

No. 199
DEC 13 1982

Libby JB 14/12/82

File Nos.: 166-2-12727
12728 & 12729

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

BETWEEN:

FRANK GAUTHIER, JOHN BATCHELOR,
AND CECIL REASIN,

Grievors,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

DECISION

Before: J. Maurice Cantin, Q.C., Vice-Chairman.

For the Grievors: John P. Nelligan, Counsel,
Catherine H. MacLean, Counsel.

For the Employer: Harvey Newman, Counsel,
Roslyn Levine, Counsel.

Heard in Toronto, Ontario, June 15, 16, 17, 22, 23, 24, 25 and July 26,
27, 28, 29, 30, 1982.

ART 7
CODR
402779

Toronto Discharge Cases - CATCA.

DECISION

On August 3, 1981, about 13,500 American air traffic controllers, members of the Professional Air Traffic Controllers Organization (PATCO) began an illegal strike. On the same day, President Ronald Reagan gave the striking controllers an ultimatum which was to return to work within forty-eight hours or be fired. The regularly scheduled flights were immediately reduced and the United States government imposed a 25% cut in commercial flights designed to reduce peak traffic at air towers. Approximately 11,500 PATCO members were fired for not respecting the back to work ultimatum. On August 9, Mr. William Robertson, the President of the Canadian Air Traffic Controllers Association, urged CATCA members to refuse to handle U.S. air traffic as of 7:00 a.m. on August 10. He said that his reason for these instructions was the unsafe conditions in U.S. air-space due to the situation with PATCO.

At about the same time, or more precisely between August 6 and 10, 1981, three Toronto air traffic controllers namely Frank Gauthier, John Batchelor and Cecil Reasin, members of the Canadian Air Traffic Controllers Association (CATCA) allegedly refused to handle U.S. traffic and committed various acts of misconduct for which they were discharged.

References to adjudication were filed alleging that the above three controllers had been discharged without just cause.

I have already rendered a decision in this matter, ruling that the penalty of discharge was excessive and should be replaced by short term suspensions, that is three days in connection with Frank Gauthier and John Batchelor and five days in connection with Cecil Reasin. I also concluded that the grievors should be reinstated immediately. I said that the reasons for the decision would follow. Such reasons can now be found hereunder.

THE EVIDENCE

A number of witnesses testified on behalf of the employer. They include Captain David Allen Wilding, Kenneth Riseborough, Charles Douglas Graham, Ronald George Bell and David Lee Campbell. Gordon Allen also testified in rebuttal on behalf of the employer.

Thirteen witnesses including the three grievors testified on their behalf. These witnesses were, besides the grievors, Tom Partello, Warren Nahirniak, John Gold, William Hill, Fred Petnauskas, James McKinnon, Terry Arnold, Ralph Johnson, Steve Hall and Garry Davey.

The letter of discipline outlining the reasons for discharge given to Frank Gauthier and John Batchelor said that they were being discharged for failing to perform their duties as required, that they contributed to a complicated and unsafe situation by denying proper air traffic control service to aircraft in flight, and were insubordinate. In his letter of discipline, Cecil Reasin was told that he was being discharged for failing to perform his duties as required, for failing to provide proper air control services to an aircraft in flight, for having used departmental communication facilities in an unauthorized manner, and for making unauthorized and improper transmissions to an aircraft in flight and to another controller.

In the case presented by the employer, the most important pieces of evidence were transcripts of tape recordings made at the Toronto air control centre. These recordings are made continuously, and record the conversations of air traffic controllers with pilots and with other controllers. In this manner, the conversations of the grievors which lead to their being discharged were presented in their entirety to me. As a result, none of the witnesses were required to give a full summary of the events leading to discharge in their testimony. I will therefore summarize these incidents.

With regard to grievors Batchelor and Gauthier, the employer presented as evidence of wrongdoing on their parts conversations they had concerning three flights. Air Canada flight 731 (AC731), Torontair flight 608 (TO608) and Torontair flight 800 (TO800). These conversations were contained in transcripts marked as exhibits E-4B and E-4C. The transcripts show that the conversation in question occurred on August 10, 1981 between 11:56Z (11:56 Greenwich Mean Time) and 13:00Z (13:00 Greenwich Mean Time). The employer alleged that AC731 was "cleared short" by Batchelor and Gauthier, or, in other words, given air traffic control only to a certain point without alerting controllers handling air traffic on the other side of that point that the plane was heading towards their airspace. This act of alerting the next controller is called a "hand-off".

With regard to TO800, a flight to Brockville which required an approach through American airspace, the employer alleged that Batchelor and Gauthier cleared the plane short to the Rideau intersection, which is in Canadian airspace. The employer also alleged that Batchelor and Gauthier cleared TO608, a flight to Syracuse, New York, short to the Kingston Beacon, a point in Canadian airspace.

As part of its case against Cecil Reasin, the employer produced a transcript marked as exhibit E-4D. This transcript started on August 6, 1981 at 14:45 Z. This transcript concerned the flight of Racer 22, a military aircraft flying from Wurtsmith (in Minnesota) to St. Hubert, in Canada. The employer alleged that the grievor ignored attempts by the Minneapolis centre controller to contact Toronto, and needlessly delayed the hand-off, causing the plane to circle in the air. The employer also produced a transcript marked exhibit E-4E which it alleged showed that Reasin made unauthorized and inappropriate

communications with regard to American Airlines flight 265 (AA265). This transcript, which starts at 11:48 Z on August 7, 1981, shows Reasin saying to the Minneapolis controller at 11:50:13 "Get some controllers in there". At 12:04, there is an exchange between Reasin and the Minneapolis controller which goes as follows:

Reasin: What do you mean apprequing climbing? ...I don't understand what you mean by that.

Minneapolis: If you had a controller there, you might.

Reasin: At least I'm not a scab.

Reasin follows this at 12:05 on the transcript by saying to the pilot of AA265 "you'll be leaving Canadian airspace in ten miles, keep your eyes open it's very unsafe there today".

EMPLOYER'S CASE

1) Captain David Allan Wilding

Captain Wilding testified that he has been employed by Air Canada for fifteen years. He joined as a first officer and worked on a Viscount for fifteen months. He was the second officer on a DC-8 for 2 1/2 to 3 years thereafter. Then once again he worked on a Viscount for six months. He then became the first officer on a DC-8. For the last few years, he has been the Captain of a 727. The crew of a 727 includes a captain, a first officer and a second officer. All of these are pilots. He has flown for 9 1/2 years overseas and many times in the United States.

On August 10, 1981, he was flying Air Canada flight 731 from Montreal to Chicago. The week was not entirely normal. Problems in the United States due to the firing of controllers were occurring at that time. Although flights were made without problems in the United States, he saw on the television news on August 9th that Canadian air controllers would not be accepting over the border flights. When he saw the news on August 9, which was Sunday, he knew he would be flying flight 731 on Monday morning. Flight 731 was scheduled to leave at 8:05 a.m. (later in his testimony, he changed this to 8:00 a.m.). The scheduled landing time was 9:14 a.m., Chicago time.

He arrived at Dorval around 7:00 a.m. and he met the crew. At that time he and the first and second officer and the four flight attendants had a brief conversation regarding the news. He then checked and found the weather was excellent and the aircraft serviceable. He called the Flight Dispatch, a company run by Air Canada. This company gives pilots information on weather, and also gives out "notices to airmen" or "NOTAMS". Phoning flight dispatch initiates a company scheduled flight.

Captain Wilding said that he phoned at 7:20 a.m. from the flight planning area. He was concerned about the U.S. situation and wanted coverage for the flight. Flight dispatch advised that all U.S. facilities were working normally. He mentioned the news report and was advised that the Canadian controllers had not carried out their threat. He said he was satisfied things were normal. As a precaution, a small amount of extra fuel for delays at Chicago was taken on.

At between 7:40 a.m. and 7:45 a.m., he said, he got on the aircraft. A cockpit check was done and he requested a flight clearance. He requested this because of the situation with the air

controllers, and he was requesting it a little earlier than usual in case he would have problems getting it. Normally, on this flight to Chicago, you are cleared on "centre-stored" routing. The definition of this routing is that every flight requires a flight plan, and the Ministry of Transport stores certain flights that are repeated regularly on computer. This is for purposes of communication failure and also reduces communication needed considerably. Using this plan, he would simply be given a standard departure from Dorval. Centre-stored plans are occasionally cancelled, for example in the case of thunder storms en route. They are also cancelled in order to take advantage of winds. They are always cancelled by the company. The communication equipment on a 727 aircraft consists of two VHF receivers/transmitters. Never has he been on a flight where both transmitters failed.

