

File No.: 166-2-9688

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

BETWEEN:

J.E. NOAKES,

Grievor,

AND:

TREASURY BOARD  
(Transport Canada),

Employer

DECISION

Before: David H. Kates, Deputy Chairman.

For the Grievor: David Jewitt, Counsel and Bob Randall,  
Canadian Air Traffic Control Association.

For the Employer: Harvey A. Newman, Counsel.

Heard at Vancouver, B.C., December 15, 1981.

ART 13  
CODE 40/79

MEAL & RELIEF  
BREAKS

DECISION

1. This is a reference to adjudication filed under paragraph 91(1)(a) of the Act. The grievor, Mrs. Janice Noakes, was employed at all material times, as an air traffic controller (AI-1) at the Vancouver Harbour Tower, Vancouver, B.C. The grievance that gave rise to these proceedings reads (in part) as follows:

Details of Grievance:

This grievance is being filed under provisions of Article 13 of the Collective Agreement 402-79 between CATCA and the Treasury Board.

On the dates following, I worked excessively long periods of time without meal and/or relief breaks:

June 9, 1980	16:28 to 22:05 PST
June 10, 1980	16:28 to 22:05 PST
June 11, 1980	15:30 to 22:05 PST
June 17, 1980	16:28 to 22:05 PST
June 18, 1980	16:28 to 22:05 PST

Corrective Action Requested:

I request a declaration that meal and relief breaks will be provided systematically, each and every day, unless unusual operational conditions prohibit. Adequate staff must be provided to ensure that meal and relief breaks are available.

2. The following information was recited at the hearing and constitutes the parties' agreed statement of fact. In addition, each party called one witness, namely, the grievor and Mr. J.R. Dubois, Unit Chief at the Vancouver Harbour Tower (hereinafter referred to as "V.H.T."). The V.H.T. was described as a daytime air traffic control operation employing visual flight rules (V.F.R.). Because the V.H.T. is a daytime operation the duration that air traffic control services are furnished varies from day to day in accordance with the different seasons. The longest period of the day in which the V.H.T. is operational is during the summer months. Normally

in summer air traffic control services commence at 7:00 hours and terminate one half ( $\frac{1}{2}$ ) hour after official sunset. The summer period commences on May 1 and terminates on September 30. At all times air traffic control services are provided seven days per week.

3. Five air traffic controllers (AI-1) and one unit chief are assigned operational duties at the V.H.T. In addition to his administrative responsibilities, Mr. Dubois, the Unit Chief, performs on an intermittent basis air traffic control services. Daily staffing assignments comprise two shifts where each operational employee works approximately nine hours and forty-three minutes. During the summer period there is an overlap between the morning and afternoon shifts of approximately four and one-half hours. In summer the morning shift commences at 6:45 hours and terminates at 16:28 hours. The commencement of the second shift is determined by deducting nine hours and forty-three minutes from "grounding time" (i.e. one half ( $\frac{1}{2}$ ) hour after sunset). For purposes of this case, the agreed statement indicates that the second shift commences at approximately 12:10 hours. The Unit Chief commences work at 8:00 hours and terminates his shift at 16:30 hours. All operating employees work a four-day week.

4. The relevant provisions of the collective agreement (Code 402/79) read as follows:

1.01 The purpose of this Agreement is to establish and maintain harmonious relationships between the Employer, the Association and the employees and to set forth herein the terms and conditions of employment upon which agreement has been reached through collective bargaining.

3.01 The Association recognizes and acknowledges that the Employer has and shall retain the exclusive right and responsibility to manage and operate the Air

Traffic Control Service in all respects including, but not limited to, the following:

- (a) to plan, direct and control operations, to determine the methods, processes, equipment and other matters concerning the Air Traffic Control Service, to determine the location of facilities and the extent to which these facilities or parts thereof shall operate;
- (b) to direct the working forces including the right to decide on the number of employees, to organize and assign work, to schedule shifts and maintain order and efficiency, to discipline employees including suspension and discharge.

and it is expressly understood that all such rights and responsibilities not specifically covered or modified by this Agreement shall remain the exclusive rights and responsibilities of the Employer.

...

