

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

BETWEEN:

A. G. MITCHLER

Grievor

AND:

TREASURY BOARD
(Ministry of Transport)

Employer

DECISION

Before: R. D. Abbott, Board Member and Adjudicator

For the Grievor: J. Livingston, of the Canadian Air
Traffic Control Association

For the Employer: J. M. Mabbutt, Counsel

Heard in Calgary, Alberta, on July 24, 1980.

LTR 4/82
code 402/82

LTR 5/79
CODE 402/79

ASSIGNMENT OF DUTIES

DECISION

The pertinent collective agreement between the parties was supplemented by a number of letters of understanding. One of those letters, Number 5 of 1979, obliges the employer, in part, as follows:

Functions which are now performed
by members of other bargaining
groups will not normally be assigned
to members of the Air Traffic
Control group . . .

The grievor, an air traffic controller, claims that on February 7, 1979, he was assigned the functions of an air traffic control assistant, in a situation which was "normal." He asserts that this was in violation of the letter of understanding and he seeks a declaration to that effect and a direction against future violations.

The facts of the case are, in the main, undisputed, and were the subject of agreement between the parties' representatives. The grievor is an air traffic controller who at all material times was employed as an IFR controller (classification AI-3) in the Calgary Terminal Control Unit. As such, he was a member of the Air Traffic Control Group and his terms and conditions of employment were governed, inter alia, by a collective agreement between the parties, Code 402/79, and some twelve letters of understanding annexed thereto. In February, 1979, there were eight air traffic control positions in the Terminal Control Unit,

manned by members of the Air Traffic Control Group. In addition to the air traffic control positions, there was one air traffic control assistant position in the unit. That position was manned by members of the Clerical and Regulatory Group, on the day and evening shifts. No assistant was assigned to duty on the midnight shift.

Until February, 1979, when an assistant was absent for a scheduled shift, the terminal shift supervisor would attempt to have an off-duty assistant come in at overtime rates to cover the shift. If no off-duty assistant was available, the supervisor would assign to the assistant's position an air traffic controller, either one who was spare but on duty in the unit, or one who was called in at overtime rates. In early 1979, the chief of the unit, Mr. F. G. Lowe, instructed his supervisors on a change in policy whereby, if an assistant was unable to work his scheduled shift, and there was a spare controller on duty on that shift, then the spare controller was to be assigned to the assistant's position without first attempting to bring in an off-duty assistant at overtime rates. The reason for this change of policy was the temporary existence of a surplus of controllers. By June, 1979, the surplus no longer existed and the policy reverted to one of attempting first to call in an off-duty assistant.

On February 7, 1979, the grievor reported for duty on the day shift (0545 to 1400 hours) and was assigned to the assistant's position. The assistant who had been scheduled to work that shift was unable to work due to sickness. No attempt was made to call in an off-duty assistant, which was in accordance with the then current policy. On that shift, nine controllers were on duty, leaving one surplus controller.

In the course of the hearing of this reference to adjudication, three issues emerged. First, on February 7, 1979, was the grievor assigned the functions performed by members of another bargaining group, namely, the Clerical and Regulatory Group? Secondly, did this assignment occur in a situation which was "normal"? Thirdly, is it within my jurisdiction not only to declare that the assignment on February 7, 1979 was in violation of the letter of understanding but also to go further and direct the employer not to commit similar violations in the future? (In view of the disposition I make of the first two issues, it becomes unnecessary to deal with the third issue and it will not be the subject of further comment in this Decision.)

1. On February 7, 1979, was the grievor assigned the functions performed by members of the Clerical and Regulatory

Group?

In general terms, a controller controls aircraft. An assistant provides support services for controllers, notably for present purposes, the provision of information regarding aircraft flight plans and weather. That information is obtained by the assistant and provided to the controllers in the form of flight progress "strips" which are the printouts from a data processing system. In February, 1979, the weather information was obtained by Telex and presented by the assistant as an overlay in a projector which was projected onto a wall. The operation of the data processing system involved the use of a typewriter keyboard and "mag cards" which in turn elicited a response from a central data base which base had been established earlier.