Captain Wilding said that he called for the clearance early. The clearance was received at 7:43 a.m. and it was a normal clearance, with the centre-stored planned route and a Dorval routing. He received this from clearance delivery. Clearance delivery is a facility run by the Ministry of Transport giving flight clearances prior to taxiing out at the airport. It is basically an air traffic service. Clearance delivery called him back, cancelling the clearance. He questioned this and he was told they had a message from Toronto centre. All communications were on the radio. This was about 5 minutes to 8:00 a.m.

Captain Wilding then said it was apparent that they were going to have problems on the flight. He requested a clearance keeping the flight in Canadian air space until the Cleveland boundary. He testified that Montreal had cancelled the clearance at the request of Toronto. He was feeling a little frustrated and Montreal did not suggest any alternative for him to follow. He said that if he had not taken some

initiative, the flight would have been cancelled. He then asked for a short clearance as far as the border. He was trying to get 116 miles west of the Kleinburg VOR, which is the boundary between Toronto and Cleveland airspace. He explained that the Kleinburg VOR is a high frequency omniranged radio facility which is like a radio beacon. It is located 15 miles north of Toronto airport. It has airways attached to it which are routings in the sky. His idea was to ask only for air traffic services in Canada to 116 miles west of Kleinburg and then to establish contact with Cleveland air traffic control. In that way, he would be able to go via Kleinburg to the Peck VOR in American airspace. Therefore, his route would include talking to Montreal tower terminal area controllers, Montreal centre, Toronto centre and then Cleveland centre.

Captain Wilding testified that he had never had to do this on a Chicago flight before. He could not get this clearance from clearance delivery and got no reason when he asked why. He then asked if clearance delivery would clear him to the Kleinburg VOR, rather than 116 miles west of Kleinburg. He could not take off without a clearance on an instrument flight. His concern was to get the flight airborne, and he felt that once it was airborne, things would be different. He said that once at Kleinburg, he would have to request further clearance from Toronto centre directly. He got the clearance to Kleinburg at about 8:03 a.m. The plane moved back from the terminal and requested a taxi clearance from Dorval ground control. Dorval ground control told him they wanted him to change frequency back to clearance delivery. This happens occasionally but mostly ground control relays a change in clearance. He changed back to clearance delivery. They wanted to issue a communication failure procedure, which he said is abnormal. The procedure they wanted him to follow in event of a communications failure would be to land at about one hour after take-off at Toronto airport.

The communications failure plan given was not a standard one at all. Normally, the procedure would be to continue the flight to O'Hare airport.

At this time, he was getting a little angry. He accepted the clearance to Kleinburg and the communications failure procedure in order to get the plane airborne. Although the communications failure plan was unusual, he did not expect to use it. At that time, he received taxi clearance and he took off at about 8:40 a.m., which was about 30 minutes late. They proceeded normally from Dorval and changed over to Montreal centre 7 to 8 minutes into the flight. At this point, they were still climbing and going toward the Ottawa VOR.

Captain Wilding testified that Montreal centre then came on the radio and said "we've got some news". The Montreal control told him that the Toronto centre would not accept the flight unless its intent was to land at Toronto. He asked why this was the case and the Montreal controller said that he had received a message from the Toronto centre. Captain Wilding questioned the clearance at some length. He said that this was aerial piracy and he requested that the flight get a hand-off to Toronto centre frequency. He wanted to talk to Toronto directly. The Montreal controller said he would not give the hand-off because Toronto centre would not take the flight. He then asked the Montreal controller to talk to Toronto. He called the company and then Toronto dispatch. He spoke to the shift supervisor there and asked him to talk to the Ministry of Transport supervisor at Toronto centre. He made this call at about 8:55 a.m. The company's supervisor told him that some things were being done outside the jurisdiction of the air traffic controllers with regard to flights to the U.S.

Just prior to receiving a hand-off to Toronto centre from Montreal centre, he told the Montreal air traffic controller that the flight had already been cleared to Kleinburg and that the hand-off should be normal. Upon being handed-off to Toronto, he asked them why they had insisted that the plane land in Toronto. He said the controller stated that they were not insisting that the plane land in Toronto but would not clear the plane into U.S. airspace. He then requested clearance to 116 miles west of Kleinburg. He was then very close to Kleinburg. He called Toronto flight dispatch to get the hand-off frequency for Cleveland in case he did not get a hand-off from Toronto; however, he did get normal hand-off to Cleveland. He spoke to Cleveland and revised the flight plan and also the communications failure procedure. They landed normally at O'Hare Airport about one-half hour late and he had no problems with the U.S. air traffic controllers.

Captain Wilding was then shown a document which he identified as an incident report he filed and which was marked E-5. He explained that an incident report is filed whenever there is any irregularity in a flight. For some of these incidents, there is a specific form to fill out but this one had been done on a general form. It is basically a report to the company. This incident report concerned interference with the flight, but it was not as serious an interference as something like highjacking. Pilots fly over the United States regularly and know what the situation there is. He could not see how any Canadian controller would know the U.S. situation better than he did, because he flew into the area and they did not. Any extra work load can create a hazard on a flight and the first officer was flying the aircraft in order to let him use the radio. Therefore, he had unnecessary work load.

In cross-examination, Captain Wilding answered that on the morning in question he had been alerted to the problem with the controllers. He had called his flight dispatcher for options and the one alternative he saw was going to be the boundary. He was not aware, however, that the other pilots were doing that. He had no problem until he got to the Montreal terminal. The only problem he had was with Toronto centre. When he was speaking to Toronto, he realized that the information from the Montreal air controller was inaccurate. Any problem he had was when he talked to the Montreal controller. He admitted that anything he heard from the Montreal controller concerning Toronto was hearsay. He got everything he asked for from Toronto centre. He asked for leave to go to the Cleveland boundary and he got such leave. Any problem he had until then was cleared up.

2) Kenneth Riseborough

Kenneth Riseborough testified that he is a shift manager at the air control centre in Toronto and has been since April 1, 1981. Before that, he was the unit chief of Sault Ste Marie from 1979 until April 1981. That unit moved to Toronto in 1981. He had been an instructor in an air traffic control school for nine years prior to that and, before that, controlled air traffic for thirteen years.

He testified that Toronto air traffic control centre is responsible for airspace generally over Ontario. Within that space, there are a variety of units and control towers. The control tower controls airspace in a three to five mile radius of the airport and to three to four thousand feet of elevation. The terminal units control to twenty-three thousand feet and to a forty mile or somewhat greater radius around the terminal. The Toronto control airspace is like a jigsaw puzzle and the pieces of airspace are called sectors. Basically,

a sector is a piece of air and two to three air traffic controllers control the airspace in a sector. Some sectors are smaller than others and they are the ones that tend to be busier with traffic. Sectors are divided by altitude as well i.e. low altitude to twenty-three thousand feet and high altitude above that. Some sectors have only one vertical sector. There are combined sectors such as Wiaraton that are not divided into high and low sectors. The low and high sectors do not necessarily coincide in geographic area.

Mr. Riseborough was shown a diagram of the Toronto air traffic control centre which was marked E-6. He explained that at the Picton seats, there would be one person on the radio and one person on the data board. Grievors Batchelor and Gauthier would sit at the Stirling board, one on the left and one on the right. Picton is being controlled by Stirling in a combined sector. Gauthier would have a cathode ray display (TV) and data strip before him. Batchelor would have a radar set and the radio hotline communications. Gauthier would have telephones. The hotline is for controller to controller communications. To activate the hotline, the controller pushes a button and speaks through a microphone. On it, Batchelor could talk to Montreal, Ottawa, North Bay and also people controlling sections who were beside him in the room. If he takes off the headset, he can still communicate through a speaker. The speaker has to be activated by a finger button; as long as you speak, you hold the button down.

He testified that to speak to people outside the room, both the radar and the data man had telephones. The radar man usually speaks to other controllers and to aircraft directly. The data man speaks mostly to other controllers. The radar man actually controls flight while the data man issues clearances off the ground in remote areas, gives clearance by a third party, passes data between persons and helps the

radar man with hand-offs. Basically, they work as a team. The data man sits adjacent to the radar man and gets data from other control centres by telephone. He records information on flight data strips, which are greenish cardboard pieces divided by dotted lines. He completes data from other centres and puts times on them. They are posted on a sequential basis. He calls these to the attention of the radar man. The radar man would take a hand-off from an adjacent area at close to the time on the strips. The other controller concerned hands them over and the radar man continues to track the plane on the screen.

With regard to transcript E-4B, it concerns the Stirling/Picton area data man. The "others" on the tape referred to aircraft or other centres heard either by the radio or the data man. "Stirling/Picton radio" refers to hotline radio communications. The times of the conversations are shown in Greenwich mean time at the beginning of the communication. On the transcript, FX stands for Gauthier and JB stands for Batchelor. UR stands for Montreal radar man, TM for McWhirter.

