

Files: 166-2-6437-6440, 6666,  
6473/4, 7026-7029

PUBLIC SERVICE STAFF RELATIONS ACT  
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

D.R. LAWES ET AL  
P.W. PARSONS ET AL  
G. KIFIAK ET AL  
L. DERRIEN ET AL

grievors,

AND:

TREASURY BOARD  
(Transport Canada)

employer.

DECISION

Before: Leon Mitchell, Q.C., Deputy Chairman and Adjudicator.

For the Grievor: Ms. C. MacLean, counsel.

For the Employer: Pierre Hamel, counsel.

Heard on October 3 and 4, 1979 at Victoria, B.C.

ARTICLE 13  
CODE 402/79  
MEAL & RELIEF  
BREAKS

## DECISION

1. There are 13 grievors of the collective agreement between the Treasury Board and the Canadian Air Traffic Control Association represented by the Ministry of Transport who complained that the employer was in violation of Article 13.02(d) on various occasions. That article reads as follows:

Where operational requirements permit,  
the Employer will provide operating  
employees with meal and relief breaks.

2. Each grievor states in essence that on a day which he specifies in the grievance he was:

...refused meal and relief breaks to which  
I am entitled under the collective agree-  
ment because the necessary staff which  
would have been required to provide these  
breaks had not been assigned to duty by  
management or replaced on an overtime  
basis if they had been assigned and  
failed to report for duty.

3. The remedy sought by each grievor reads as follows:

1. A declaration that I was improperly denied meal and relief breaks contrary to the provisions of the collective agreement.
2. An order that in future the employer ensure that sufficient staff is available to permit that I be granted meal and relief breaks in accordance with the collective agreement.

4. Five grievances were referred to adjudication. The date of the alleged violation of the collective agreement and the names of the grievors on each are as follows:

- (a) A grievance was submitted on behalf of the following employees alleging that they were denied meal and relief breaks in contravention of Article 13.02(d) of the collective agreement on February 18, 1979: D.R. Lawes, J.C. Whyte and W.T. Sankey.
- (b) On April 1, 1979, a similar grievance was submitted on behalf of the following employees: D.R. Lawes, J.C. Whyte, M.J. Todd and W. Heal.
- (c) On April 7, 1979, a similar grievance was submitted on behalf of the following employees: P.W. Parsons and G.V.A. Kifiak.
- (d) On April 21, 1979, a similar grievance was submitted on behalf of the following employees: J.E. Pye, L. Derrien, E.R. Landega and U.G. Newstone.
- (e) On April 29, 1979, a similar grievance was submitted on behalf of the following employees: L. Derrien, P.W. Parsons, W.T. Sankey and W.E. Robertson.

5. The facts are not in dispute. Each of the grievors is employed as a Controller and works in the air traffic control tower at the airport situate at the International Airport in Victoria, B.C. The tower is called a "cab". Airports are graded according to volume of air traffic and complexity of operations required to be performed. Victoria Airport is graded as requiring a No. 2 Tower. For purposes of comparison, Vancouver is graded as a No. 3 Tower. Each full shift requires three controllers and one assistant controller to man four consoles at each of four positions located along the perimeter in the cab. The cab is on the 4th floor of the tower. In the Victoria Tower there is no radar equipment to assist in locating air traffic. The controller must rely on direct verbal communication with the pilot of

each aircraft. The pilot verbally describes his geographic location by reference to the identifiable topography or objects on the ground. The primary function and responsibility of the controllers is to avoid accidents in the air and on the ground.

6. Every movement in traffic which involves communication between the controller and a pilot is a traffic statistic. Planes land and take-off on the ground and on bodies of water. There are also many "through" flights which are monitored even though they neither land nor take-off from the vicinity of Victoria. The controllers must be aware of the location of all users of the sky lanes in order to avoid accidents.

7. The shifts and normal staff employed are as follows:

Day shift - 07:45 - 16:00 staffed by 3 controllers

Swing shift - 09:45 - 18:00 staffed by 1 controller

Afternoon shift - 15:45 - 24:00 staffed by 3 controllers

Midnight shift - 23:45 - 08:00 staffed by 1 controller

8. The fifteen minute "overlap" is intended to ensure that the incoming controller can be properly briefed by the controller who has nearly completed his shift.

