

File Nos: 166-2-9797  
166-2-9820

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

BETWEEN:

DONALD BOYCE,  
CLAUDE BIZZARRO,

Grievors,

AND:

TREASURY BOARD  
(Transport Canada),

Employer.

DECISION

Before: Emile Moalli, Board Member and Adjudicator

For the grievors: C.H. MacLean, counsel

For the employer: M.M. Galipeau-Mayrand, counsel

Heard at Montreal, Quebec, October 4, 1981.

CHANGE IN SHIFT SCHEDULES  
DUE TO EMPLOYER'S ACTIONS  
LESS THAN 15 DAYS

*from E 3B  
ART 13  
CODE 408/79*

DECISION

Two air traffic controllers, Messrs Donald Boyce and Claude Bizzarro, shift supervisors, working at Dorval International Airport, each filed a grievance as the result of incidents relating to the employer's decision to have them take the B.A.S.E. course in automation at the Transport Canada Training Institute in Cornwall.

Mr. Donald Boyce's grievance reads as follows:

The undersigned requests remuneration, in accordance with the agreement, as a result of changes in his work schedule for May and June 1980.

These changes arose because the Department was unable to offer him a course taught in French.

Corrective Action Requested

That I be paid in accordance with the agreement.

Mr. Claude Bizzarro's grievance is worded as follows:

Not granting me the overtime to which I am entitled for the period from May 29, 1980 to June 11, 1980, thereby contravening clause 13.08 of the CATCA-TB collective agreement.

Corrective Action Requested

Payment at the appropriate rate for the days worked and written justification for the policy followed in refusing this payment.

At the hearing, counsel for the grievors, C.H. MacLean, specified that both employees' claims were based on clauses 13.03 and 15.01 of collective agreement 402/79 binding Treasury Board and the Canadian Air Traffic Control Association, which expires on December 31, 1980, and not on clause 13.08 as indicated in Mr. Bizzarro's grievance. No objection was raised concerning this correction.

As the circumstances of both grievances were identical, the parties presented the evidence relating thereto jointly.

#### EVIDENCE

The grievors were designated to take a course intended as an introduction to automation; it was to be offered in Cornwall from May 27, 1980 to June 19, 1980 inclusive.

Although these employees hold bilingual positions, it seems that they are more fluent in French. When Mr. Boyce asked his superior what language the course would be taught in, he was told that it would probably be English, but that he should still go to Cornwall to see what he could get out of it.

On May 15, 1980, the employer posted the employees' shift schedule for June 1980; it took into account the fact that both employees would be on the course in question.

On May 27, 1980, the day on which the course was to begin, the instructor in charge gave an overview of the course in English. Afterward, Mr. Boyce asked him if the course would be given in French too or, at least, if there was a system for simultaneous interpretation.

On learning that the course would be given only in English, that there was no simultaneous interpretation and that the relevant documentation was only in English, the grievors decided that the course would not be very useful to them. Mr. Boyce informed his immediate superior, Mr. Réal Bérubé, of this by telephone, and told him that he wished to return to Dorval.

Mr. Bérubé asked him to describe the situation in a telegram and promised to give him a reply in an hour or an hour and a half.

The grievors sent the following telegram to Mr. Bérubé:

Subject: BASE course at TCTI

Course in English only. Unilingual English instructor. Request course in French. If unavailable, wish to return to our respective positions.

Signed jointly

DONALD BOYCE  
CLAUDE BIZZARRO

In effect, both employees returned to Dorval that day, namely May 27, 1980. Mr. Boyce was informed that May 28 and 29, 1980 would be days of rest for him and that he would be on duty on May 30, 1980 from 7:45 a.m. to 4:00 p.m.

With respect to the following days, he was asked to consult the posted shift schedule.

Mr. Bizzarro was informed that he would be off on May 28 and that he would work on May 29, 1980 from 7:45 a.m. to 4:00 p.m.

The grievors' unexpected return obliged the employer to change the shift schedule for June 1980, which had been posted fifteen days earlier. The grievors then worked according to this changed schedule.

#### PARTIES' POSITIONS

According to counsel for the Canadian Air Traffic Control Association, clauses 13.03 and 15.01 must be read together. She submitted that the employer changed the shift schedule for June 1980 and that, when it did so, it did not give the employees the fifteen-day advance notice indicated in clause 13.03 of the collective agreement.

Ms. MacLean stated that, according to the second sentence of clause 13.03, "the shift as indicated in this schedule shall be the employee's scheduled hours of work". As the grievors worked outside their hours of work, as established on May 15, 1980, the hours so worked became overtime, under clause 15.01, which must be paid at the rate stipulated in the agreement.

For her part, Ms. Galipeau-Mayrand argued that only clause 13.03 of the agreement applied in this case.

She maintained that the shift schedule for June 1980, which had been posted on the previous May 15, had been changed solely to accommodate the grievors, who had decided that there was no point in them taking the course in Cornwall. She argued that, in such a case, it is the third sentence of clause 13.03 which applies.