With regard to the Torontair 800 aircraft, Mr. Riseborough explained that on page 31, Valley is a low sector and Stirling a high sector. IFR stands for instrument flight rules and VFR stands for visual flight rules. UD stands for the Montreal data person. On page 18 of E-4B, an "appreq" means a request for approval by a plane on the ground. On page 19 of the transcript, there is a transfer of controllers to Gauthier who is refusing the flight. The transcript has him saying either the airplane does not go or else it does not go in Toronto airspace. Gauthier at that point is asking the Montreal controller whether the controllers there are obeying the CATCA directive.

With regard to flight 731 on E-4C, he testified that the tape was done in Montreal centre. Toronto is now in the "others" column. On page 3 of the transcript, there is a refusal by Gauthier to take an estimate on a flight with an American destination.

With regard to the incident of Racer 22 on E-4D, the Wiarton-Cobalt sectors were combined. MR stands for Minneapolis radar and Rick White (RW) is a controller in Toronto. Rick White ignores the Minneapolis controller on the tape. Rick White was on the data board. Page 5 of the transcript indicates that the airplane is in a holding pattern because it has been cleared short. The voice on the tape saying "tsk tsk" is that of Cecil Reasin. The word "spin" means a racetrack holding pattern. The standard racetrack takes five minutes to complete, while one one-half the size takes two and a half minutes. Reasin first talks to Racer 22 on page 9 of the transcript. Their first discussion is at 14:56:22, and the first contact from Minneapolis had been at 14:45. The total time elapsed, 11 minutes, 22 seconds.

With regard to E-4E, Traverse City is the low level sector of the Minneapolis air control area. In the transcript, it is combined with the high sector. CR is the same as SR, and stands for Cecil Reasin.

In cross-examination, Mr. Riseborough stated that about eleven years have elapsed since he was an active air traffic controller. He taught the instrument flight rules course during that period. He has not been checked out in position during that period.

He agreed that with regard to Racer 22, the data man had both the hand set and the head set and therefore that messages to him would not be heard in either case by the radar man. Both the radar and the

data man could have discreet conversations. He was asked if, while the speaker system was on, it could be turned up enough for the whole room to hear. The witness agreed that it was possible not everyone would hear. He agreed too that it would be possible for someone coming in not to be heard the first time.

He was asked if he agreed that flight plans are usually done ahead of time between the data men. He stated that the various flight agreements state that you must specify to a particular centre at a certain time when the flight is coming in. This depends on how close the centres are. He agreed that when a call comes through on a hotline, it could be calling a different sector. He was then asked about pages 17 to 18 of transcript E-4B. This was concerning the aircraft which filed a flight plan to Brockville. He agreed that, on page 21, it seemed to be that the first short clearance was by the Montreal controller and Mr. Gauthier simply went along with it. He does not know if anyone else in Montreal was disciplined in this way. He was not the first to analyse the tapes. He had been involved since April 1, 1982 as a custodian for the tapes.

With regard to Torontair 608 and page 32 of the transcript E-4B, he was asked whether, in actual fact, no holding had been developed. He agreed that there was no holding pattern, just a short clearance. With reference to a flight mentioned on page 18, Eastern 1973, he was asked if he was familiar with the fact that the flight normally flies from Ottawa to Baltimore and would not fly in Toronto airspace at all. He answered that yes he was familiar with it. He said that it was an odd route and that normally the flight would go from the Ottawa to Boston sectors. He was asked whether, when a flight takes an unusual clearance route, it is within the discretion of the controller to give the clearance. He answered that the normal practice was to ask for an alternate route.

With regard to Air Canada flight 731, he was asked whether conversations that the pilot had with the tower would normally be recorded. He agreed. He declared that conversations with Toronto control centre would be on the Toronto master tape. He was asked whether those tapes would be within one hour of the conversation he had already discussed. He said yes but then said that he could not find them. He agreed, with regard to the number of transmissions that are recorded and kept, that there is a master tape. There are 40 channels on each of the two tapes, or about 65 available channels. He admitted that these would record conversations between Montreal and Toronto about incoming aircraft. He also said that Mr. Robertson of CATCA asked if he could run tapes of that area. However, nothing other than this tape showed up conversations regarding Air Canada 731.

He was asked how many minutes prior to the conversation he listened to on the tape. He replied that he listened from 4:00 a.m. to 12:00 a.m., Greenwich mean time. He was asked if he skipped some parts of the tape. He replied that he did and played it at random. He was asked whether he knew the first request was at 7:43 that morning. He answered that he thought they were working back from the tape that Montreal provided. They were not able to tell the movements of the plane. He said they worked exactly from 8:41. The only other tape he listened to was at Mr. Robertson's request. He said that the tape would have recorded everything between Toronto and Montreal but he could not find it.

"Apprequeing out of Ottawa" means that that may be a normal practice. Sometimes, these are imposed on a daily basis as a flow control restriction. He was asked what this meant with regard to data transmission. The answer was that it means all planes out of Ottawa need the approval of the receiving sector prior to departure. He

confirmed that if this was so, then when Toronto received a request for clearances appreq, it was correct in assuming that the airplane had not left. This does not mean Montreal is apprequing as well.

He was questioned with regard to the conversations with the Minneapolis air controller on transcripts E-4D and E-4E. He said that there was an agreement signed between Toronto and Minneapolis in 1981. He agreed that these agreements are not standard and that they are practical working relationships between centres. He also agreed that the problem with Minneapolis is that their airport is very close to their boundary. He confirmed that they had to move fast in order not to intrude on their neighbour's airspace. He admitted that the agreement says that estimates shall be furnished at least 15 minutes ahead of entering airspace and that within 15 minutes of taking off, a plane must coordinate with Toronto and give an estimated departure time as well.

He was asked, with regard to Racer 22, whether for 2 1/2 minutes Mr. Reasin is not at the controls and Mr. White is on the transcript. He agreed. With reference to the fact that on the transcript, Mr. Reasin says that he saw the light button but couldn't hear Minneapolis, he was asked whether this kind of technical problem could happen to anyone at any time. He replied in the affirmative. He confirmed that normally, if the radar man was busy, he would ask someone to call his data man in order to have something entered on the computer. He said that this would not be straightening out communications' gap. With regard to page 5 of the transcript, it was not exceptional for another controller to tell someone that someone is coming into their sector. He admitted that it could be that the Minneapolis controller was wrong twice, once when he gave the altitude incorrectly of the plane and once with regard to the distance of the plane from Mr. Reasin's sector.

On page 8, the Minneapolis controller tells the data man that the plane is entering his airspace. Mr. Riseborough agreed that normally, he would tell the radar man this. He was asked if it was not unusual to allow the plane in without clearing him into a new sector. Mr. Riseborough pointed out he had been airborne for sixteen minutes. Counsel then pointed out that the Minneapolis controller agreed to give the plane two spins and a clearance and that the plane contacted Mr. Reasin just a minute and a half later. The witness was asked, given that his earlier testimony said that a spin lasts at least 2 1/2 minutes, whether it was fair to assume that the plane either did not do the spin or the Minneapolis controller did not tell him to do so. He answered no. He said that we don't know where the plane was, nor do we know how quick a loop the plane was doing. The witness was told that this was a military aircraft and he said that he did not know if it can do a 360 turn in 1 1/2 minutes and come out. He agreed that by coming in on the air, the plane was defeating the request of Mr. White.

Mr. Riseborough was advised that the plane took off at 14:38:18 but made a first attempt to contact Toronto at 14:45. He was asked if this was a violation of the agreement. He answered perhaps. He admitted that the Minneapolis controller was also wrong in the altitude that he gave. Counsel pointed out that the Minneapolis controller said the plane was holding, but it had entered Canadian airspace. The plane was then advised to spin twice but 1 1/2 minutes later he asked for a clearance without having given any indication of making a turn. Mr. Riseborough admitted that this was a possible violation of airspace.

Mr. Riseborough then referred to E-4E, on page 1. He responded that the reference to the plane climbing at 310 means that is a short route it is following to the border and it would be climbing at that point. He declared that possibly data control would record he was

climbing. This would normally be the case. Reference was made to page 2 of the transcript. He was asked if this did not indicate that the plane was climbing and it was suggested that the Minneapolis controller was confused about what was going on. He was asked whether "apprequeing climbing" was an abnormal term for an air traffic controller to use. He answered that it was a military term. He said it was understandable but it was not a regular term. As to whether Mr. Reasin was reasonable in asking about the term if he did not understand it, Mr. Riseborough agreed that if he did not understand it, it was reasonable for him to ask. He was asked whether the response of the Minneapolis controller was being rather unfair to Mr. Reasin. He pointed out that on the tape, the same voice that occurred here had said something rather similar to the Minneapolis controller. He said that he did not know if it was reasonable to ask. He added that perhaps Minneapolis did not give the correct code for Montreal.