9. The scheduled flights in Victoria comprise only 5% of the total volume. Ninety-five per cent of the flights are unscheduled consisting of privately owned craft, military craft and helicopters.

10. There are two Airport Controller positions. No. 1 controller is referred to as the "Inner Controller" responsible for air traffic within an inner radius elevation. No. 2 controller is the "Outer Controller" responsible for air traffic outside the area which is the responsibility of the Inner Controller. This latter position was

established very recently, i.e. March 22, 1979 in order to alleviate the work load of the controllers. Then there is a "Ground Controller" responsible for the safety of aircraft and vehicles using the runways on the ground. Finally, there is a "Data Recording" position the incumbent of which performs a wide spectrum of recording duties regarding the use of the services of the controllers by users of the skyways and the runways on land and water.

11. The Data Recording position is performed by an Assistant Controller between May 1 to October 31 of each year. Between November 1 and April 30, a controller performs the duties in this position because no Assistant Controller is available.

12. The meal breaks normally begin after the controller on the swing shift reports for duty. It is this controller who relieves each of the other controllers for a meal or relief break. This relief enables each of the other controllers to leave the cab and thus break the tension resulting from the concentration required to perform the duties. If no break is available to a controller during his  $8\frac{1}{4}$  hour shift, it affects adversely his powers of concentration and his alertness. It also causes headaches and other undesirable ailments. One grievor explained that since the Victoria Tower has no radar the controller must rely on two main factors: verbal communication and eyesight to spot aircraft. The latter is frequently done with binoculars. If no break is allowed the eyes get strained and spotting of craft is less reliable. At times control of the traffic seems to be lost in the sense of not being "on top of it". On occasion fatigue blurs the ability to identify aircraft.

13. In summary, I find that the tasks and responsibility of controllers and others on duty is an exacting kind of work which requires relief breaks, whether for a meal or other purposes, for effective performance of their duties.

14. The nature of the duties obviously requires constant alertness and readiness to cope with a wide variety of potentially dangerous situations which may arise suddenly and without notice. Each of the five grievors who were called to testify impressed me as conscientious, able, responsible and intelligent.

15. It is of interest that the employer decided not to call any witnesses on the ground that the testimony given by the grievors was "complete". The fact is, however, that the evidence is incomplete. Several of the grievors phoned and asked for relief but the management refused to provide it. There is no explanation by the employer for the failure and refusal to provide adequate staff for relief and meal breaks during any of the days which gave rise to these grievances except the reasons given in argument by counsel.

16. Mr. J.C. Whyte, a controller, testified regarding the situation in the cab on February 18, 1979. The day shift arrived at 07:45 and was briefed by the staff due to leave at 08:00. As at 08:00, two controllers were on duty, one of whom did the work of both the Ground Controller and the Data Recorder. At 09:45 the swing shift controller arrived and after being briefed, performed the duties of the Data Recorder. The controllers rotated positions in the cab every hour as follows: from Data Recorder to Ground Controller to Air Controller and then back to Data Recorder and so on. The only means of providing a break was to require one controller to perform both the Ground Controller and Data Recorder duties. However, such combining of duties is possible only if the volume of traffic is low enough to ensure that the safety of air traffic and ground traffic is not jeopardized. On February 18, 1979, the volume of traffic was too high to allow such combining. The controllers, therefore, had to work a complete shift without a meal or relief break. They had to eat while on duty.

17. Mr. Whyte further testified that the problem arose as a result of the absence from duty of two controllers, (one was sick and the other on leave). However, relief could have been provided by either the Chief of Operations or the Supervisor if either was available or by calling in a controller to work overtime. On February 18, 1979, the staff on duty were at a minimum and the Unit Chief rejected this grievor's request for relief.