The training of a controller includes the preparation and reading, in the special script which is used, of flight progress "strips" and weather information. However, the training does not involve learning how to operate the data processing system through the keyboard and "mag cards". Some controllers through experience are able to operate the system in this manner. However, they are all capable of preparing flight progress "strips" in their own handwriting (rather than as a printout from the data processing

system). Likewise, they are capable of obtaining their own weather information directly from the Telex machine without the necessity of having that information projected onto a wall. On the midnight shifts, when no assistant is on duty, the obtaining of flight information and its presentation in "strips", and the obtaining of weather information directly by Telex, is done routinely by the controllers on duty. It appeared in evidence that all other duties of assistants except the operation of the data processing system to produce "strips" and the projection of weather information are duties in which controllers are trained and which they do perform.

On February 7, 1979, the grievor worked the day shift in the assistant's position. No claim is being made on his behalf that what he did while in that position involved the performance of functions peculiarly the assistant's, except the production of "strips" as printouts from the data processing system and the projection of weather information. Indeed, there was no evidence that the grievor did, in fact, perform these latter duties, but it was assumed by the parties' representatives that he did, and I am prepared to make the same assumption.

For the grievor, it was argued that the production of "strips" as printouts from the data processing system

and the projection of weather information were functions of the assistants, members of another bargaining unit. The employer's position is that the end product is the same, whether it be the production of "strips" or the provision of weather information. It is a function of controllers to do both, whether by hand or machine or by direct Telex reading, and it does not matter that the production of "strips" using the data processing machine was peculiarly within the capability of the assistants and the projection of weather information likewise was not done by controllers as part of their job as controllers.

On this issue, I am prepared to accept the employer's position. I would interpret "function" in Letter of Understanding Number 5 of 1979 as meaning, in this context, the production of flight progress "strips" and the provision of weather information. Clearly, by the very name of the position, "air traffic control assistant", confirmed by a reading of the job description for the position, the assistant is to do what is necessary to support the work of the controllers. But it is equally clear that the controllers can and do support themselves, and this involves the preparation of flight progress strips and the obtaining of weather information. The only difference in the assistant's role is that he is neither capable of, nor

required to, use the "strips" and the weather information in further operations such as controlling aircraft. Thus, as a matter of respective roles, the assistant must provide flight progress information and weather information in a format useful to controllers: as printouts from the data processing system or as an image projected on a wall. What is important, as argued for the employer, is the end product, support of the controllers in their role of controlling aircraft. I therefore find that the grievor, when assigned to the assistant's position, was not called upon to perform functions performed by members of another bargaining unit. What he did was to provide support for air traffic control, something which was his own function when he did it for himself.

It should be noted that the representatives of both parties focused their arguments on only two aspects of the assistant's position: production of flight progress strips and projection of weather information. It was not argued for the grievor that a controller must not be assigned any function of the assistants. By not so arguing, I think it must be taken that it is conceded, for the grievor, that when the letter of understanding precludes the employer from assigning to controllers the functions of another bargaining group, it must mean that controllers are not to

be assigned the functions which are peculiarly, uniquely, the functions of the other bargaining groups and which are not at all the functions of controllers. I have proceeded on that assumption. I think I am warranted in so doing by the evidence that controllers are trained to do, and do, all that assistants do, except the production of printouts from a data processing system and the projection of weather information. I note, furthermore, that controllers have done all that assistants do, on many occasions, when they work the midnight shift (when there is no assistant on duty) or when they have been called in to fill an absent assistant's position at overtime rates. This has been done without objection or grievance, reflecting an acceptance that controllers' functions overlap and include the assistants' functions. It follows that what the employer is precluded from doing by the letter of understanding is the assignment to controllers of functions uniquely those of assistants; i.e., functions which are not functions of controllers.

In the result, I find that this issue must be answered in the negative: on February 7, 1979, the grievor was not assigned the functions performed by members of the Clerical and Regulatory Group.

2. Did the assignment of the grievor on February 7, 1979, to the position of assistant, occur in a situation which was "normal"?

For the grievor, it was argued that, during the period which included February 7, 1979, it was not "abnormal" simply because there were surplus controllers. The absence of an assistant for whatever reason was certainly not "abnormal", since that had occurred prior to the adoption of the new policy in early 1979 of using the surplus controller to fill the position of the absent assistant. Under the former policy, attempts were made to call in off-duty assistants. The situation then would become "abnormal" only if no off-duty assistant was available. At that point, the situation would justify calling in a controller to fill the assistant's position and no objection has been made to the assignment of controllers to perform the functions of members of the other bargaining unit in those circumstances.