When re-examined, Mr. Riseborough was questioned about the tapes from Montreal and Toronto. He was asked whether it was true that he did not listen to the Toronto tapes before 11:55 a.m. He said he was just being asked to verify the tape and to listen to the Montreal tape. He said that he did listen to the Montreal tape and heard the whole tape from 14:41 to 12:56 (E-4C). This was about 15 minutes of tape. He also ran the tape back on channels with adjacent sectors. He then said that he listened to the tape at random, looking for references to Air Canada flight 731. He was asked how random was his listening. He said that he just started and stopped the machine, switching between the channels. He went back to 0:500 and listened for 15 minutes. Two people listened to the tape.

3) Charles Douglas Graham

Mr. Graham said that he was a member of the bargaining unit. He is a supervisor of the east side of the Toronto air control centre and has been since November of 1973. The east side comprises the east and north side sequencing, including the Stirling, Picton, Wiarnton, Cobalt and Sault high and low sectors. Before having this position, he was an air traffic controller from 1962 to 1973. As a supervisor, he moves people around from various positions. He has 15 to 18 people working for him per shift. He regulates flow control and does the initial investigation of any occurrences. He is a liaison between the controllers and the data systems. He informs people of power-outages and equipment failure. He appraises the crew yearly and is responsible for the trainees and the crew. He also signs papers in times of sickness. He is responsible to the watch supervisor and reports to him verbally. He keeps a unit log at his desk where outages and other events during the shift are recorded. Separate reports are written when requested or when they will not fit in the log.

On August 6 and for three days thereafter, he worked the day shift at the air control centre, which was from 6:15 a.m. to 3:15 p.m. On August 6, he had contact with the grievor, Mr. Reasin. Reports were made at the time and submitted to the supervisors. On August 7, he got a call from the Minneapolis supervisor on the 612 line which provides access between Minneapolis and Toronto for controllers and supervisors depending on the dial code. A supervisor informed him of a complaint from the captain of American Airlines 265 travelling from Toronto to Chicago. The hand-off had occurred from the Wiarnton sector to the Minneapolis sector. The captain's complaint was that the air traffic controller had said that it was unsafe to fly into American airspace.

Reasin was working the radio for Wiarnton. Mr. Graham said he interviewed him in the office and asked him if he wished to provide normal service without comment. He gave him fifteen minutes to decide. When he went back, Reasin said he would give normal service and he was then switched from the board to the radio for the rest of the day.

On the same day, the watch supervisor called the floor supervisors and asked them to tell all the crew they were to provide normal duties or discipline would result. Mr. Graham said that he told the crew singly or in groups of two to three. He interviewed seventeen people with regard to this directive and Reasin was one of them. He said that normal control duties were to be provided or disciplinary action would be taken. This could include letters on file, suspensions or discharge.

Mr. Graham then turned to the east side log. He explained that each log is kept at the supervisor's desk and usually the supervisor writes in it but the controllers can also do so. He explained that the log is a list of abnormal events which also shows who is on duty at the time. On August 9, there is a reference that he signed in the log at 10:15. There is also a message about flow control. There were different routes being used for the U.S. due to route saturation, but nothing happened with regard to any of the grievors on August 9. On August 10, he arrived four to five minutes late. He was issued a pile of sheets. Two sheets were to be given to the grievors. The first was a telex with regard to the edict of Bill Robertson, the president of CATCA. This was signed by P.J. Proulx and was marked E-7. The second document given to the controllers was "NOTAM 810494" which was marked E-8. E-7 warns that the Department of Transport expects all controllers to perform the full range of their duties. It also says that Mr. Robertson's statement urges an illegal work stoppage and that

participating controllers could be subject to various forms of discipline. E-8 repeats this warning and advises that an investigation concerning incidents where air safety might have been violated is being carried on. He was given sufficient copies to give each air traffic controller a copy of E-7 when he came in. Each was also given a copy of E-8. The witness explained that NOTAMS are given to airmen and are issued by telecommunications or individuals. His office issues them with regard to air traffic control. They are available at flight service stations for pilots when the flight plans are filed. Large companies keep them on a telex and also on radio.

Mr. Graham testified that John Batchelor and Frank Gauthier were among the controllers given copies of the documents. He said that when he got to the desk, he read the notices. He made a schedule for the controllers at that time as well. He was five short on the east side and two short on the north. He was supposed to interview all the controllers to see if they would work normally. The list of employees interviewed on August 10 by D. Graham was put in as E-9. Batchelor was one of the first people to be interviewed. On the interview sheet for him, he has "will work-won't clear aircraft into U.S.A." With regard to grievor Gauthier, who is number 7 on the list, Mr. Graham had him putting down "reserves judgement". There was no second answer given. After the first answer, the witness did nothing. He thought that Gauthier proceeded to work. He did the same thing with Batchelor as with Gauthier, i.e. he let him proceed to go to work.

Later that day, he received a telephone call on an outside line from an Air Canada dispatcher with regard to Air Canada flight 731 and a short clearance that the aircraft had received. He copied down the statements that the dispatcher gave. The witness said that Air Canada flight 731 is a DC 9 that normally proceeds from Montreal to O'Hare

airport. He said the message he got was "Toronto air traffic control won't clear aircraft past Kleinburg" and "Toronto insists he land Toronto". At this point in the conversation, the order was not clear and he asked whether Batchelor would clear the aircraft through. He wrote it down. He believes that the dispatcher said "won't clear into U.S. airspace". Then, Mr. Graham testified, he heard comments back and forth. He is not sure whether Batchelor said them or not. They came from that area. Whoever was talking said they would clear Kleinburg 116 miles west on high level 546 but not into U.S. airspace.

Mr. Graham added that he said to the west supervisor "if we get him cleared to Kleinburg would they clear him to O'Hare?" The west supervisor replied yes. He was on the West side of the room 40 to 50 feet away. Mr. Graham left Batchelor to see him. He was trying to get the plane to Chicago. He didn't know if he was cleared by anyone on the East side. His last act was to speak to the west supervisor.

Before he approached John Batchelor, he called Montreal and the Montreal controller said that at the request of the pilot, he (the pilot) was being cleared short to Kleinburg. Mr. Graham requested Montreal provide Toronto with a full report. He said that at 13:10, he has a note in the log saying "estimate now cleared to 116 miles west of Kleinburg". He testified that the Centralia sector would come after that and they would clear the plane through. He was not sure if or how John Batchelor cleared them but he thought he did clear them to the West side at Toronto air traffic control centre.

Mr. Graham testified that he bypassed the supervisor and went to see Ron Bell at Dave Campbell's office. He told them he was going to wind down the East side to the number of controllers who would perform a full range of duties. The others would be asked to leave. The reason

that he gave was the safety factor. He also thought that later in the day, when traffic came across the ocean to the United States, he would be unable to handle an operation like that of Air Canada flight 731 with the type of air flow they got from overseas into the U.S. It would not be normal operations for them to get short clearance in the North. He was afraid errors would be made and there might be shortages of fuel. They wouldn't have had a good answer for the pilots of overseas aircraft when asked about the situation. The winding-down was done.

Mr. Graham testified that he did not tell Bell and Campbell all of what he thought. He does not know if he mentioned the North traffic. He did discuss the safety factor. He left the office and began the winding-down. When he got back, somebody came and told him there was a bomb scare. He then proceeded to call Ottawa, Boston, Minneapolis, Cleveland and all adjacent sectors to tell them that he did not want traffic in Toronto. He advised them that the controllers were working on a winding-down basis so they could leave the building due to the bomb scare. Batchelor was one of the last controllers to leave the East side. He ended up with two controllers working because some planes were still in the air. Neither of these last two controllers were any of the grievors, and Reasin was not on duty that day. He had no further contact with Gauthier or Batchelor on that day. He advised some controllers to report to Campbell but he did not know how many. They did the same thing on the West side. With regard to the full report from Montreal, he had never seen it and it would not normally come to him.

In cross-examination, Mr. Graham first discussed the professional qualifications of the grievors. He is professionally acquainted with all three of them. He was shown signed appraisals of grievor Reasin, the earlier of which, November 16, 1978 was marked E-10

and the second of which, the appraisal of 1980, was marked E-11. The evaluations on page 2 show that Reasin always had high appraisals. Mr. Graham's opinion of him today, leaving aside any incidents of August, would be that the appraisal could be the same. He testified that Batchelor is an excellent controller and his relationship with the supervisors is good. He said the same with regard to Gauthier. Apart from the incidents involved in this case, all three were excellent controllers. With regard to the incidents of August work stoppage on the U.S. side of the border affected the flow of traffic between the two countries. The Americans at first tried to solve the problem by cutting air flow of traffic. It meant that was then a subsequent increase in the traffic. As the flow increased, it led to an increased number of complaints from Canadian controllers with regard to the U.S. controllers.