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

(Emphasis added)

5. During the winter period employees working their normal shift receive at least two pauses from work constituting their meal and relief breaks. The nature and duration of these breaks are not defined in the collective agreement. While employees take their meal and/or relief breaks, they are paid in accordance with the terms of the collective agreement. During the summer months the employee who reports to work on the morning shift receives at least two meal and/or relief breaks. Mr. Dubois often spells off the air traffic controller on the morning break to enable him to take a first break. The employee who reports to work on afternoons normally takes one break in the ordinary course. That person is spelled off by the controller who reported to work on the morning shift. Prior to 14:30 hours the controller on the afternoon shift "spells off" the

.../4

controller on morning in order to enable that person to take a second break. After 14:30 the controller on the second shift works alone. Accordingly, that person cannot be spelled off for the purpose of a second break.

6. The V.H.T. is located on the top of an office building on North Granville Street, Vancouver, overlooking Burard Inlet. The tower portion is composed of a glassed-in portion referred to as the "cab". Air traffic control equipment such as a radio, microphone, telephones, etc. are located in the cab. A drinking fountain, a refrigerator and a microwave oven are also available in the cab portion of the tower. Below the cab portion is an area where office, kitchen and washroom facilities are provided. Access to these facilities from the cab portion is by way of a ten-foot spiral stair case. Speakers connected to the radio in the cab are placed throughout the downstairs portion of the tower, including the washroom facility.

7. The V.H.T. was described as a commercial operation Grade 1 level. In relative terms the V.H.T. is not as busy an operation as air traffic control operations at the Victoria Airport (Grade 2) or at the Vancouver International Airport (Grade 3). Unlike Victoria and Vancouver the V.H.T. tower is not a runway operation but is principally concerned with marine landings and take-offs. Sixty percent (60%) of the air traffic control traffic involves scheduled commercial flights. The V.H.T. is a "one" person operation. That is to say, it is required that at least one controller remain in the cab portion of the V.H.T. at all times. When two controllers are on duty simultaneously, the one controller assists the other controller in manning the equipment. The second controller also performs the relief function enabling his colleague to take the anticipated meal and/or relief break.

8. Mrs. Noakes grieves that on the days alleged in her grievance the employer, contrary to article 13.02(d) of the collective agreement, deprived her of an opportunity to take a second relief break. The employer conceded that during the summer period while the air traffic controller assigned to the afternoon shift remains alone no "true" break is possible. At that time of the year the air traffic controller must remain in the cab for periods as long as five and one-half (5½) hours. Although no specific request for a relief break was made at the alleged times indicated in her grievance, the employer conceded that Mrs. Noakes would not have been accorded any such break owing to operational requirements. In other words, so long as no one was available to relieve Mrs. Noakes from her duties, she was confined to the cab portion of the V.H.T. In lieu of a true break, Mrs. Noakes was permitted during this period to leave the cab at her discretion in order to prepare a meal or to use the washroom facilities. She was forbidden from leaving the cab for prolonged periods at her own pleasure.

9. Mrs. Noakes testified that her principal duties as an air traffic controller were to assist pilots in the navigation of their aircraft in the positive control zone constituting the area of responsibility of the V.H.T. Communication with the pilot is maintained by radio frequency. Normally a pilot would radio his intentions to pass through the positive control zone from three to five minutes before approaching the boundary of the positive control zone. In rare instances a pilot's warning of an intention to impinge upon the boundary of the positive control zone can be as short as one minute. Aircraft including helicopters intending to land and to take-off from the landing areas covered by the V.H.T. are directed by the attending air traffic controller. Because the area governed by the tower while aircraft are not in flight is comprised of water, the air traffic controller assists the pilot in avoiding collisions with all watercraft occupying the same

vicinity. In addition to general telephone inquiries, the air traffic controller maintains direct telephone contact as the occasion arises with the police, the merchant marine, the fire department, Customs and Excise personnel and meteorological personnel at the Vancouver International Airport. From time to time the air traffic controller also assists in administering "flight plans" to assure the safe arrival of aircraft that fly through the V.H.T.'s primary control zone.

10. At a time relevant to these proceedings, air traffic controllers assigned to the V.H.T. were required to prepare air traffic sheets on a daily basis. The controller was required to record the total number of movements of aircraft in and out of the primary control zone. Movement of aircraft within the primary control zone is simply enumerated. As of the date of the hearing performance of this responsibility has ceased. Mr. Dubois testified that the requirement to perform this paperwork distracted the air traffic controller from his prime responsibility of scanning the air space. Mr. Dubois did not dispute that air traffic controllers "technically" perform all the duties described by Mrs. Noakes. When I asked what he meant by his reference to the word "technically", Mr. Dubois simply suggested that these duties are not performed all at once. Unlike most other air traffic control towers, operating employees at the V.H.T. do perform simultaneously airport control functions, data control functions and en route traffic functions. Usually these four functions are split amongst individual air traffic controllers at the busier towers.