But, it was argued for the grievor, on February 7, 1979, the "abnormality" of having no off-duty assistants available to be called in did not exist; no attempt was made, pursuant to the new policy, to call in an assistant. Furthermore, the situation did not become "abnormal" simply because at the time there was one surplus controller. The

measurement of what is "normal" and what is "abnormal" is provided by looking to the practice of the employer in the past: the employer previously treated the situation as "abnormal" only when no off-duty assistant was available to be called in. This is the measure of "abnormality", not the existence of a surplus controller, and the evidence is that sometimes in the past even if there was a surplus controller on duty the attempt was made to call in an off-duty assistant.

For the employer it was argued that the situation was not "normal". The existence of a surplus controller in the period in question was temporary: the normal situation would be to have just enough controllers to fill the unit positions. When the situation changed, i.e., there was no longer a surplus controller, the employer's policy reverted to what it had been before. This demonstrates that it was the existence of the surplus controller which made the situation "abnormal".

In dealing with this issue, I am hampered by the absence of any evidence as to the frequency of the occurrence of two situations, the presence on duty in the unit of a surplus controller, and the absence of the scheduled assistant. Nor do I have evidence of how often these two recurred simultaneously. All that I know is that they

conjoined on February 7, 1979, and that the employer had by then adopted a policy directed at coping with such a conjuncture. I am not prepared to infer that because the employer had made provision for the conjuncture, it was therefore treating it as "normal". It seems to me that a policy, laid down in advance, to cope with circumstances which are foreseeable, does not in itself transform those circumstances into "normal" circumstances. What I am prepared to infer from the evidence available to me is that the existence on duty in the unit of a surplus controller was not "normal": it was quite clear that there are only eight controller positions in the unit and it is simply beyond reasonable expectation that the employer, as a "normal" (or regular, usual or routine) practice would arrange to have an extra controller on duty. That circumstance was therefore not "normal". Furthermore, the absence of the scheduled assistant must be treated as not "normal". It is self-evident that employees scheduled to be on duty can be expected to be on duty. Finally, and most importantly, it must be considered to be very far from "normal" to have the two circumstances conjoin so that a surplus controller was on duty in the unit, on a shift when the assistant scheduled to work was absent. In the result, I am prepared to find that the assignment of the grievor on February 7,

1979, to the position of assistant did not occur in a situation which was "normal".

Decision on the Grievance

Two issues were not raised in these proceedings. I mention them only to complete my assessment of the situation in the Terminal Control Unit and the manner in which this situation has been analyzed by the parties' representatives. In the first place, it is to be noted that the pertinent letter of understanding was dated March 21, 1979. It refers to ". . . functions now performed by members of other bargaining groups . . ." (emphasis supplied). It is clear from the evidence that the employer's policy of assigning controllers in the Calgary Terminal Control Unit to the assistant position had long since been implemented and certainly was in effect on February 7, 1979. However, it was agreed by the parties' representatives at the outset that the provisions to be applied here are identical to those contained in the previous collective agreement between the parties, so that the employer's representative did not argue that the letter of understanding dated March 21, 1979, had no application to the facts of this case; nor did he argue that by March 21, 1979, the status quo was that the functions of the Clerical and Regulatory Group were already

being assigned for both controllers and assistants and therefore were not within the coverage of the letter of understanding. I take it that since this issue was not raised, it was the intention of the employer's representative to see this grievance resolved on a broader and less "technical" basis and I have attempted to do so.

Secondly, I must refer again to the glaring lack of direct evidence that the grievor did in fact produce flight progress "strips" using the data processing system, and did project weather information. It might have been argued, for example, that the appropriate remedy was to declare that only those aspects of the assistant's position were ones which the employer was precluded from assigning to the grievor. But the parties' representatives presented their respective cases on the footing that either the grievor could, or could not, be assigned to the assistant's position, performing all the functions of that position including the disputed ones. I think that the parties' representatives were correct in taking this approach, considering the wider impracticality of sorting out precisely what constituted functions that only controllers perform and what only assistants perform.

To sum up, I have found, first, that on February 7, 1979, the grievor was not assigned the functions performed

by members of another bargaining group, namely, the Clerical and Regulatory Group. Secondly, the grievor was not "normally" assigned to perform such functions on that date. Therefore, the employer was not in violation of Letter of Understanding Number 5 of 1979 annexed to the pertinent collective agreement. A declaration to that effect must be denied and this reference to adjudication must fail.

For the Board,

R.D. Abbott,
Board Member and Adjudicator.

OTTAWA, November 3, 1980.

