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

BETWEEN:

GEORGES-MICHEL NADON,

Grievor,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

DECISION

Before: Emile Moalli, Board Member and Adjudicator.

For the grievor: Georges-Michel Nadon (grievor).

For the employer: Robert F. Lee, counsel.

ART 7
CODE 402/79

JB

29/11/81

AI GRIEVANCE

Heard at Montreal, June 12, 1981.

Grievor reported to work for an overtime shift and subsequently left work and went home after working for twenty minutes; following a dispute over the operation (grievor was a supervisor at the time). Grievor was subsequently suspended for one day. Grievance dismissed.

DECISION

Following an incident on August 16, 1980 at the Montreal Regional Control Centre, at Dorval International Airport, the grievor, Mr. Georges-Michel Nadon, a supervisor, was suspended for one day without pay.

In a grievance dated September 5, 1980, he contested this disciplinary measure in these words:

Details of grievance:

As stated in the final paragraph of the disciplinary notice received on September 3, 1980, I find the action taken unjustifiable for the following reasons:

- (1) The Personnel Manual (section 4-4) was contravened as regards the very spirit and application of this guide, particularly in the following areas:
 - page 1 Introduction (1)
 - page 2 Section 9
 - page 3 Sections 17 and 18
(in their entirety)
 - page 6 All of section 20
(in particular paragraph C(1))
- (2) Violation of articles 1 and 12 of the collective agreement.
- (3) Since overtime was not compulsory, I had the right not to work, according to the practice followed in all similar cases in the unit.
- (4) The violation of section 4-4 of the Personnel Manual prevented certain facts from coming to light, namely:

- (a) the existence of the CCC (Committee of concerned controllers) and their involvement in this matter;
- (b) my immediate superior's disapproval of the action contemplated;
- (c) your failure to provide leadership and directives, which contributed directly to the events of August 16, 1980.

Finally, there are several other factors that will have a bearing on this case and for this reason, I will not allow the local association of CATCA to be consulted or to represent me in any way whatever. Should this grievance reach or go beyond the third level of the grievance procedure, I may allow CATCA's national office to represent me.

Corrective action requested:

That the disciplinary measure be withdrawn and that I be paid four (4) hours at straight time for August 16, 1980.

(Exact wording of grievance)

On September 10, 1980, the grievor amended this grievance by withdrawing point 2 concerning the violation of articles 1 and 12 of the collective agreement and by limiting the corrective action to the withdrawal of the disciplinary measure.

At the hearing, Mr. Georges-Michel Nadon argued his own case.

EVIDENCE

At the Montreal Regional Control Centre at Dorval, there are three sub-units, under the supervision of Mr. Pierre Marcotte, which control the movement of aircraft: the terminal sub-unit, the enroute east sub-unit and the enroute west sub-unit.

The schedule for August 16, 1980 called for the grievor to work overtime on the 7:45 a.m. to 4:00 p.m. shift, in the terminal sub-unit, with five or six controllers under his supervision.

This sub-unit controls aircraft within a radius of fifty miles of the airport which are at an altitude of less than thirteen thousand feet. In order to control the movement of these aircraft, the employees of this sub-unit can use three systems: the AASR-1 radar, the ASR-5 radar on the Standard Separation method, Regional and Terminal Control, described in part 3 of Manops.

Having planned to shut down the ASR-5 radar, for maintenance purposes, for a period of three hours beginning at 9:00 a.m. on Saturday, August 16, 1980, Mr. Pierre Marcotte wrote the following memorandum which Mr. Georges-Michel Nadon read:

Weather conditions permitting, the ASR-5 radar will be shut down for a period of three hours on Saturday, August 16, 1980. During this time, you may use the AASR-1 radar if you find this equipment acceptable.

Otherwise, we will have to use Manops, part 3, "Standard Separation, Regional and Terminal Control". The holding patterns are prepared, as well as the transition routes, for control without radar.

These procedures will be in the hands of the supervisor Saturday morning. There is also the possibility of establishing a flow control, but this will be left to the supervisor's discretion. An extra man will be included on the 8:00 a.m. to 4:00 p.m. shift.

For your information and action.

Upon his arrival at work at 7:45 a.m., Mr. Nadon discussed with his group of employees the system to be used while the ASR-5 radar was shut down. All, save one, who apparently let it be known that he "did not feel capable of functioning without radar", wanted to use the procedural method, that is, the one described under "Standard Separation" in Manops.

Faced with this lack of unanimity, Mr. Nadon, who preferred to use the AASR-1 radar system and who, during the discussion, had apparently expressed doubts about the ability of some controllers to use the procedural system, decided at 8:05 a.m. to leave his post without authorization "rather than inflame the situation".

The evidence also revealed the following:

- The V.O.R. (equipment used to facilitate navigation in an area where there is no radar) broke down on Saturday, August 16, 1980 before 9:00 a.m.;
- Following this breakdown, the controllers working in the terminal

sub-unit decided to use the AASR-1 radar instead of the procedural method;

- Controllers can refuse to use a control system if they feel that the performance of the auxiliary equipment is unsatisfactory;

- According to the Chief of the Montreal Regional Control Centre, all controllers working at Dorval have the knowledge required to use any one of the three control systems and Mr. Nadon had the necessary authority to impose the most appropriate system in the circumstances; the supervisors, including Mr. Nadon, can relieve a controller of his duties if he refuses to obey such an order (if the auxiliary equipment is operating normally);

- Supervisors may leave their posts without prior authorization: "We rely on their sense of responsibility; we nevertheless expect that there will be someone in charge";

- An incident (apparently not serious) "in the Valley sector", apparently occurred during the morning of August 16, 1980;

- As a result of the events of August 16, 1980, the memorandums issued in similar circumstances now tend to be more specific: the control system to be used is indicated instead of leaving the choice to the supervisor.

