.

(3) The Minister may, in writing, authorize the holder of a medical certificate to exercise, under the circumstances described in paragraph (1)(a) or (d), the privileges of the permit, licence or rating to which the medical certificate relates if such authorization is in the public interest and is not likely to affect aviation safety.

404.07 to 404.09 [[Reserved]]

DIVISION IV - MEDICAL FITNESS

Minister's Assessment

404.11 (1) The Minister shall assess any medical reports submitted pursuant to paragraph 404.17(b) to determine whether an applicant for the issuance or renewal of a medical certificate meets the medical fitness requirements set out in the personnel licensing standards that are necessary for the issuance or renewal of the medical certificate.

(2) The Minister shall, by personal service or by registered mail sent to the applicant at the latest known address of the applicant, immediately

- (a) notify the applicant of the result of an assessment, and
- (b) in the case of an application for the renewal of a medical certificate, inform the applicant that the Minister will, no earlier than 30 days after the date that the applicant receives the notification, make a decision pursuant to subsection 7.1(1) of the Act, based on the result of the assessment.

Reconsideration of Assessment

404.12 (1) An applicant for the renewal of a medical certificate who is assessed by the Minister as not meeting the requirements referred to in

subsection 404.11(1) may, within 30 days after the date that the applicant receives the notification referred to in subsection 404.11(2),

- (a) request the Minister to reconsider the assessment; and
- (b) submit additional information to the Minister regarding the medical fitness of the applicant in support of the request.

(2) Where the Minister is requested to reconsider an assessment pursuant to subsection (1), the Minister shall

- (a) take into consideration any additional information regarding the medical fitness of the applicant; and
- (b) immediately notify the applicant in writing of the result of the reconsideration of the assessment.

404.13 to 404.15 [[Reserved]]

DIVISION V - MEDICAL EXAMINERS

Authority to Conduct Medical Examinations

404.16 No physician shall conduct a medical examination of an applicant for the issuance or revalidation of a medical certificate unless the physician conducts the medical examination in the region in which the physician is licensed to practise and

- (a) the physician is appointed by the Minister as a CAME;
- (b) where the applicant is a regular member of the Canadian Forces or an air cadet, the physician is a Canadian Forces flight surgeon; or
- (c) where the applicant resides or is examined in a contracting state other than Canada, the physician is authorized by the licensing authority of the contracting state to conduct such examinations.

Responsibilities of Medical Examiner

404.17 Where a physician referred to in paragraph 404.16(a) or (b) conducts a medical examination of an applicant for the issuance or renewal of a medical certificate, the physician shall

- (a) conduct the medical examination in accordance with the procedures set out in the personnel licensing standards; and

- (b) submit to the Minister a medical report that specifies the results of the medical examination.

Permission to Continue to Exercise the Privileges of a Permit, Licence or Rating

404.18 (1) When the holder of a medical certificate undergoes a medical examination by a physician referred to in paragraph 404.16(a) or (b) for the purpose of obtaining permission to continue to exercise the privileges of the holder's permit, licence or rating, the medical examiner shall

- (a) sign and date the medical certificate and stamp it with the medical examiner's official stamp indicating that the applicant is "fit", subject to any restrictions already endorsed on the medical certificate, including any restriction to a shorter than normal validity period;
- (b) return the medical certificate to the applicant; or
- (c) advise the applicant that he or she is "unfit".

(2) When the applicant's medical certificate has been marked with an endorsement referred to in paragraph (1)(a), the certificate validates the permit or licence for the period specified on the medical certificate. SOR/2003-129, s. 9, effective June 1, 2003 (Can. Gaz. Pt. II, Vol. 137, No. 9, p. 1204).

The Union argues that it is inescapable that the parties used the word “affected” in the Letter of Understanding so as to be consistent with the use of that word in the *Aeronautics Act*, even though it was used in the LOU to modify the word “LVC” rather than the applicant for renewal, as the word is used in the statute. I note that, in *Martin and Treasury Board (Transport Canada)* [1995] C.P.S.S.R.B. No. 28, March 10, 1995, Public Service Staff Relations Board, L.M. Tenace, Vice Chairperson, an adjudicator came to a similar conclusion about the intention of the parties. That decision is not binding on me, and it may have been rendered obsolete by a mutual agreement between the parties to abandon past practices in 1999. There is also the awkward circumstance that, while this was not argued before me, the French versions of the statute

and Letter of Understanding 4-03 do not support this argument in the slightest, since quite different language is used.