11. The assertion that V.H.T. is not a busy tower was confirmed in reference to the air traffic sheets prepared by Mrs. Noakes and her colleague on the days alleged in her grievance. A distinction was made between "batch" periods and "down" periods. A "batch" period is a busy time when air traffic is normally at its peak. During the

summer period a "batch" period occurs usually at 7:00 hours when the tower opens, at noon, at 18:00 hours and at closing time. A "down" period is a time when air traffic is predictably light and often times no movement of aircraft is monitored at all. The information contained in the air traffic control sheets was qualified by Mrs. Noakes as not being one hundred percent accurate but nonetheless reflected in her view a measured appreciation of the work load at the V.H.T. On the days in question the following information was extracted from the air traffic sheets prepared by Mrs. Noakes during the course of her shift. They indicate periods of time in excess of ten minutes between 12:10 hours and 22:00 hours when no movement of aircraft occurred:

June 9, 1980:	26 minutes
	32 minutes
	19 minutes
	83 minutes
June 10, 1980:	15 minutes
	16 minutes
	17 minutes
	79 minutes
June 11, 1980:	17 minutes
	18 minutes
	19 minutes
	42 minutes
June 17, 1980:	14 minutes
	17 minutes
	21 minutes
	13 minutes
	14 minutes
	30 minutes
	36 minutes
	64 minutes
June 18, 1980:	16 minutes
	27 minutes
	23 minutes
	29 minutes



12. Mrs. Noakes testified that her physical capacity to endure the responsibilities of her position normally would begin to wane after three consecutive hours of duty. A short break allowing her to leave the tower and to take a walk outside was a necessary diversion that would enable her in the normal course to refresh herself for the purpose of resuming the duties of the position for the balance of the shift. Without this diversion she feels both apathetic and fatigued while discharging her responsibilities. When asked in cross-examination what she does during the "down periods", she candidly stated that she can make a cup of tea, go to the washroom, sit back and relax and walk around the cab. Mrs. Noakes insisted that her complaint in having been deprived of a second break while assigned to the afternoon shift has nothing to do with satisfying such needs as preparing a meal or attending the washroom. Her complaint essentially is that spending upwards to six consecutive hours in the cab, at any given time, without a true relief break is extremely demanding. The fact that there are periods when there may be little to do may very well contribute to her fatigue and thereby affect her concentration.

13. Mr. Dubois testified that not only did he not have the staff to enable a second controller to remain on duty to spell Mrs. Noakes off for a "true" second break during the summer period, but he would not know how to take advantage of the added staff complement. In the winter months there is a complete overlap of shifts enabling the controller on duty to take a second break. If complications arise due to absenteeism Mr. Dubois indicated that he would relieve the attending controller for meal or relief purposes. In the summer months the special exigencies of operational requirements dictate that the air traffic controller assigned the afternoon shift forego his or her second break. To alleviate the sustained nature of the second leg of the shift, the employer allows the controller to leave the cab for reasonable periods to attend to obvious needs.

14. Suggestions were put to Mr. Dubois in cross-examination as to how the difficulty in providing a second break could be overcome. It was suggested that he could make himself available to work overtime to allow the controller some relief. Mr. Dubois did not react kindly to this suggestion. It was also suggested that a swing shift could be arranged to cover the period when there was no overlap in shifts. Mr. Dubois suggested the feasibility of this proposal has been criticized in the past having regard to staff arrangements for vacation leave in the summer months. Moreover, the scheduling of a swing shift would require advance notice of when staff would be prepared to take their vacation. He indicated a past reluctance of operating staff to commit themselves in advance to their vacation leave. Rather, they prefer the flexibility that is now allowed them. The proposal that another controller be hired temporarily for the summer months was also suggested. In having regard to the "down periods", Mr. Dubois was of the view that that suggestion would be totally wasteful.

