File: 166-2-9254

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

BETWEEN:

W.H. MACEWAN,

Grievor,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

DECISION

Before: J.C. Mayes, Board Member and Adjudicator

For the Grievor: W. Robertson, Canadian Air Traffic Control Association

For the Employer: R. Cousineau, Counsel

ART 8
COPIE 402/79

Heard November 19, 1980, at OTTAWA

RE REFRESHER COURSE CONTENT

DECISION

1. Four grievances, not having been dealt with through the grievance process to the satisfaction of the grievors, were referred to adjudication. Each of the grievances purport to qualify at adjudication pursuant to paragraph 91(1)(a) of the Public Service Staff Relations Act (hereinafter referred to as the Act). The grievors are Messrs. G.A. Newell, A.D. Haines, W. Snelgrove and W.H. MacEwan. The four references were scheduled for hearing in Ottawa on November 19, 1980.

2. At the hearing held on that date, Mr. Cousineau, representing the employer, pointed out that two of the grievances appeared premature to the facts alleged while yet another made no mention of a particular provision of the collective agreement. The fourth grievance, he contended, directed itself to the particular question which the parties agreed needed to be determined at adjudication; i.e., whether the employer, by its actions or inactions, has improperly interpreted or applied clause 8.02 of the collective agreement. He suggested that it would perhaps be in the best interest of all concerned if the adjudicator were to decide only on the grievance of Mr. MacEwan leaving it to the parties, once that decision is rendered, to address themselves to the resolution of the other three grievances. Mr. Robertson, representing the grievors, indicated that he felt Mr. Cousineau's remarks were pertinent and agreed that the adjudicator's decision should be confined to the reference filed by Mr. MacEwan. The bargaining agent withdrew the references of Messrs. Newell, Haines and Snelgrove. This decision therefore will apply only with respect to the reference of Mr. W.H. MacEwan (Board file 166-2-9254).

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3. Mr. MacEwan's terms and conditions of employment were, at all material times, governed by a collective agreement between the Canadian Air Traffic Control Association and the Treasury Board (Code: 402/79, Expiry date: December 31, 1980) which was continued in effect pursuant to section 51 of the Act. Mr. MacEwan is an Air Traffic Controller whose job classification is listed as AI 3. He is classified as an "operating employee" and is employed as such in Ottawa.

4. Mr. MacEwan, in his grievance, draws attention to a "Regional Information Bulletin" (ATSI-900-ONT-7) issued by Transport Canada which deals with the introduction of "on-site" refresher training for operating employees. He contends that the employer has, in the bulletin, committed itself to certain guarantees which it has failed to observe. He goes on to state in his grievance:

> This year I attended refresher training at my unit. There were no regional personnel and no meaningful site-specific programs. The use of trained instructors and the interaction of controllers from different locations within the region is an important part of refresher training, which I was denied. Thus I feel, the intent of the collective agreement (Article 8.02(a) and (b), was violated.

Corrective Action Requested:

> (1) Refresher training for all controllers be at one central location.
>
> (2) Utilize trained instructors.
>
> (3) A national program be utilized but be mandatory to include site-specific programs.

5. A copy of the above-mentioned bulletin was entered, on consent, as exhibit 1 in the proceedings. It reads as follows:

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Toronto, Ontario
October 16, 1979

INDEX - TRAINING

REFRESHER TRAINING

We have revised the Refresher Training Program for the balance of this year to provide the training on-site (with the exception of the Toronto ATS Facility). Our objective is to maintain contractual commitments, include Headquarters Programs, but to allow Unit Chiefs input in providing a meaningful, site-specific program.

A modular package is being prepared by the Regional ATS Training Unit, and will include mandatory items. By allowing Unit Chiefs the latitude of examining pertinent issues at their units, programs may be implemented to compliment (sic) the package. Instructor assistance and training aids will also be provided, and, on request, Regional Office personnel may be utilized.

It is our intention to analyse the results of this program, and make recommendations intended to benefit the organization on a long term basis. No degradation of the Refresher Training Program is intended, nor will it be permitted. Your participation to ensure the success of this modified program is anticipated.

6. Mr. Robert J. MacDonald was called upon to testify for the grievor and the grievor himself testified. The employer called only one witness, Mr. Leo Middlestadt. Two more exhibits were entered and identified by Mr. MacDonald and the grievor. Exhibit 2 is an excerpt from the employer's Manual of Operations dealing with refresher training and exhibit 3 (identified by the grievor) comprises a number of documents utilized at the on-site refresher training course attended by the grievor.

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7. Mr. MacDonald is employed in Transport Canada as Superintendent of Training and Career Development for the Ontario Region. He has been so employed since April, 1977 with the exception of a nine-month period (September, 1979 to June, 1980) during which time he was involved in language training. His general responsibility is to provide the environment for training and career development for staff in the Air Traffic Services. He identified exhibit 2 and stated that as regards his responsibilities he was bound within the confines of that directive respecting refresher training. He drew particular attention to sections 2506.1 and 2506.2 which he stated reflected the current policy of the department and had been in effect for several years. Those sections are hereunder reproduced.