In August, the Toronto air traffic control centre opened a special incidents log on these complaints. The log dates back to August 6. With regard to the period from July 26 to August 3, there was one possible note with regard to the U.S. controllers but everything was normal up to that point. There is an entry in the log for August 3 which was the first day of the U.S. walk-out. The planes from the United States were being spaced five times further apart. There is an entry in the East side log at 15:02 on August 5. It says "Minneapolis target enters Sault - uncoordinated and returns to Minneapolis or illegal entry in our space". There were no improper entries into Canadian airspace before that. The log was usually one page per day. There was an extra page taken on the 6th with regard to Racer 22. He was running out of space in the regular log page for the day. An entry on the page says "see watch log for other 'difficulties'". The East log was marked E-12.

The witness pointed out some "difficulties" noted in the log. At point 13:06 Z in the log, there is a reference to the Canadian boundary and Cleveland. It is part of the agreement with Cleveland that they call Toronto with hand-offs and Toronto accepts hand-offs from the terminal and over to Cleveland. A flight would go only about 30 miles to the border with Cleveland, which is not very far. They were unable to get through to Cleveland to do the hand-off in this case. Toronto will not let aircraft out of its airspace without a hand-off.

The agreement with Minnesota was marked E-13. When an aircraft is taking off from Wurtsmith, Toronto expects it to report before it leaves the ground. With regard to the incident of Racer 22 on August 6, Mr. Graham said that he was on duty. He made an entry himself. Either Cecil Reasin or the board man had called him over to say they had a scan. They had no estimate and the flight was level at 29,000 ft. Apparently the flight was cleared short to Clark, but it entered Toronto's airspace. This was an important matter and did not often happen before this. No written memo was given to him by the air traffic controller concerned. There was no suggestion that Minneapolis was ignored on the hotline. The case was presented as one of an intruder in the airspace. At 18:10, in the log there is a report that an aircraft without the required frequency was in the Toronto area.

There are three pages in the log with regard to August 7. Mr. Graham said that at 14:15 there is an estimate from Boston clearing a plane from Watertown to Kleinburg. The plane was cleared direct to Kleinburg without telling Toronto. The aircraft would not go where it was expected to go, and this is a dangerous situation. At 15:46, there was an aircraft noted without a hand-off. He also noted that the "appreq list" was heavy. This indicates the system was not functioning normally.

With regard to a note by Cecil Reasin at 16:37 Z it was given to Mr. Graham who in turn put it in the log. The note said that Minneapolis was having trouble copying estimates, and that the U.S. controller said he had never worked there. This surprised the witness and it indicated that the people there were inexperienced on the job or that the man was a trainee. The conclusion was that they were having difficulty with regard to the U.S. air traffic controllers. His air traffic controllers were concerned. In the normal course, Mr. Graham said he would accept Reasin's evaluation of the situation.

The entries in the log were contrary to routine. Mr. Graham thought that something was done nationally with Mr. Robertson and Mr. Pépin and that the Department of Transport would set up a system. Up until the publication of the telex, the department told controllers they were to note their complaints and they would be sent to the FAA. There were no actual constructive answers, that the witness was aware of. In his opinion, this would have been helpful to the air traffic controllers.

With regard to his note dated August 7th and entered as E-14 relating to the Minneapolis complaint about AA 265, Mr. Graham replied that air traffic controllers do not normally, when talking to a pilot, offer opinions with regard to safety on the frequency. Given what had happened, the remark was understandable. Air traffic controllers do alert pilots to situations of danger from time to time, for example, thunder storms.

The incidents continued on August 8 and 9. Referring to the log on August 8 at 14:13, there was a problem with an American air traffic controller who was unfamiliar with the situation. It could have been dangerous because one controller could climb an aircraft without

the other knowing what he is doing. With regard to AL 2020, the aircraft entered the Toronto information region. Toronto did not have this pointed out from the U.S. air traffic controllers or an estimate on the plane. They also had an aircraft descending in their area at the same time. The planes were within five miles of each other, and there is normally ten miles separation. This could be dangerous.

There were no problems with his controllers while he was on duty, except for those in the log. He noted problems generally but they were universal for all air traffic controllers. Procedures in agreement were not being followed by the U.S. air traffic controllers. There were problems because of a potentially hazardous arrangement.

With regard to August 10, and the telex from Proulx, the witness believed that he saw something earlier from Proulx but it did not go to the air traffic controllers. After the noon break, on the 10th, the grievors that were on duty were Batchelor and Gauthier but not Reasin. Up until that time, there was no difficulty with Batchelor and Gauthier, though there were with some other controllers.

In the watch log for August 6, entered as E-15, it says "controllers refusing flight in and out of U.S. airspace". It is not true that until the 10th, there were no refusals from either Gauthier or Batchelor. When asked about his intentions, Gauthier said that he would reserve judgment, as stated in E-9. There was a second interview with Gauthier in the briefing room with Ron Bell and others. There were several managers with Gauthier. At the end of the meeting, Batchelor was very upset. Gauthier would have been expected to be upset. It was just before the bomb scare, after it had been decided to shut down the East side. Mr. Graham does not know if the bomb scare was related to what was happening with the controllers. There was possibly a third interview with Batchelor or Gauthier.

Concerning the notes on American Airlines 231, marked E-16, Mr. Graham said that it was the first departure out of Toronto heading East bound. There was a problem either passing information to Cleveland or the flight got changed on its way to them. It was after this that he cancelled all flights East bound. The plane was cleared short, but he did not know who did it. Whoever it was is still working for Toronto air traffic control centre.

Exhibit E-17 was introduced with regards to Eastern Airlines flight 173. This flight would normally come through Montreal and not through the Toronto sector. When Mr. Graham spoke with Batchelor, he (Batchelor) had cleared the flight to the U.S. border without any prompting. All he did was clear short to the U.S. border. With regard to Air Canada flight 731, normally Montreal would do all the clearances. It was the pilot who requested clearance to Kleinburg. Batchelor said he would clear to the U.S. border. This was happening regularly over those four days. He and other supervisors knew this. This was the case even though clearance should have been done in Montreal.

With regard to a letter he wrote to Mr. Campbell regarding Air Canada flight 731, which was marked E-18, Mr. Graham said he wrote that Batchelor did not put the plane in a dangerous position and he is still of that view.

In re-examination, Mr. Graham stated that Reasin did not act professionally and in accordance with expectations. Incursions into airspace do not happen often and not as frequently as they did from August 6 to 9. Incursions are reported when they occur. With regard to Racer 22 and Mr. Reasin's comments on this which led to a log entry,

Mr. Graham said that if Minnesota had been ignored, he would not be pleased and he would want an explanation. He would expect him to include the reason for ignoring the Minneapolis controller.

Regarding flight 731, the witness said that who cleared it west of Kleinburg is unknown. He assumed John Batchelor cleared it. He asked Batchelor a question and Batchelor said that he would not clear to the U.S. Batchelor told him with regard to clearance of 731 that if it was cleared short to his sector, he would have to deal with it.

4) Ronald George Bell

Mr. Bell testified that since 1979 he has been the regional manager for all of the air traffic control services in Ontario. He is responsible for the operations, procedures, equipment, training and human resources. Prior to that, he was division chief of systems and equipment division, Ottawa. He has been with Transport Canada for 22 years. He was an air traffic controller from 1960 to 1970. His office is located at 4900 Yonge Street.

He stated that he received a phone call from David Campbell with regard to a letter from air traffic controllers advising that they did not intend to work traffic in or out of the U.S. He discussed this with Campbell, his own boss Lane, Proulx, head of air traffic control services, and Jim Fitzimmons. He said they thought they could expect problems. He called Campbell in the afternoon to see what he should do with any further letters. He also mentioned questioning employees with regard to their intentions, telling them that they could be subject to discipline including discipline under the standing injunction holding at that time.

On August 6, in the evening, he went to the air traffic control centre and there were problems. He did not leave until noon on the 7th. At that point, he went back to his office and then called the air traffic control centre at 5:00 p.m. He was told that the problem was being managed. On the next morning, Saturday 8, he called the shift manager. Some people had refused to work and were sent home but he was told they were managing the situation. On his arrival, the management group met. Some controllers were refusing to fly the planes, but he felt that it was being handled reasonably. They were, at that point, interviewing people on the list. He interviewed Reasin that evening about 6:30 p.m. or 7:00 p.m. David Lee, the superintendent of procedures was present at that time. He asked Reasin if he knew of the direction that had been issued. He gave him a letter regarding their expectations, which was marked E-20. He asked Reasin if he had any questions. He asked him about his awareness of full performance and the repercussions of the situation. Reasin replied yes. Bell advised him of the repercussions and he told him that if he could not decide, he would give him twenty minutes to think.