18. Mr. D.R. Lawes, another controller, testified as to the grievances relating to both February 18, 1979 and April 1, 1979. He stated that the head set used by controllers while on duty gets very uncomfortable after a lengthy period. On February 18, 1979, he had called the Chief, Mr. Smith, and explained the staff situation including the reason that the circumstances did not permit combining the Ground and Data Controller positions but no relief was made available. One person ran out and obtained lunch for the three employees on duty. He could not recall the details of the situation on April 1, 1979, but he testified that he would not have filed a grievance if relief had been available to provide a break.

19. Mr. Parsons, another controller, gave evidence as to the April 7 and April 29, 1979 grievances. He testified that on each of those two days it was impractical to combine the duties of Controller and Data Recorder by reason of adverse weather and heavy traffic volume. He called Chief Smith on April 7, 1979 and requested relief but was told by the latter that the employer's obligation is to provide the minimum staff requirements and there was no point requesting relief when such minimum staff was on duty. He, therefore, did not call Chief Smith regarding the complaint on April 29, 1979.

20. Mr. J.E. Pye, another controller, testified as to the April 21, 1979 grievance. Mr. Pye stated a break is essential to avoid fatigue and eye strain. On April 21, 1979 he decided that it was unsafe to assign an operating employee to perform the duties of both a Ground Controller and a Data Recorder. He considered it unfair to impose such a burden in the prevailing circumstances on one employee. It is not merely a matter of safety but also the orderly handling of aircraft that is affected. He testified that if a Boeing 737 aircraft is required to wait near the runway for five minutes before getting clearance from a controller a lot of fuel is wasted. The difficulties that may arise which require a decision by a controller are not predictable. He gave no evidence as to whether he requested the management to provide relief on April 21, 1979.

21. Mr. Kirkpatrick, another controller, but not a grievor, testified that combining of Ground and Data positions is neither unusual nor unthinkable but it depends on weather conditions and volume of traffic. While there have been no major accidents involving loss of life at Victoria International Airport, there have been some that resulted in personal injury. For example, the inability to lower the landing gear occurs on average about once per shift cycle or approximately once every three weeks. These incidents demand great concentration in communication between the controller and the pilot. They also require calling out the emergency vehicles and personnel. Such problems with the landing gear, when a pilot is lost and cannot identify his whereabouts, or when circumstances arise which cause the "loss of the picture", are all unpredictable and arise without notice. The controller must be ready to deal with any one or more of such situations at all times.



Argument for the Grievors

22. Counsel for the grievors submitted that the issue to be determined is whether the facts warrant a declaration that the employer failed to comply with Article 13.02(d) of the collective agreement which reads in part as follows:

Where operational requirements permit,  
the Employer will provide operating  
employees with meal and relief breaks.

23. My attention was also directed to the definition of "operating employees" and particularly Article (1)(b) which reads:

(1) For the purposes of this Agreement  
the following shall be considered  
as operating employees:

(b) all shift supervisors and  
controllers including Unit  
Chiefs who are required to  
perform Control duties in  
Control Towers.

24. The evidence is uncontradicted that the operating employees on shift between 08:00 a.m. and midnight received neither meal breaks nor relief breaks on February 18, April 1, 7, 21 or 29, 1979. Sufficient staff was available for duty assignment in the sense that either a controller or the supervisor or the Unit Chief could have been ordered to report for duty. The failure or refusal to do so is a failure or refusal to comply with Article 13.02(d). The decision of Adjudicator Clarke in Randall et al (File: 166-2-4828 to 31) should be followed since the facts are similar to this case.

25. The issue is the meaning to be given to the phrase "where operational requirements permit..." and particularly the words

"operational requirements". The cost to the employer is not a relevant consideration in interpreting these words for the purpose of deciding whether a controller is entitled to a "meal or relief break" (Sumanik (File: 166-2-395)). There are occasions when the unpredictable prevailing conditions such as any one of numerous types of emergencies and/or unusual bad weather and/or very heavy traffic volumes create an operational requirement that will require all controllers to remain constantly on duty. Under such conditions operational requirements will not permit a break. That is the meaning to be given to the words qualifying the employer's duty to provide operating employees with meal and relief breaks. However, there is no evidence that these kinds of unusual or emergency conditions prevailed when relief was unavailable on the days in question.