POSITIONS OF THE PARTIES

Counsel for the employer argued that in acting as he did, the grievor "shirked his duties" and that he should at least have informed his immediate supervisor before leaving the premises.

He noted that if supervisors have considerable leeway as regards the amount of time they spend at their work stations, the employer, for its part, is entitled to expect that they show responsibility in exercising this privilege.

In counsel's opinion, Mr. Nadon should have exercised the powers inherent in his position as supervisor and imposed the choice which he considered appropriate in the circumstances. He maintained that in the present case, there was no circumstances which could mitigate the seriousness of the action taken by this employee and that consequently, a one-day suspension was not an unreasonable penalty.

For his part, the grievor felt that "August 16, 1980 was a perfectly normal day". The shutting down of a radar system did not create a crisis situation and he therefore had no reason to act any differently than he normally did.

As for his refusal to impose the procedural system, he argued that in order to use this control method, certain procedures had to be worked out and that on August 16, 1980, "there was nothing in writing in this regard".

In his opinion, he could not force the controllers to use the AASR-1 radar and his presence would have served no useful purpose whatever. In his words, "I did not want to be a party to a situation where safety was lacking."

As for the incident in the Valley sector, "in the enroute west sub-unit", he claimed that even if he had been at his post, the incident would still have occurred.

He considered that the role of a supervisor should be more clearly defined and that the duties and responsibilities incumbent on this category of employee should be spelled out in greater detail.

REASONS FOR DECISION

Was the disciplinary penalty, namely, a one-day suspension without pay, imposed on the grievor following the incident on Saturday, August 16, 1980, imposed for just and sufficient cause?

It was clearly established that Mr. Nadon left his post at 8:05 a.m. without prior authorization, without even informing his

immediate superior or taking the necessary steps to have someone replace him. At the very most, he apparently said "good-bye" to a Mr. Desjardins, the supervisor of another sub-unit.

In doing so, he acted in a highly reprehensible manner. I do not think it necessary to demonstrate the importance of an air traffic control supervisor - his responsibilities are considerable - and he can only abandon his post under very special conditions.

As head of the terminal sub-unit, Mr. Nadon, according to the memorandum prepared by his immediate superior, Mr. Pierre Marcotte, had to choose from the two available systems the one which would be used to guide aircraft flying in the air space he was responsible for controlling, while repairs were being made to the ASR-5 radar system. Mr. Nadon had to impose the system of his choice and ensure that it operated properly.

Were there valid reasons why the grievor did not impose his choice but chose instead to leave his post twenty minutes after the start of his shift?

I believe that the grievor had all the authority he needed to impose his choice. Neither the fact that he was working overtime, nor the anticipated difficulties concerning the system to be used, nor the fact that the practice of allowing supervisors to leave their posts temporarily is tolerated, gave Mr. Nadon the right to leave his work station.

Even if we were to admit the following facts - which we do not - namely, that the directives contained in Mr. Pierre Marcotte's memorandum were imprecise, that it was not the supervisor's

responsibility to choose the control system to be used and that he did not have the necessary authority to impose this choice, that, because he was working overtime or because of a certain practice, he could leave his post as he saw fit, that he left so as not to create dissension among his group of employees, that he did not intend to be a party to an action which could affect established safety standards, and that he anticipated difficulties imposing the system of his choice or using the one the majority of controllers suggested, I feel that the grievor should at least have informed his immediate superior of the situation before leaving the premises.

Despite the opinion expressed by Mr. Pierre Marcotte, Mr. Nadon's immediate supervisor, to the effect that a reprimand in the form of a written notice would have constituted sufficient punishment in the present case, a one-day suspension cannot be considered unreasonable.

Even though the supervisors and the controllers are in the same bargaining unit, such a penalty cannot, as Mr. Marcotte seems to believe, erode Mr. Nadon's authority over the controllers.

As for the allegations in the grievance concerning the violation of the provisions of section 4-4 of the Personnel Manual, the evidence does not enable us to conclude that this violation occurred.

Consequently, since I am of the opinion that the one-day suspension was imposed for just and sufficient cause, I must dismiss the present grievance.

The grievor, who choose to argue his own case, will be disappointed not only with this decision but especially, I believe, with the entire adjudication procedure.

Despite the indirect assistance which the adjudicator can provide him with by ensuring that the rules of natural justice are observed, an employee, in such a situation, is at a disadvantage from the outset.

The employee must realize that the adjudicator is strictly limited to the specific subject of the grievance before him and that his decision must be based solely on the evidence presented to him.

The grievance which is the subject of the present adjudication did not allege any violation of the collective agreement. In the circumstances, the adjudicator could not allow the hearing to go beyond the circumstances which led to the imposition of a one-day suspension. He could not, for example, allow evidence designed to establish that there was a chronic shortage of personnel or that overtime is voluntary or compulsory.

These were not the matters raised in the grievance. Moreover, if the grievance had alleged that the clauses of the collective agreement dealing with these matters had been violated, the employee alone could not, by reason of the provisions of subsection 91(2) of the Public Service Staff Relations Act, have referred his grievance to adjudication.

Even if the adjudication procedure allows an employee to have his day in court, he must remember that the adjudicator can only decide the specific matter raised in the grievance. He had no authority to settle other problems.

For the Board,

Emile Moalli,
Board Member and Adjudicator.

VILLE DE LAVAL, September 3, 1981

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