15. Mr. Jewitt argued on the grievor's behalf that the adjudication precedents have established, particularly in the interpretation of the very provision before me, that the employer cannot rely on staff shortcomings to excuse its failure to comply with specific obligations that have been assumed under the collective agreement. Article 13.02(d) imposes a positive obligation upon the employer to provide operating employees reasonable meal and/or relief breaks during the course of their tour of duty. This proposition has been confirmed in subsequent cases without employer challenge before the Federal Court. In anticipation of the employer's argument, counsel submitted that the prefacing words of article 13.02(d) cannot be interpreted to allow the employer an unfettered discretion to restrict the occasions where operational requirements will permit a meal and/or relief break. Rather counsel submitted that the precedents establish that the employer's decision to deprive operating personnel of a true break may only occur in exceptional circumstances.

That is to say, only where operational requirements do not permit will the suspension of meal and/or relief breaks be warranted. In Mrs. Noakes' situation the employer's failure to provide a "true" break at the times alleged in her grievance does not fall within any such exceptional circumstances. The adjudication precedents relied upon by counsel are the cases in Randall et al (Board files 166-2-4828 to 4831), Lawes et al (Board files 166-2-6437 to 6440) and Savage (Board file 166-2-9734).

15. Mr. Newman submitted that the prefacing words under article 13.02(d) preserve the employer's prerogative to determine when operational requirements will permit operating employees the opportunity to take meal and/or relief breaks. Nothing contained in the article should be interpreted to impinge upon management's discretion under article 3.01 "to direct the working forces including the right to decide on the number of employees, to organize and assign work, to schedule shifts..." Indeed the onus is placed upon the aggrieved employee to satisfy the adjudicator that operational requirements did permit a meal and/or relief break and that the employer's discretion was arbitrarily or wrongly exercised. In support of his interpretation, Mr. Newman suggested that one reason that meal and/or relief breaks are not defined in the collective agreement is because they are "paid" breaks. In other words, although on most occasions, at the employer's discretion, operating employees are permitted "true" breaks, unlike most other employees, they may be required from time to time to remain on duty. As a result, where operational requirements do not permit, operating employees, notwithstanding their expectations, may be asked to perform their duties without a relief break. Although it was conceded by counsel that the interpretation he advanced of article 13.02(d) might appear "technically" severe, the reality as indicated by the facts in the instant case has failed to demonstrate that the exercise of employer discretion has been abused. To the extent that the adjudication precedents quoted by Mr. Jewitt conflict with or represent a different

interpretation from his own, counsel submitted that those precedents were simply incorrect. Accordingly, I was advised that I ought not to feel myself bound by their conclusions. Indeed, no real effort was made to distinguish the instant case from the situations in those precedents. Counsel was content to rest his case on the premise that article 13.02(d) imposed no positive obligation to provide operating employees with meal and/or relief breaks.

16. Alternatively, counsel for the employer submitted that even if a positive obligation was imposed upon the employer to provide operating employees with meal and/or relief breaks the facts in Mrs. Noakes' circumstances indicate that that obligation was satisfied. Nothing contained in article 13.02(d) suggests that employees must necessarily absent themselves from the work place in order that the employer fulfill its obligation to provide a meal and/or relief break. In this case during the latter part of her shift Mrs. Noakes, although precluded from leaving the work place, nonetheless during "down periods" was allowed all of the amenities of a real break. The constraint imposed upon her was that she remain on duty in the cab except where physical exigencies dictated her absence. In other words, although she was not entitled to a "true" break, Mrs. Noakes still was extended the opportunity to disengage herself from her work when operational requirements permitted.

17. In support of this proposition, Mr. Newman relied upon the private sector case in Re St. Michael's Hospital and International Union of Operating Engineers (1973) 3 L.A.C. (2d) 443 (Rayner). In that case the respondent hospital was required by operation of the Operating Engineers Act R.S.O. 1970, c. 333, s. 20 to have at least one operating engineer or helper in attendance to oversee the hospital's boiler room operations. The collective agreement covering operating engineers employed at the hospital "allowed two (2) fifteen minute coffee breaks during each eight (8) hour period" at the employer's

expense. Apparently staff exigencies required that the "coffee break" be taken while the operating engineer remained in attendance in the boiler room. The obvious concern was that someone ought to remain in the vicinity to deal with an urgent situation. The union argued that the term "coffee break" implicitly suggested that an employee should be allowed to leave the work place in order that compliance with the article's objective be achieved. The immediate implication of the union's argument, if successful, would have required the hospital to engage another qualified employee to attend to the boiler room operation for the express purpose of providing the other operating engineer a break period. In deciding the case in the employer's favour, the arbitrator indicated that in the absence of a clear and precise definition of "coffee break", the language of the collective agreement could reasonably lend itself to the interpretation that fulfillment of the requirement for "two coffee breaks" could be met while an employee remained on duty and attending the boiler room operation. But of utmost significance the arbitrator indicated in direct reference to the potentially adverse effect of the union's interpretation on the employer's operation (at p. 446):