26. However, the words used in Article 13.02(d) (*supra*) ought not to be given a meaning that meal and relief breaks will not be provided by reason of inadequate staffing. Counsel contended that such an interpretation would lead to an absurdity or injustice. The rules governing the construction of words in a contract include the duty to avoid giving words a meaning that would lead to such a result. Where two interpretations are possible it is the duty of the Board to give words a meaning that will avoid an absurd or unjust result.

#### Argument for the Employer

27. Counsel for the employer submitted that the issue to be decided is whether the operating employees were entitled as a matter of right to meal and relief breaks on February 18, April 1, 7, 21 and 29, 1979 pursuant to the words used in Article 13.02(d) of the collective agreement between the parties.

28. Article 13.02(d) does not provide for any specific length of time as a meal or relief break. Furthermore, the employee in this case is paid for all time during which he may take a break. The words used in the agreement clearly provide no guarantee of a meal break or its length of time. Nor should the words "where operational requirements permit" be interpreted as if they meant that the employer undertakes to provide meal and relief breaks except during emergencies. If the parties had intended that result, they would have used the words "except in an emergency" as they did in Article 15.04 of the same agreement which reads:

Except in an emergency, no operating employee shall work more than twelve (12) consecutive hours or more than nine (9) consecutive days.

29. The fact is that on most days breaks are possible with minimum staffing by "combining", i.e. assigning one employee to perform both the Ground Controller and Data Recording duties. Only if operating conditions such as weather and volume of traffic are unusual are meal and relief breaks unavailable to the operating staff.

30. The employer's position is that it is obligated to assign only the minimum number of staff required to operate the Control Tower. Where operating conditions permit, such minimum staff may take meal and relief breaks for such time as is reasonable. However, there is no obligation on the employer to ensure that meal and relief breaks will be available regardless of operating conditions. In any event, he contended, the Board must determine whether the employer acted reasonably in refusing to assign an extra operating employee to provide meal and relief breaks on the days which are the subject of the grievances under consideration.

31. Counsel drew attention to the fact that in Halifax the supervisor regularly acts as an operating employee, whereas in Victoria the supervisor does so only intermittently, i.e. when assigned. Hence in Randall et al (File: 166-2-4828 to 31) the adjudicator found that the employer should have assigned the supervisor to work in order to provide meal and relief breaks.

32. Counsel for the employer also contended that the authority of the adjudicator is limited to a declaration, if warranted by the facts, based on the evidence adduced. The question whether operational requirements permitted the employer to provide meal and relief breaks depends on findings of fact. Therefore, there is no authority to issue a declaration having a prospective effect. He relied on the comments on compliance orders in the text "Canadian Labour Arbitration" by Brown and Beatty, pp 62-63 as well as Randall (supra).

33. Finally, counsel referred to the Letter of Understanding (3-79) dated March 21, 1979 which is appended to the collective agreement and reads as follows:

March 21, 1979.

Dear Mr. Robertson:

This is to confirm an understanding reached at negotiations with respect to staffing requirements.

It was agreed that during the term of this agreement, the parties will establish a joint committee to investigate the problems associated with minimum staffing levels for air traffic control units. This committee shall also formulate recommendations for solutions to the problem areas identified by their study.

The Association's representatives on this committee shall be considered as being on duty for all meetings of the committee. Where travel is involved, the Employer shall cover the costs of all reasonable and allowable travel expenses as permitted by the Treasury Board Travel Directive.

It was further agreed that this committee's first priority will be to address the question of the staffing requirements in those units where only one licensed air traffic controller is on duty between 08:00 and 23:00 hours.

Yours very truly,

S.R. Anderson,  
Chief,  
Employee Relations.

Received by and accepted this 21st day of  
March, 1979 by

W.J. Robertson,  
Vice President, Canadian Air  
Traffic Control Association

34. This letter he submitted is evidence that the parties agreed that the problem giving rise to these grievances should be referred to a joint committee of the parties for investigation and to make "recommendations for solutions" rather than be dealt with as grievances.

#### DECISION OF THE BOARD

35. I think the real issue between the parties is whether Article 13.02(d) of the collective agreement imposes an obligation on the employer to provide operating employees with an opportunity for meal and relief breaks. To determine that issue, the qualifying words "where operational requirements permit" must be interpreted within the context of that Article and the agreement as a whole.