In my view, however, the correct place to look for help in the interpretation of the Letter of Understanding is in that document itself. A review of the document, viewed as a whole, makes it clear that the word “affected” appears in only one place, the fourth paragraph. This paragraph serves only one purpose, as an exception to the main operative provision, the second sentence of the second paragraph, which begins with the words “Subject to paragraph 4”. The appropriate place to start to find the intention of the parties is thus that sentence, which goes on to provide that the one year period of maintenance of salary commences on the date on which “the medical endorsement of his or her air traffic controller licence is revoked”. Thus, when the expression “and the employee’s LVC is not affected” is used as an exception to the exception set out in the fourth paragraph, logic requires a direct reference back to the use of the word “revoked” in the second paragraph. To give “affected” a meaning which expands on the scope of “revoked” is to ignore where it appears in the document, in a very subsidiary provision. In context, it cannot be given its ordinary meaning, as the Employer argues, but must be read together with the operative provision which it modifies.

I note that the word “revoked” is not used in the *Aeronautics Act*. In my view, the word is shorthand for the words “suspend, cancel or refuse to renew” in section 7.1. It contemplates formal action by the Minister to invalidate the medical certificate, either permanently or indefinitely or conditionally.

The maintenance of salary provisions are, in most cases, a once-in-a-lifetime protection against loss of medical qualifications to work as an operational air traffic controller. The parties would not reasonably have intended that those provisions would be invoked unless there were a significant challenge to those qualifications. As appears from my earlier award on maintenance of salary issues, cited above, there are significant effects on other collective agreement entitlements, including loss of some accrued benefits, when a controller begins to benefit from the maintenance of salary protections. Reasonable parties would not intend such a result without a clear and positive trigger.

The result, in my opinion, is that the medical certificate of an air traffic controller is not affected for the purposes of LOU 4-03 merely because it expires prior to being renewed. Obviously, official notice of the Minister's decision to "refuse to renew" the medical certificate, a step which can only be taken after the provisions of CARS in relation to medical assessments have been carried out, would certainly amount to revocation. Whether something less than official notice under section 7.1 would have the same effect on maintenance of salary is not before me as a general issue; I am only able to decide the grievance before me.

The Employer argued that there had been, in effect, a delegation to the CAME to renew or not to renew, and the failure to renew by the CAME constituted a refusal to renew by the Minister. Leaving aside the question of whether there can be a delegation of the Minister's powers, and to whom they can be delegated, for a case where the issue of delegation arises squarely, there is here not only no evidence of a delegation

to the CAME, nor any evidence that the CAME took any action at all. I do not even know for certain from the evidence when and in what circumstances Mr. Parks actually attended with the CAME.

I note that the processes for renewal of the medical certificate and for refusing to renew a medical certificate are not at all parallel. The endorsement by a CAME on an applicant's medical certificate has the effect of validating that certificate, pursuant to section 404.18 of the Regulations, presumably subject to any subsequent conclusion the Minister might come to in relation to the medical reports submitted. On the other hand, the failure or refusal of the CAME to endorse the medical certificate does not constitute an immediate refusal under the *Aeronautics Act*. Rather, the processes of notice and decision, as set out in the regulations and in section 7.1 of the Act, must be carried out before there is an official refusal. Mere unexplained delay in processing the renewal, which is all that the evidence suggests occurred in the case of Mr. Parks, is not enough to trigger the Letter of Understanding.

Both CARS, in section 424.04(4), and the collective agreement, in clause 30.04, make some provision for relieving against circumstantial or administrative delay in issuing or renewing a medical certificate. Neither provision appears to have been invoked here. It may be that it is too late to do so now, and that if the grievance is allowed Mr. Parks will have to apply for sick leave for the 17 days if the reasons for the delay make him eligible. If he is not eligible, he may have to rely on other forms of leave instead. But such contingencies cannot change the interpretation of the language of the Letter of Understanding.

On this basis, therefore, the grievance must be allowed, and Mr. Parks is entitled to reinstatement of the 17 days of MOS entitlement which was applied to his temporary inability to exercise the privileges of his license because of the delay in renewing his medical certificate. I retain jurisdiction to whatever extent is necessary to resolve any difficulties which may arise in the course of implementing this award.

DATED at TORONTO this 15th day of February, 2005.

Kenneth P. Swan, Arbitrator