If the union's interpretation was to prevail, then the consequences of that decision would be extremely onerous to the Hospital. As stated earlier, it would undoubtedly necessitate either the hiring of new employees or the disruption of supervisory personnels' routines to a great extent. On the other hand, the benefits flowing to the employees from the union's interpretation are not substantial. The board recognizes that the engineers now must stand a continuous shift in the boiler room without ever leaving their place of work. However, the board also recognizes that the employees can, in fact, find time to take their break in the boiler room. In the board's opinion the negative consequences flowing into the Hospital from the union's interpretation far outweigh the positive consequences flowing to the employees from that interpretation.

The work done by the operating engineers in the boiler room is not the same type of work that is done by an employee on a production line. The employees in the boiler room do not continually engage in active duties. A great deal of their time is spent in passive activities.

(Emphasis added)

18. The circumstances described herein raise three issues. Firstly does article 13.02(d) impose upon the employer the positive obligation to provide operating employees with meal and/or relief breaks? Secondly, if so, what circumstances would excuse the employer from compliance with that obligation? Or, more precisely, what does the phrase "where operational requirements permit" mean? Finally, do the circumstances in Mrs. Noakes' case constitute a breach of article 13.02(d)?

19. The adjudication references quoted by the grievor's counsel stand for the proposition that a positive obligation is imposed upon the employer by operation of article 13.02(d) of the collective agreement. The underlying premise of the interpretation attributed to the article is two-fold. Firstly, common sense dictates that owing to the onerous nature of the duties performed by air traffic controllers it was mutually recognized that depriving them of their meal and/or relief breaks could entail a hazard to public safety. This concern was expressed in Lawes (supra) where air traffic controllers were required without explanation from the employer to work a full tour of duty without a relief break. Secondly, if the extension of meal and/or relief breaks is to be viewed, as counsel for the employer insists, as a part of management's unfettered prerogative, then one must question the necessity of inserting article 13.02(d) into the collective agreement at all. Apart from the requirement that meal and/or relief breaks

are paid breaks, there would not appear to be a pragmatic purpose for the introduction of the provision. For like reasons I am of the opinion that the employer's interpretation is not only an unreasonable view of its responsibilities but clearly would render, if accurate, article 13.02(d) of the collective agreement a superfluous appendage. Accordingly, I subscribe to the interpretation advanced both in Lawes (supra) and Randal (supra) to the extent they indicate that a positive obligation is imposed upon the employer to provide operating employees with meal and/or relief breaks save in circumstances where operational requirements do not permit.

20. What then are the circumstances that would excuse the employer from complying with the obligations assumed under article 13.02(d)? It may serve a useful purpose to indicate those circumstances that would not excuse the employer's failure to comply. I hold that the adjudication precedents stand for the proposition that the employer cannot rely upon staffing inadequacies as an excuse to raise artificial barriers to satisfying an otherwise legitimate requirement of the collective agreement. Just as the employer must comply with the requirement to pay overtime and call in premiums for unexpected shortcomings attributed to staffing so it must be held accountable to comply with like requirements under the collective agreement to provide employees with meal and/or relief breaks. Adequacy of staffing albeit related to operational requirements cannot be viewed as per se an "operational requirement" that would justify undermining the purpose and intent of a bona fide provision of a collective agreement. As my colleague, Mr. Mitchell, Q.C., Deputy Chairman, indicated in Lawes (supra) at p. 14:

...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 does impose an obligation. The word "permit"

means "to make possible". The employer's 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.