> 2506.1
> Provide refresher training in 2 phases as follows:
> A. The operationally-oriented phase to clarify or re-acquaint controllers with material previously studied that is relevant to the maintenance of their operational competence.
> B. The career-oriented phase, to provide opportunities for career growth such as supervisory development, instructional techniques, or project activity.
>
> 2506.2
> Provide IFR and VFR controllers with the following periods of refresher training every 12 months:
> A. Operationally-oriented phase - a minimum of 5 days.
> B. Career-oriented phase - if feasible and staff permits.

8. The grievor testified that in previous years he had attended refresher courses at the Regional School in Toronto. The courses were of a one week duration with a qualified instructor in charge of the class. Air traffic controllers from many sites were in attendance;

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i.e., from within the Southern Ontario Region. This system allowed controllers the opportunity to meet "face-to-face" those other controllers with whom the only previous contacts had been by phone. Fresh ideas were exchanged and discussions were made possible on a variety of issues and problems encountered at various sites. This interaction of employees was monitored by an instructor who had the resources at hand to answer questions put to him. In contrast, at the most recent "on-site" course provided in Ottawa there was an absence of interaction and questions were only answered if local instructors happened to know the answer.

9. The grievor identified a number of documents which he understood covered the matters to be dealt with at the Ottawa refresher training course. Some of them, he recalled, had been dealt with during the training course. With respect to the balance of the package, he affirmed that the subject matter therein contained had not been covered. It was his contention that many of the subjects dealt with had little or no relevance to the maintenance of an acceptable level of performance. He stated that no on-site specific program had been provided. He had been informed by his unit chief, he said, that since the bargaining agent had opposed on-site training and since the local was to present a grievance respecting such practice, no on-site specific program would be included so that any grievance presented would be confined to the mandatory package (for refresher training) from the Region. During cross-examination the grievor admitted that a period of time had been made available for questions or discussions respecting on-site problems and supposed that, if raised, such subjects would have been dealt with. He stated that he had raised no such questions.

10. One of the subjects dealt with at the refresher training course, which in his opinion was not related to the maintenance of operational competence, offended the grievor. He described the subject

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as a Personality and Ability Test Form (listed in exhibit 3 as 16 PF). He said he felt embarrassed by the result of the test which he completed and which was marked by the instructor. The test result, he said, suggested that he was not an outgoing person and was sensitive to criticism. This he contended was an improper subject not at all related to any maintenance of an acceptable level of his performance.

11. Mr. Middlestadt was the Acting Superintendent of Training and Career Development during the period of Mr. MacDonald's absence for language training. He is therefore familiar with the on-site refresher training program here at issue. He testified that the mandatory package respecting the Ottawa training course comprised those items directed by (national) Ottawa Headquarters representing the "National Program". The additional material, if utilized, was left to the discretion of the Unit Chief. He was at liberty to use some, all or none of that material.

12. Mr. Robertson, on behalf of the grievor, argued that clause 8.02(a) should not be given a narrow interpretation which disregards the employer's obligations in the Article read as a whole. To do so would lead to a ridiculous situation not intended by the parties. The adjudicator should therefore consider extrinsic matters and, in particular, sections 2506.1 and .2 in exhibit 2. He argued that, as the evidence reveals, these sections were in effect prior to the signing of the collective agreement and continued to remain in effect for the time material to the present case. The exhibit demonstrates the parties understanding of the meaning of refresher training. The question then is, did the employer carry out its responsibilities respecting refresher training in accordance with its policy which remained unchanged for some years.

13. Mr. Robertson directed attention to exhibit 3 and, in particular, a letter dated October 12, 1979, signed by Mr. R.H. Loucks for the Chief,

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Regional ATS Training Unit, to which was attached a memorandum dated October 26, 1979, outlining, inter alia, the mandatory material for refresher training for 1979/80 together with the time allotted for the use of video tape recordings related thereto. Also attached to the letter is a document dated November 1, 1979, outlining training times allotted to mandatory and non-mandatory items. The grievor's representative contended that, based on Mr. MacEwan's testimony and a reading of the aforementioned documents it may be seen that 700 minutes of the time allotted to refresher training had no relevance to the maintenance of operational abilities. By this action alone the employer abrogated its obligations in clause 8.02 of the collective agreement. Coupling this with the diminished value of the refresher training in the parochial atmosphere at the unit location compared to the regional school where interaction played an important part of training, Mr. Robertson urged that the adjudicator find that the employer misinterpreted or misapplied the collective agreement since it did not provide the refresher training in accordance with the spirit and intent of the parties respecting the maintenance of operational abilities.

14. For the employer, Mr. Cousineau responded first to Mr. Robertson's urgings that clause 8.02(a) of the collective agreement, if read by itself and given its normal interpretation could lead to an absurd result. Counsel for the employer disagreed. The employer, he argued, undertook to provide, in clause 8.02, refresher training which it considered adequate. There is no reason to conclude an absurd or unintended result in interpreting its obligation in the clause in that manner. Counsel stated that he did not dispute that the memoranda and the excerpt from the Operations Manual were factors but argued that they were not needed by way of extrinsic evidence to conclude the proper interpretation to be placed on the appropriate provisions of

the collective agreement. There was nothing in either of these documents which would lead to the conclusion that Mr. MacEwan was not provided with the refresher training in accordance with the collective agreement.