36. The nature of the function and responsibility of an operating employee while on duty is, in my view, an important element to consider. The parties involved here were not negotiating an agreement in some vacuum or dealing with theoretical obligations and entitlements. They were well aware of the tremendous stress and tension that may arise at any time in the course of performing these duties. The need for a clear mind, good eyesight, ability to concentrate and the ability to respond responsibly and effectively was and is known to the parties. That the work of a controller is demanding and requires constant alertness is not denied. In these circumstances it is reasonable to expect that the parties intended that the operating employees shall receive meal and/or relief breaks unless very unusual unpredictable operating conditions makes such breaks impractical. Apart from the specific evidence which was reported by the witnesses it is common knowledge based on common experience that breaks during a working day are not only desirable but essential to efficient performance. It is for that reason that most people are granted coffee breaks and meal breaks as a normal work day occurrence.

37. Common sense suggests that the parties were and are well aware of that norm. Surely then persons employed in exacting occupations requiring mental alertness and concentration which involve grave responsibilities could not have been considered to have waived an entitlement to relief breaks during an  $8\frac{1}{4}$  hour work period. Indeed one would think that it is in the public interest to ensure that controllers do in fact receive "meal and relief breaks" unless unusual circumstances make that impractical.

38. It is my view that the parties could not have intended to make the receipt of a break by controllers dependent on the employer's unilateral decision on staffing.

39. The employer interprets this article to mean that entitlement to a meal and relief break depends entirely on the employer's decision regarding adequacy of staff on duty. This interpretation by the employer is evident from its position that the words in Article 13.02(d) impose no obligation on the employer to provide meal and relief breaks.

40. The employer contends that, if as a result of making minimum staff available operating conditions permit a break, the employee may take it. If operating conditions do not permit a break then the denial of same is not a breach of Article 13.02(d) since the employee is not entitled to a break as a matter of right. This reasoning has at least two defects. Firstly, the issue as to whether the controller may get a break is thereby related to "staffing" rather than "operational requirements" as required by the agreement. Secondly, the words "the employer will provide" in Article 13.02(d) are rendered nugatory and redundant. The word "provide" means "to supply what is needed" and hence do impose an obligation. The word "permit" means "to make possible". The employers' interpretation is in reality that where "staffing" rather than "operational requirements" makes it possible, it will supply employees with meal and relief breaks. In my view this is an untenable interpretation. The reality is that the employer's policy is, as stated by it, to make available minimum staff without regard to any obligation to supply meal and relief breaks. If, notwithstanding minimum staffing, the duties can be so reassigned as to enable the employees to get a break, well and good. If circumstances are such that a reassignment of duties is not practical then no breach has occurred even though no breaks can be taken. The employer, by reason of this interpretation, makes staff available only for operational purposes on the ground that it has no obligation to provide meal and relief breaks.

41. I think the words used in Article 13.02(d) create an obligation on the employer to supply such staff as is needed to enable an operating employee to get a meal and relief break at such times and for such length of time as is reasonable, unless "operational requirements" and not "staffing" makes it impractical to do so. I am of the opinion that to interpret these words as imposing no obligation on the employer is inconsistent with the agreed upon purpose of the collective agreement as provided in Article 1.02 thereof which reads:

The parties to this Agreement share a desire to improve the quality and to increase the efficiency of the Air Traffic Control Service and to promote the well-being of its employees so as to provide safe and efficient services to the public.  
(emphasis added)

42. I doubt that anyone would seriously contend that meal and relief breaks during an 8½ hour day are not essential "to promote the well-being of its employees so as to provide safe and efficient services to the public." The words used in Article 13.02(d) need to be interpreted in a manner consistent with the stated purpose of the agreement particularly because the parties by Article 1.02 appear to have agreed that there is a direct relationship between the "well-being" of an employee and the "provision of safe and efficient services to the public".