21. What circumstances therefore do warrant the employer's non-compliance with the requirements to provide meal and/or relief breaks? What the parties seem to have recognized under article 13.02(d) is that situations may very well arise where it would be not only unreasonable but impractical for employees to have a normal break. I do not suggest that these occasions need necessarily be emergency situations where the taking of a relief break would clearly be imprudent. In a like fashion I do not view that the employer is bound to engage in superfluous staffing actions for the purpose of guaranteeing compliance with article 13.02(d). Rather implicit in the wording of the phrase "where operational requirements permit" the parties have mutually acknowledged that owing to the duties and responsibilities shared by each of them to the public's well being circumstances may arise that might require, notwithstanding potentially adverse mental and physical effects, the continued presence of operating personnel at their work station. I do not propose in this case to give an exhaustive definition of these circumstances that might constitute "operational requirements". The parties by virtue of their failure to provide such a definition, must be deemed to have purposely intended (as they should have) to allow the situation as it arises to dictate those occasions when the suspension of article 13.02(d) is warranted. Accordingly, I am of the view that the task of pinpointing those circumstances where operational requirements do not permit a meal and/or relief break is a matter that is peculiarly a question of fact to be determined on a case by case basis (see Tremblay, Board file 166-2-9742<sup>1</sup>)

<sup>1</sup> Upheld on application to the Federal Court (A-404-81) on December 18, 1981.



What appears to be the key test, however, is whether practical exigencies warranted the employer in holding in abeyance the obligations it has assumed under article 13.02(d).

22. The parties' intentions as to the meaning of "operational requirements" may also be discerned from what article 13.02(d) does not include. Most collective agreements in both the public and private sector define both the nature and duration of a meal and/or relief break. In a like fashion I believe I am entitled to take some notice that the normal practice in such agreements are that meal breaks are on the employee's own time and relief breaks (coffee breaks) are usually on the employer's time. I am of the view that the parties' failure to define what they meant by meal and/or relief breaks must be deemed to have had a specific purpose. That is to say, it seems a tenable proposition that meal and/or relief breaks are lacking in definition because the practical exigencies of the air traffic control service simply do not allow for rigid and formalized procedures. In other words, where one hour for a meal break is practical the employer may be obliged to accord a one hour break. By the same token, where only five minutes is practical then the employee must recognize that in isolated instances operational requirements may not permit a normal meal break. In other words, implicit in the absence of definition is the clear inference that the parties have entrusted to each other the task of determining on an ad hoc basis those circumstances where a true meal and/or relief break may not be possible. That trust should not be compromised by recourse to artificial staffing strategies to circumvent otherwise legitimate obligations under the collective agreement (see Savage (supra), Hollier and Willis, Board files 166-2-10526 and 10527).

23. In Mrs. Noakes' case I am of the view that, on balance, operational requirements dictated that in the summer period she endure a portion of her shift without a relief break. I am satisfied that the employer has not in a mal fides manner sought to evade its obligations

by virtue of its control over the staffing of the V.H.T. Moreover, the solutions suggested by Mr. Jewitt during the course of his cross-examination of Mr. Dubois simply were not practical. I do not doubt that the requirement that Mrs. Noakes remain on duty without a second relief break imposed a demanding physical and mental strain. Nonetheless she did indicate that during these "down periods" lengthy respites were possible. She was allowed during the course of her shift to relax, to walk around and to attend to physical exigencies. And she was paid during these intervals. Moreover, I am satisfied the adverse effects of the admittedly protracted shift without a true relief break is somewhat anticipated by virtue of the four-day week provided for under the collective agreement that is worked by all operating personnel. In other words, on balance, I am constrained to the conclusion that the operating requirements that are dictated by the seasonal nature of air traffic control services at the V.H.T. did warrant the suspension of her second break.

24. Mr. Newman's reliance on the St. Michael's Hospital case (supra), in my view, does not warrant consideration in reaching this conclusion. Firstly, the duties of the air traffic controller in scanning the sky for potential difficulties is a continuous, uninterrupted function. The responsibilities of an air traffic controller are distinguishable from the responsibilities of an operating engineer who must remain on duty to attend to unanticipated emergency situations occasioned by an inoperative boiler. In other words, the mental and physical demands of the two jobs are quite distinguishable. Secondly, and more importantly, the parties in having regard to their agreed statement of fact by their own admission have treated meal and/or relief breaks as "true" breaks. That is to say, on the vast majority of occasions where operational requirements have permitted a break, the operating employee is allowed to indulge himself in whatever pursuits he chooses. On the other hand, I view the St. Michael's Hospital case as a practical, common sense response to a difficulty that is peculiar to the facts described in the circumstances of that case.

25. For all the foregoing reasons, the grievor's reference to adjudication is denied.

For the Board,

David H. Kates,  
Deputy Chairman.

OTTAWA. January 11, 1981.