In her opinion, the provisions of this clause do not cover the type of situation in which the employer found itself when the grievors decided not to take the course in question. The employees' decision

made it impossible for the employer to give any advance notice concerning the necessary changes in their hours of work. In addition, she noted that the employees did not object to these changes.

Moreover, she pointed out that violation of this clause does not entail any penalty for the employer.

#### REASONS FOR DECISION

The problem before the Adjudicator can be summarized as follows: at the request of the grievors, who did not feel that the course in Cornwall would be useful to them, the employer decided to bring them back to their usual work place in Dorval. This decision obliged the employer to change the shift schedule prepared for June 1980. Does the fact that the grievors worked hours during June 1980 that were different from those posted in the shift schedule on the previous May 15, without being given fifteen days advance notice, give them the right to payment at the overtime rate for these hours of work? (It should be noted that, to avoid pointlessly complicating the matter, I have not referred to a number of days in May 1980 covered by the employees' grievances. It is clear that if the union's argument is accepted, it would apply as much to the days in May on which the employees worked different hours as to those in June.)

The provisions of the collective agreement that are likely to help us answer the above question are the following:

#### DEFINITIONS

- (7) "Shift Cycle" means the recurring sequence of an employee's days of work and days of rest.

- (8) "Shift Schedule" means the Employer's advance posting of shifts to be worked by employees within their shift cycle.

ARTICLE 3 - MANAGEMENT

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) . . .
- (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.

ARTICLE 13 - HOURS OF WORK

13.01 Non-Operating Employees

13.02 Operating Employees

13.03 Shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee

with reasonable notice as to the shift he will be covering. The shift as indicated in this schedule shall be the employee's scheduled hours of work. If it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity. If the employee has serious objections to the amendment, the Employer shall make every reasonable effort to accommodate the employee provided that it will not result in any additional overtime payments than would have otherwise been the case if the employee had not been so accommodated.

ARTICLE 15 - OVERTIME

- 15.01 Time worked by an employee in excess or outside of his scheduled hours of work shall be considered as overtime.

The wording of clause 13.03 of the collective agreement indicates its purpose quite clearly: to give employees reasonable advance notice of the shifts that they will be required to work.

What are the employer's obligations in this connection?

1. the employer must post the shift schedule which determines employees' work hours at least fifteen calendar days in advance (I have concluded from the collective agreement that "calendrier des postes", which is used in clause 13.03, is synonymous with "horaire de postes"; in English, only one expression, "shift schedule", is used and its definition is found at page 6 of this decision);



2. if the employer decides to change this shift schedule, it must "make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity";
3. "if the employee has serious objections to the amendment," the employer is obliged to "make every reasonable effort to accommodate the employee"; nevertheless, the employer will not be required to accommodate him if doing so would result in additional overtime payments.

The expression, "additional overtime payments", implies that a change in the shift schedule may result in the payment of overtime. However, we do not believe that any change in the shift schedule would entail payment at the overtime rate. For example, if a shift schedule is posted twenty days before it comes into effect and is changed three days after it was posted, the work performed on the changed shifts would not, in my opinion, result in payment at the overtime rate, because the employees would have received reasonable advance notice of more than fifteen days.

Moreover, this is what emerges from the decision of our colleague O'Shea in Elkins et al. (file no. 166-2-3046 and 3062), in which he states the following:

Since the grievors had been rescheduled by the Employer pursuant to its authority under Article 3.01(b) and since the Employer gave effect to the provisions of Article 13.03 and 13.05(c) in the manner in which it effected the change in the shift schedules, I find that all the disputed work was performed during properly

scheduled shifts and was not "in excess or outside" the scheduled hours of work of the grievors so as to entitle them to overtime pay under Article 15.01 of the Collective Agreement.

What happens when the advance notice concerning a shift change is less than fifteen days?

We do not feel that reasonable advance notice must necessarily consist of fifteen days; it will depend on the circumstances. At least, this is what emerges from clause 13.03, in which the parties stipulated that "if it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity".

It is this obligation that the employer must observe. Moreover, in our opinion, it is only if this obligation is not observed and if the employee must work a shift different from that which had originally been scheduled that he can claim to have worked "outside his scheduled hours of work", and require that he be paid at the overtime rate.

In this case, the employer was obliged, on May 27, 1980, to change the shift schedule for June 1980, which had been posted the previous May 15. The new shifts appear to have been assigned to the grievors as soon as it was possible to do so. No evidence was presented to show that the employer did not on this occasion make every reasonable effort, as required, to inform the grievors as soon as possible of the shift changes made necessary by their decision not to attend the B.A.S.E. course. In addition, there is no evidence that the grievors made any objections to the changes made in their hours of work.

Consequently, as the evidence has not established that the employer failed to comply with the obligations imposed by clause 13.03 of the collective agreement, I must dismiss the grievances.

For the Board,

Emille Moalli,  
Board Member & Adjudicator

LAVAL, December 23, 1981

Certified true translation

Serge Lareau