15. Mr. Cousineau argued that operational competence has a much wider meaning than strict operational performance. He referred to the grievor's testimony respecting his embarrassment when the "16 PF test" found him to be sensitive to criticism. He argued that such a personality trait could have a direct bearing on the competence of an operational air traffic controller. Knowledge of such a trait would demonstrate to a supervisor that in particular situations it would be advisable to delay the levelling of a criticism of the grievor. This he contended is but one illustration of the material utilized respecting 400 to 600 minutes included dealing with the emotional health of air traffic controllers, all factors which form an integral part of what is required to establish operational competence.

16. Counsel argued that nothing in the evidence nor in the submissions on the grievor's behalf demonstrated that the training provided was not adequate. The grievor's perception of diminished value respecting refresher training was not shared by the employer. Clause 8.02 provides that the employer shall determine training requirements and the means and methods by which the training shall be given. The clause then obligates the employer to provide adequate training to operational employees and certain refresher training. To find that the employer did not provide adequate training respecting Mr. MacEwan would be to do so in the absence of evidence to that effect.

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Determination

17. The relevant portions of clause 8.02 are hereunder reproduced.

> (a) The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction on equipment and procedures prior to their introduction and refresher training where appropriate.
>
> (b) In addition to the training referred to in 8.02(a), controllers shall be provided refresher training as follows:
>
> (i) IFR Controllers, VFR Controllers, Performance Development Officers, Data Systems Co-ordinators and Shift Supervisors - five (5) working days each year;

18. Mr. Robertson, on behalf of the grievor, has urged that the adjudicator consider extrinsic evidence in deciding the proper interpretation to be placed on the relevant portions of the collective agreement here at issue. Mr. Cousineau, on the other hand, while accepting that the particular evidence to be considered may be relevant to the proceeding, argues that such evidence is not necessary in interpreting provisions which he considers are clear in their meaning. In Re Leitch Gold Mines Ltd. v. Texas Gulf Sulphur Co. (Inc.) (1968), 3 D.L.R. (3d) 161, [1969] 1 O.R. 469 (H.C.J.), referred to in Canadian Labour Arbitration (Brown and Beatty) the following, inter alia, is stated:

> The Court is not necessarily concerned only with the literal meaning of the language used but rather with its meaning in light of the intentions of the signatories....
>
> A transaction having been reduced to writing, extrinsic evidence is generally inadmissible to contradict, vary, add to or subtract from

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> its terms. This is fundamental in the interpretation of written instruments. Parol evidence may, however, be admitted in aid of interpretation.
>
> Where the language of the document and the incorporated manifestations of initial intention are clear on a consideration of the document alone and can be applied without difficulty to the facts of a case, it can be said that no patent ambiguity exists. In such a case, extrinsic evidence is not admissible to affect its interpretation.

It is clear from a cursory reading of Mr. MacEwan's grievance and the corrective action he seeks that he questions, inter alia, the right of the employer, within its authority under clause 8.02, to decide where the refresher training will take place. Nowhere in the collective agreement is the employer restricted in this regard. In fact the opening words of clause 8.02 make it clear that the parties have agreed that it is the employer who shall determine training requirements and the means and methods by which training shall be given. This language is unambiguous. To decide otherwise would be to contradict, vary, add to or subtract from the terms clearly agreed to by the signatories of the agreement.

19. It is clear that the adequacy of training provided in the present decentralized system compared to the previous system at a regional training school is not perceived, on the one hand, by the grievor and his bargaining agent and, on the other, by the employer in like manner. However, even if it were to be assumed that regional school training was more beneficial it could not necessarily be assumed that on-site refresher training was inadequate as that term is employed in the collective agreement. A finding that one type of refresher training is to be preferred to another is not the question to be decided by this adjudicator. The question rather is, has the

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employer misinterpreted or misapplied the provisions of the collective agreement. It is my finding that the employer has acted within its authority agreed to by the signatories to the collective agreement.

20. Before summarizing my findings it may serve to note that while the employer has stated in the bulletin entered as exhibit 1 in this case that it is not intended that there be any degradation in the refresher training program, and that none would be permitted, it has noted in the final level reply to the grievance that on-site refresher training will be under constant evaluation and modified as necessary. If this is to be read to mean that the employer's current (at the time of the final level reply) views are not engraved in stone, it is open for the bargaining agent, on behalf of the employees they represent, to have input through consultation on this subject matter to which they have demonstrated a legitimate concern. The parties may even wish to address themselves to the language of the collective agreement in future negotiations should either or both feel a necessity for change.

21. In summary, I have found that there has been no misinterpretation or misapplication of the relevant terms of the collective agreement by the actions or inactions of the employer. The reference to adjudication of Mr. W.H. MacEwan's grievance is dismissed.

For the Board,

J.C. Mayes,
Board Member and Adjudicator.

OTTAWA, January 26, 1981