File: 166-2-8797
166-2-8799

THE PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

W.E. ROBERTSON and
P.W. PARSONS

grievors,

- and -

THE TREASURY BOARD
(Transport Canada)

employer.

DECISION

Before: A.W.R. Carrothers, Board Member and Adjudicator

For the grievors: John R.A. Pottinger, Pacific Regional Director, Canadian Air Traffic Controllers Association

For the employer: Brian R. Evernden, counsel

ART 15
CODE 402/79

Heard in Victoria, Canada, 23 July, 1980.

MINIMUM 7 HOURS FOR SHIFT
DOES NOT APPLY TO OVERTIME SHIFTS

Decision

The grievor Mr. P.W. Parsons was not present at the hearing of the adjudication, and the representatives of the parties agreed that his case be adjourned.

The corrective action requested for Mr. Robertson is for two and a quarter hours pay for 8 September, 1979 according to Article 13.05(b) of the Collective Agreement, and for an order that management comply with Article 13.05(b).

The Article reads as follows:

> Every reasonable effort shall be made by the employer: (b) Not to schedule shifts of less than seven (vii) hours' duration.

Three resignations among the air traffic controllers occurred in August, 1979. After being trained, a replacement of an air traffic controller must be checked out, under the supervision of an air traffic controller, on the control tower where he is to work for a period up to three months. Management then was faced with a need for overtime services until the tower was back to its complement of qualified air traffic controllers. Instead of relying on Article 12 call-in the Supervisor who is responsible for shift scheduling, entered overtime shifts on the standard shift schedule, marking the overtime shifts in red. I am satisfied from the

evidence before me that the Supervisor assigned the overtime equitably as required by Article 15.03; there was no serious claim that he had not, although there was much evidence as to why the Supervisor did not use the "overtime call-in book". I am satisfied that there was good reason to act as he did so as not to confuse actual overtime recorded in the book with potential overtime marked on the schedule but subject to variation.

The total circumstances were unusual. The overtime was entered on the regular schedule to give a minimum of two weeks notice that the employee would be required to work on a day off. And the grievor was informed orally that he would be required for five hours on the afternoon shift of the 8 of September. The call-in Article contemplates a period of work less than the standard eight and a quarter hours.

It was argued that the assignment of overtime, having been entered on the shift schedule for September, 1979, was a scheduled shift and that the employer had violated Article 13.05 by making the shift less than seven hours. It was argued that the expression "every reasonable effort" should permit the employer to schedule overtime for less than seven hours only in circumstances of unforseeable demand for services.

The Collective Agreement does not address itself directly to the circumstances of this grievance. Article 13.05 (b) is not on its face limited to the scheduling of regular shifts. The Supervisor chose, as a convenience to everyone, to enter the overtime, required by the special circumstances of the resignations, on the shift schedule. I conclude that everyone concerned treated the overtime work thus prescribed as being part of the shift schedule, although neat legal reasoning might suggest that advance notice given on the same sheet of paper as the shift schedule does not necessarily make the assignment of overtime work a scheduled shift, particularly where the subject matter is addressed in Article 12 Call-in. The circumstances called for a special treatment, and this adjudication is addressed in that light.

The question then arises whether the Supervisor made every reasonable effort not to schedule the overtime shifts for less than seven hours. Considerable evidence was given as to how the shift schedule was drawn up and as to efforts made to minimize overtime and to assign overtime equitably, recognizing in addition the employees' claim to vacation, and recognizing also that the afternoon shift did not require overtime services beyond one half hour after sunset, or grounding time. This evidence was probed in cross-examination, and I accept it.

As noted earlier, the Union would have the phrase "every reasonable effort" to permit a shift of less than seven hours in an emergency situation only - an unforseen situation requiring an immediate remedy. In my view that is much too narrow a construction. Management was presented with an unusual problem which could be resolved only by months of supervised training. The afternoon overtime shift requirements fell considerably short of the standard eight and a quarter hour day or the minimum seven hours referred to in Article 13.05(b). To start the shift before the services were required or to extend it beyond the time when services were required would build redundancies into the overtime shifts. In my view that is inconsistent with the spirit of overtime as reflected in Article 12 and Article 15.03. In the evidence before me as to why overtime was required and the anomalies involved in meeting that requirement, as to how the overtime was allocated, and as to how the duration of the overtime work was determined, I conclude that the circumstances did not allow the supervisor to do other than he did consistent with acting reasonably. I therefore conclude and decide that Article 13.05(b) has not been violated and that the grievance is accordingly dismissed.

The representatives of the parties argued many points which I have not found it necessary to resolve in this Award. If their resolution is not required in adjudica-

tion before the Collective Agreement is next reopened, they ought to be addressed at the bargaining table and not be left to be resolved by inference from the language, or absence of language, in the Collective Agreement or from evidence of assumptions drawn from the conduct of the parties at a time when their minds were more directly addressed to other issues. Specific cases can help to reduce hypotheticals to realistics, and I would urge the parties to take advantage of those realities to fill such gaps or remove such ambiguities as this case has brought to the surface.

For the Board,

A.W.R. Carrothers,
Board Member and Adjudicator.

VANCOUVER, August 20, 1980.