He testified that after that, Reasin took some time. He interviewed someone else. Reasin returned a half hour later and said he did not intend to work aircraft in or out of the U.S. A letter from Reasin to this effect was entered as E-22. Mr. Bell told him to leave, and also said that he might be subject to further discipline. He spoke about the injunction. Reasin was taken out. Mr. Bell left at 1:00 a.m. On Sunday, there was a conference call with the regional managers of the air traffic control system. They discussed their own standing and agreed that they would each be at their own facility. They would tell their own employees about what they should do and repercussions arising from any acts. At 1:00 a.m. on Monday, he received a telephone call with regard to Robertson's announcement. He

was told to expect two documents on teletype and to be at the air control centre first thing on Monday to receive them. They received E-7 and E-8. They gathered the supervisors and showed them E-7 and E-8. Campbell made photocopies of them. Everyone agreed to give them to the employees and ask them for an affirmation. They were going to ask each whether he was willing to carry out a full range of duties. If the answer was yes, they would report for work. If the answer was no, they were to leave the premises with a standard warning. As the employees came in, he assisted in passing out the telexes but he did not ask for the affirmation. Some refused to carry out the full range, so the unit men started organizing a schedule. He spent time in the briefing room helping where he could. At 9:30, Mr. Graham came to the watch supervisor's office, which was that of Mr. Riseborough, and said that he would have to shut down. Mr. Bell told him to send people to see him. He was sent Reasin, Batchelor and another controller. He gave them the standard speech. He got Mr. Hornsby to escort them out. Riseborough told him about the bomb scare. He did not question Reasin, Batchelor or the other controller. For the rest of the week, the situation started to become normal. He received a recommendation for disciplinary action from Campbell.

He was asked under cross-examination about the actions of the controllers. He said that until August 6, he did not know that the controllers elsewhere were becoming reluctant to perform. He made inquiries with regard to the fears for safety by discussing the situation with Campbell on August 6. Campbell told him that some things were different and that this was causing some concern, but he was looking into it. He subsequently became aware of incidents and set up an investigation with the American people on the incidents. This was on the Friday. By Friday morning, there was a special log with regard to the U.S. incidents that he had asked for. He did not know the number of

incidents from August 6 to 10. For the 90 days of a special desk log, Ontario had greater than 100 incidents, and nationally there was an equivalent count. He did not have reports examined by Ottawa, but he had them for Ontario. The reports were carried out by Lee Hornsby. The number of incidents was greater than normal for that time of year. He did not know if this was due to the inexperience of American controllers.

He obtained a copy of the significant incidents. He was asked if he was aware of the number of letters filed by controllers who refused to perform by Saturday. He replied that he interviewed a number of people who had filed letters, and there were six to eight of them, but that was not all. Those who were not prepared to withdraw their letters were sent home for the shift. He was not aware of other difficulties with regard to grievor Reasin at that time. He sent Reasin home that night. He sent home one-third of the 68 people he interviewed. He was aware of a letter where Reasin withdrew his first letter. This letter was marked E-23. He was asked whether he felt that Reasin's discussions with him were sincere, and also whether he felt there was motivation there. He replied that for part of the discussion, he felt that Reasin thought it was a bit of a lark. Counsel then asked whether anyone else sent such a letter of withdrawal. He said other employees sent such a letter of withdrawal but that he did not know about all. After this, Mr. Reasin had done exactly what was asked of him and he worked.

Mr. Bell stated that it could be that he talked to grievor Gauthier in Campbell's office on August 6. That kind of thing was happening. Grievor Batchelor was possibly not interviewed with Gauthier on the 10th and it is possible that he stayed later than the bomb scare. Mr. Bell added that he spoke to Gauthier only once as he recalled. This was his only contact with the grievors. He knew two of

them before, Gauthier and Batchelor. He knew they were both good air traffic controllers. Gauthier had a disciplinary record of a one-day suspension and Batchelor had a clear record. Batchelor and Gauthier were sent back to work without giving a firm yes on the questions being put to them, contrary to his instructions. Others who did not were spared this kind of confrontation as a result. The penalty that people got depended on if one refusal had been given. If management considered a response from a controller to equal a no, he was sent home until staff numbers got to be too small. The original failure to give a definite yes was held to equal insubordination. It was a simple refusal. It was suggested to Mr. Bell that because these people worked and then refused services, this equalled the difference between a one-day suspension and a dismissal. He said that in the scenario described to him, this was the case. He was asked about E-20, a memo from P. Proulx to all regional managers outlining penalties for controllers who refused to perform their duties. He said he consulted with the department of air traffic with regard to the consistency to the application of the penalties. He was asked if the general approach was one of discipline. He noted that there are disciplinary instructions to staff relations dated September 29, 1981, signed G.M. Allen. He was asked whether his was the only region that imposed suspensions of greater than 5 days for any offence. He said that he could not remember. He was asked whether Mr. Proulx's letter says that he had to coordinate with the national office with regard to discipline. He said that when penalties fell within the letter's boundaries, he applied them. Mr. Campbell applied discipline in his jurisdiction. Anything else was referred to Ottawa. Mr. Campbell has the authority to suspend for five days, and he has the authority to suspend for ten days. Mr. D. Lane, from the regional administration can discharge. They have to consult with Ottawa for consistency purposes but not for approval.

He was asked how many cases fell within Campbell's jurisdiction. He said that six fell in Campbell's, and three to four in his own. Six cases were referred to Lane. With regard to the suspensions between five and ten days, he consulted with Ottawa. He never found out that in other areas of the country five day suspensions were reduced to three days as per instructions.

He was questioned about the disciplinary investigation and whether Montreal was asked to send a report to Toronto. He replied that he did not get a copy and he did not think anyone else had either. With regard to the tapes, he said that he asked that the Montreal tapes be held or impounded and sent to the head office in Ottawa. He also asked for a transcript. He was asked about the build-up of evidence of the Montreal controllers and what type of investigation was carried on regarding these allegations. He said that they had Montreal transcripts and Toronto air control centre tapes. Using those and the flight data script record, this totaled the investigation. He was questioned about the tape of original clearances from Toronto. He said that he recalled reading these on the transcripts.

He was asked if he made inquiries regarding the disciplining of Montreal controllers. He replied no. He said that he understood Proulx would pursue this regarding his counterpart in Quebec. He was asked about the letter regarding Captain Wilding's incident report, which came two months after the report. He said that he received reports on delays, but there was no other like Wilding's. There were no complaints regarding a flight 608. The incident came to their attention regarding investigation at the site. No pilot complained. He understood people who did investigate talked to Torontair, but even after that there was no formal complaint. He knew by August 12 that there was a problem all over Canada. He was then asked if he helped prepare material for an

action for contempt of court and he said yes. He was referred to this case, which is called R. v. Wayne Perry. He said that there is an appeal by the Crown with regard to the decision of Justice Jerome. The "joint file" of that case was filed and marked E-25.

Mr. Bell was referred to his affidavit on page 89 of the joint file, specifically paragraphs 8 and 9. He was told by counsel that the controllers filing letters or refusing service were listed there, and that Mr. Reasin appears only in paragraph 12. Mr. Bell was asked about the maximum penalty for any of the other controllers mentioned, aside of Reasin. He said that he suspects it was three days. He did not see the names of anyone other than Reasin who had greater than three days of suspension.

Mr. Bell was questioned about Exhibit C to the affidavit. He was asked if this concerned instructions regarding special procedures on investigations regarding U.S. aircraft. He said yes, following his conversation with the FAA. He did not see any other affidavits in the joint file. He was advised by Ottawa that they would pursue swearing of affidavits in other regions. The pattern he testified to in the affidavit was with respect to Toronto. He was not aware of other incidents of clearing short. He was asked how he organized the review of this large body of information. He said that he got a team together, including the manager of another unit, a manager from personnel and other managers with regard to the collection of information for August 6 to 8, 11 and 12. This team gave the documents to Campbell. He interviewed those named in the documents. He then made a recommendation for areas in Ontario. If the discipline was within his competence, he implemented it. There was also an administrative inquiry. Toronto also consulted with Ottawa before disciplining. He said that he gave them terms of reference. They did not see his affidavit but they had the

same information that he did. They did make recommendations after reviewing the personnel files. The report was completed at the end of September.