43. In Randall et al (File: 166-2-4828 to 4831), Adjudicator Clarke found:

The evidence respecting the nature and conditions of the work and the responsibilities falling within the work jurisdiction of the grievors satisfies me of the obvious necessity of such relief so that persons such as the grievors can



maintain their physical and mental alertness in the performance of their exacting tasks. (p.3) (Emphasis added)

While it is obvious that it costs more to employ a person at overtime rate rather than at regular rate one must also be concerned about the sensitive position occupied by these grievors and the need that they be at all times physically and mentally alert. (p.6)

However it is my judgement from the overall burden of the evidence that with no contrary explanation provided other than the financial cost of the overtime experience and where as I find, operational requirements otherwise permitted, the employer ought to have provided a relief break. (p.8)

44. I adopt the views expressed in Randall (supra) and consider them applicable to the grievances before me.

45. What I am to determine is whether the employer committed a breach of the agreement on each of five days viz February 18, 1979, April 1,7,21 and 29, 1979 in failing to provide a meal and relief break. Mr. Lawes, one of the grievors, could not recall the circumstances on April 1, which gave rise to the grievance. I shall, therefore, deal only with the four remaining grievances regarding each of which there is some evidence as to the circumstances which led to the complaint.

46. Firstly, it is clear from the evidence that on most working days the position of Ground Controller and Data Recorder can be combined to enable each operating employee to get meal and relief breaks. The decision as to whether it is prudent to combine these functions is made by the controllers on duty. As one of the grievor's

witnesses testified "combining is neither unusual nor unthinkable". The evidence before me includes a schedule prepared by Mr. Whyte, one of the grievors who testified, showing that between June 1978 to April 1979, a total of 11 months, there were only 26 days during which no meal and relief break could be taken. This amounts to an average of  $2\frac{1}{2}$  days per month. In my view, it is therefore not necessary to overstaff the cab. One way by which meal and relief breaks may be provided on these relatively rare occasions is by use of personnel including the supervisor and the Unit Chief as standby in case of need. The employees in these two (2) positions are defined by Article (1)(b) of the collective agreement as "operating employees": This article reads as follows:

- (1) For the purpose of this Agreement the following shall be considered as operating employees:
  - (b) all shift supervisors and controllers including Unit Chiefs who are required to perform Control duties in Control Towers;

47. Secondly, I am faced with the fact that the employer called no evidence to explain the refusal to provide relief breaks or the circumstances under which relief breaks cannot be made available to operating employees. It decided to rely entirely on the principle that an operating employee is not entitled to any meal and relief break pursuant to the words used in Article 13.02(d). At the same time counsel submitted that it was my duty to determine whether the employer acted reasonably. Needless to say, in the absence of any evidence from the employer as to the reason the employer refused to provide relief on each of these days it is difficult to determine whether the employer acted reasonably.

48. It was submitted to me that I ought not to make a declaration that is prospective in nature since the issue as to whether operational requirements permit a break is a question of fact to be determined in each case. I agree with this principle.

49. In summary, I am of the opinion that the employer is misinterpreting Article 13.02(d). I find there is an obligation on the employer to provide adequate staff to enable operating employees to take a meal and relief break except when by reason of unusual operational conditions that is not practical.

50. For all the above reasons my decision is that:

- (a) The employer does have an obligation pursuant to Article 13.02(d) to supply adequate staff to permit operating employees to take meal and relief breaks of reasonable duration except when unusual operational conditions make the taking of such breaks impractical.
- (b) The employer violated the requirement of Article 13.02(d) by refusing to provide adequate staff to permit meal and relief breaks on February 18, 1979, April 7, 21 and 29, 1979 as disclosed by the grievances and the evidence adduced.

51. I wish to emphasize that this decision is not to be interpreted as meaning that the employer must necessarily increase the number of staff on duty during the day and evening shift. The means by which the employer arranges to ensure that operating employees receive a "meal and relief break" during their shift is not an issue to be decided by adjudication but rather by the employer or through negotiation.

It appears to me that the "Letter of Understanding" (3-79) dated March 21, 1979 which is attached to the collective agreement and is reproduced above, outlines a practical method by which this problem may, hopefully, be resolved by the parties.

For the Board,

Leon Mitchell, Q.C.,  
Deputy Chairman and  
Adjudicator

OTTAWA, January 16, 1980.