A memorandum signed by the witness recommending discipline was marked E-26. Mr. Bell was asked if this was out before the committee made their recommendation. He replied that if it was not then complete, it was near completion. He was asked if he participated in the telephone conversation mentioned in the last paragraph of the memorandum. He replied yes. He said he talked to all those addressed on September 22. He was attempting to coordinate discipline across the country. He did not recall if anyone mentioned that penalties greater than five days were being imposed. He proposed this. He had some sixty-six offenders and he felt penalties could be anything from reprimand to discharge. As the result of the call, it was agreed that two shifts off would equal two days as a standard penalty, and if any other cases arose, they would be dealt with. It would not have come to his attention immediately that he was having to set an example. Some areas felt nothing had occurred and Toronto suspected that it had some cases of discharge. He said at the time that Toronto had cases possibly involving discharge. He discussed generally why this was the case. Toronto felt the safety of the system might have been compromised. He was asked if the safety of the system was discussed separately from issues in the letter. The witness replied that surely all the cases have that as a universal factor. He did not identify issues that raised his people above the standard discipline. It was their business and it was not raised or discussed. He had not decided at that point to fire the grievors. He was advised that the committee was ready by the end of September and his recommendation was September 29. He was asked at that point if he could say when the recommendation came down. He said no.

The witness was asked if it was not true that Campbell sent on only those cases that were not within his five-day limit for discipline. He said yes and that he himself reviewed six cases. In each case, the recommendation was for a greater than ten-day penalty. Therefore none of them fell within any authority of his. He read reports, talked to Dave Campbell, discussed the personnel manual with his own staff relations people and sent the report to his supervisor Mr. Lane. He recommended to him that he follow the recommendations made by Dave Campbell. Lane made the final decision but he had to consult with Ottawa about it. He was asked whether the procedure in the letter was followed. He replied that the letter was addressed to the staff relations officer and it did go to Ottawa. This was not unusual. He was then asked about the meeting between him and the members of the association before the discipline was imposed in December. He said that he was sure that the material was in Ottawa then and that he had received Ottawa's views back. The stress of management in this was to proceed on to the cases. Changes were made in Mr. Lane's office. Lane made changes solely on information he learned in December. It was not on instructions from Ottawa. One case had increased discipline and one decreased but neither of these cases involved the grievors here. He did not know what Ottawa had told Mr. Lane. Some of the original charges put forward by the employer against the grievors were now not being put forward, but as of the meeting of December, the employer still had these in mind. It was put to him that after the meeting, these charges were dropped. He said yes. Ottawa was not told that these allegations were dropped.

Mr. Bell was asked about suspensions during the time that the fact finding board was in progress. He said that this process is initiated at the time an incident occurs, for example, when either the pilot or the controller reports an incident. He said in this case,

there was a labour or disciplinary point of view in the way the cases came to light. Because of concern of his controllers, he initiated an investigation with regard to the Chicago air traffic controllers. The Department of Transport also initiated a fact finding team. The Minister of Transport and the President of CATCA agreed to this. None of the three controllers were shown in that report to have caused a lack of separation or safety. Until August 10, the grievors were permitted to work and he was satisfied of their competence. The dismissal related to specific allegations. He went along with Mr. Campbell's recommendation.

Mr. Bell was re-examined about E-26, the disciplinary memo, and the "simple refusal to handle traffic". He replied that some simply said they would not handle U.S. traffic, sometimes saying this before the end of the shift. They said nothing else. The next day they were back at work. This memorandum was earlier on in the investigation. He suspected there were a number of controllers in each region in a similar situation. It was decided to deal with these quickly and that is the purpose of the first two paragraphs. These incidents were not with regard to aircraft. As to what distinguished these grievances, he replied that the grievors were given the opportunity and information and that they knew the repercussions of their acts. Knowing that, they did not control aircraft or else they hurt safety. They took action in a positive sense against management directives or lessened the level of safety. With regard to grievor Reasin, he said in the letter that he would work and, nevertheless, they found he was still not working as expected. With regard to Batchelor and Gauthier, while carrying out the work, they did not carry out their full responsibilities as controllers.

5) David Lee Campbell

Mr. Campbell stated that he was the facility manager for the Toronto air control centre and has been for the last 10 months. Before that, he was the data system's manager at Toronto air control centre. Previously, he was a project manager of automated systems at the Toronto air control centre. He was an air control instructor in Toronto Regional School for two years, from 1978 to 1980. He was a radar and automation specialist for two years. He was a data specialist for one year, and he was an air traffic controller for seven years in Toronto. He was asked when he was first aware of the incidents surrounding the 3 discharges in question. He said that with regard to specific cases, he was aware around August 7 for Reasin and August 10 for Gauthier and Batchelor. On August 3, the situation in the U.S. was such that data systems managers were anticipating adjustments to cope with the U.S. situation. At the time, he was both the data systems manager and the acting facility manager. There was very little he could do at the onset. His priority concern was that the radar system would not be overloaded with unusual flights. The staff managed the problem very well. There were no problems at this time with the staff or the grievors in particular. He believed that he spoke to Batchelor and Gauthier at one point during the crisis. He tried to ascertain whether they would be performing their specific duties, and he asked them. This was after August 10th. He thought it was August 11 or the morning of the 12th. From the 6th to the 10th, he had no meetings with the grievors. He met with other air traffic controllers who were sent to him.

He was then questioned about Exhibit-21. This is a memo from the witness on August 6 to supervisors. He said that as the result of an increasing number of deviations from procedure along the U.S.

boundary and in anticipation of anything, he felt he should advise the staff of what was expected of them and what should be maintained. He was speaking to the supervisors at the same time. He was asked by counsel what are the principles on which the air traffic control service is based. He replied that these are safety, efficiency, and orderliness of traffic. The department has a number of divisions charged to address themselves to various aspects of the system to maintain these principles. An air traffic controller through his knowledge of the rules, regulations, agreements etc. is expected to move planes in accordance with these procedures. He is responsible for the timeliness of acts. Certain duties go with both the radar man and the data man position. The radar man insures safe passage of aircraft and he talks to them. The data man talks to other people and transfers data. Geographically, jurisdiction ends at the end of their sector.

Mr. Campbell was asked what in his opinion, an air traffic controller can do if a plane goes from a point outside his sector to a point outside another sector and flies over his sector. He replied that he can alter the heading or altitude or talk to the pilot about these. Safe passage through the sector is the responsibility of the air traffic controller. If the pilot requests something out of the ordinary, that can be attempted, but for the most part that is it. He was asked what happens if clearance was given from a point outside the sector to inside the sector. He said that if the landing point is in his sector, he ensures that the flight lands safely and involves coordination with other systems. To pass to someone else in the sector, he can clear the flight short to destination. Usually, he clears it short if there are congestion problems at the landing point or a necessity for flow control. His obligation in air traffic control is to move the plane through. Failing that, he should change something and explain to the pilot the circumstances. He cannot change the destination without the consent of the pilot.

He was asked to define "authorized transmissions". He replied that those are communications with regard to the duties he outlined above. He was then asked what is the air traffic control system. He replied that the parts formed a ball, each linked. If one is taken away, this weakens the entire structure. So does a deviation from the standard form, and this leads to increased risk.

Mr. Campbell was asked about the incident of Racer 22, and he drew a diagram. He said that Reasin was on the radio hot-line, but that White had borrowed his headset, perhaps particularly to talk to that specific flight. White could hear it on the speaker as well as by flipping the button. He said that at that point, Reasin called Montreal regarding the CATCA representative there. During this exchange, the plane penetrated Toronto airspace. When the Minneapolis controller talked to Reasin, he told him he was too busy. Mr. Campbell said that Reasin could not have been all that busy, because he has let White talk to Air Canada flight 825 and you don't have the time to do that when you are busy. Nor do you have the time to call Montreal with regard to their CATCA representative. Reasin also showed delay when he asked the Minnesota controller to get his data man to phone his data man and talked about the inbound dial numbers. Upon being shown a picture of the radar unit, which was marked E-27, Mr. Campbell pointed out that the numbers are right in front of the controller. He did not believe that the numbers had changed, and this was not an excuse Reasin could have been really giving. If the numbers had been changed, the plaque would have been changed. At this point in the transcript, the aircraft is turning at the border of Canadian airspace, although the plane does penetrate at one point. A prudent air traffic controller, given the time available, should ensure service to the aircraft. He would accept the data on the plane over the hot-line. This would expedite the flight of the aircraft. Right away, the situation was not normal here. The

pilot is not too surprised by minor variations in the flight, for example being asked to turn left or right, but he does not expect to be forty miles from departure and circling in the air. He said that this type of plane seats two people. He did not know how much fuel would be on the aircraft. A typical military aircraft has enough fuel to get to its destination plus a little bit. A prudent air traffic controller would accept what he could and argue later.

The witness testified that at the next point in the transcript, the Minneapolis controller calls White, the data man, who takes the data. Racer 22 then calls Reasin. Reasin asked about its destination. However, Reasin's data man had just taken the flight plan for this flight. The data man and the radio man work as a team. Only momentarily would he not know what the other person is doing. Under the Minnesota agreement, the Minnesota air traffic controller has to contact the data man within fifteen minutes of the plane's taking off. You could issue a clearance on the ground, and then the pilot would taxi and take off. It is not unheard of, that the air traffic controller will issue that clearance first and then contact Toronto. Mr. Campbell said that there is some risk there. Normally, this contact should take less than a minute. It was highly unusual to take twelve minutes or until the plane got to the border, even if the 612 line was not working. If the equipment was not working, the air traffic controller on it should know and have the situation corrected. This is the case even if as the radio man, I give out my headset to someone else. It was not a safe situation to have an airplane ignored due to something happening on the ground.

Mr. Campbell testified that a light would flash when a Minneapolis air traffic controller pushed the button. The only way that the light can flash without volume is if someone has turned the volume

down or if the line is unserviceable. Nothing in the log indicated that the line was unserviceable. If the headset was not on, the speaker could be switched on. Reasin was engaged in extraneous conversation and not paying any attention. He did not exercise proper judgment with regard to Racer 22 and he effectively denied a client normal control service between centres. He said that air traffic control can see the plane coming from another sector before it actually gets there. He could not understand why he would not see it.

Mr. Campbell was questioned about American Airlines flight 265. He testified that the flight was off Toronto, and the controller identified London centre as XU. The comment by grievor Reasin when he said "get some controllers in there" was unwarranted. Mr. Campbell testified that during the hand-off to Minnesota, the aircraft was still climbing. The altitude was at peak 39,000 feet. "Appreq climbing" essentially means an approval request for the plane to climb in your airspace. He did not understand what Reasin's difficulty was here. With regard to the reference "turn him 360", that means he can get him to turn ascending so that he climbs into the airspace level. This is not that unusual. With regard to the comments exchanged, he said that they were insults. It was not necessary to enter into an argument. The area is outside his authority as it is outside his sector.

With regard to Air Canada flight 731, Mr. Campbell testified that QC stands for Stirling, which is between Toronto and Cornwall. Gauthier refused entry to flight 731 into his airspace. The pilot's expectation is that from point A to point B the plane can do this safely, expeditiously, and in an orderly fashion. The responsibility for deciding this is the pilot's, but the responsibility for its implementation is the air traffic controller's. The air traffic controller does not have the authority to change the aircraft's

destination. If O'Hare was closed, it would be the pilot's decision or the company's decision whether to land. The pilot does not need aggravation and uncertainty. The plane was then climbing at 290 knots. The pilot was busy enough. Incidents of that nature will distract him from his primary duty. Batchelor's attitude on the tape, when he said "if he wants to go there, o.k." is not good enough. The pilot has a right to go through unobstructed. In the normal course, a plane gets complete clearance to O'Hare airport. The air traffic controller should only watch it go through the area. Effectively, the pilot was having to negotiate his route all along the way.

With regard to Torontair flight 608, Mr. Campbell noted that the pilot says on the transcript that he wants to go to Syracuse by Watertown to avoid the military area. At Kingston, there is a flight service station operator, who is not a controller. The Toronto centre controls Kingston airport. The flight was cleared to Kingston, to be picked-up by the U.S. controllers at that point. This is not normal. Usually, there would be an appreq to Syracuse. The controller here is obstructing aircraft and creating confusion. This is a change from the norm. Sending an aircraft in to take a clearance from a controller on the other side is unsafe. Full service would be to check with Boston or to clear further and pick-up Boston. Bachelor says on the transcript "hold south to the Kingston Beacon". This would send the plane into U.S. airspace without a clearance. At 8,000 feet, the plane's protective airspace would go into U.S. airspace. There is a military route at the border which sends all planes there at 17,000 feet. This would lead to a technical loss of separation. All the controller did was to give the plane the frequency of Boston, so that the pilot could contact Boston himself.

With regard to the reference of "11300DME" from Watertown, he explained that the plane is cleared 25 miles from Watertown, 45 miles from the border and is still in Toronto airspace. The incident shows a lack of coordination and communication with other areas. On pondering what would happen if communication failure happened at this point, he said that the plane's IFR clearance limit is to the border, but the original flight plan says Kingston. The clearance penetrates Boston control area. A lack of safety here is intentional, not just a mistake. That is not proper control of air traffic.

With regard to Torontair 800, Mr. Campbell testified that the aircraft wants to go to Brockville and the Montreal area. The approach here is in U.S. airspace and therefore the Montreal controller says he cannot go to Montreal. U.S. air traffic controllers passed an advisory with regard to Torontair 800 approaching at Brockville. Gauthier accepted the change in route from the Montreal controller to clear short to the Rideau. Batchelor told the flight to go to Ottawa in the event of a communication failure without telling the pilot that he has been cleared short to the Rideau. Normally in the case of a communication failure, the plane would go to Brockville. The pilot says that if the weather permits, he will cancel the IFR service and go VFR to Brockville. Montreal was also involved in this. There was no attempt to try to get the plane through the way it wanted to go. Nobody wanted to give the plane the ability to go.

With regard to Torontair 608, Torontair 800 and Air Canada 731, the total time involved is 1 1/2 hours. The pilot is working twice as hard. The system is deteriorating at a rapid pace.

Under cross-examination, Mr. Campbell stated that his experience was in the Toronto area. He was last an operational controller in 1975. The JETS system was introduced in 1981 and

therefore he did not work that system. He used the older system. He knows all of the grievors. He has known Batchelor for 14 years and he worked with him in his post. He was asked his opinion of him as a controller. He replied that prior to these events, he would consider him a very good controller. He would consider him one of the best in terms of knowledge and ability. He was then asked about Batchelor's appraisal reports for 1978 and 1979, which are E-28. He replied that Batchelor had a superior rating. He has known Gauthier since 1973, and Gauthier's appraisal reports were marked E-29. The rating is fully satisfactory and he agreed with that rating. With regard to grievor Reasin, he replied he was not as familiar with him as with Batchelor and Gauthier. However all the air traffic controllers in Toronto are fully qualified and professional.

Mr. Campbell was asked on what date he came to the view that something had to be done about the air traffic control situation in Toronto. He replied that this was approximately on August 6. He became aware either through conversations or someone coming to him or through a log book that there were a number of Canada and U.S. incidents. It was almost coincident with this that letters came from the air traffic controllers refusing to do duties as outlined. He was in touch with the regional manager. He checked incidents in the log book and he did a tape analysis on the night of August 6, trying to find information to analyze. The information was available but not conclusive although the number of complaints indicated abnormality. As a result of the abnormalities, the regional supervisor contacted the Great Lakes region supervisor in the United States. He said personnel were assigned to keep a special log book with regard to the U.S. situation and the responses to it. He said that Mr. Hornsby and another person received reported occurrences. The log, which was a special log for August 6 to 10, was entered as E-30.

Mr. Campbell was asked whether the number of entries indicate a large amount of U.S. interference, at least in his opinion. He replied that the log instruction was to gather as much detail as it was possible. On the 12th, when the commission was set up over what happened, regional and then national representations were heard.

Exhibit E-31 which contains 13 reports was filed. The first report discusses seven incidents which cannot be confirmed. With regard to the entries for August 5 and 6, the "loss of separation" means the losing of required minimum separation between two aircraft leading to a formal fact-finding review. A total of seven incidents were unconfirmed and in forty, findings were made. All but seven incidents occurred between August 5 and 10. Of the remaining seven, half were on the 11 to 12. Stress on controllers then was not at its most severe. Talking to air traffic controllers at that time was above normal but sufficient air traffic controllers able to handle these duties were working. There might be air traffic controllers unable to handle the stress in the same manner. It is possible that from their vantage point and what others were experiencing the air traffic controllers thought that safety of the system was compromised. It is an individual assessment. He could understand why they would come to such conclusion.

He was then asked about E-24, a memo regarding a conference call. He said he presumed he prepared it. He recalled discussions with Bell with regard to a conference call with other regional managers and the making out of this report as a result. With regard to the summary of the Ontario position, he did not provide Bell with the information. He was not on duty on August 9. He was on duty until Friday and took Friday afternoon and Saturday off. He reported back on Sunday afternoon. He agrees with page 2 of the memo where it said that the

emotions of the air traffic controllers were rather high. He agreed that there were 24 incidents in the special log. He said that this was a fair assessment of the situation.

He was asked if he remembered meeting Gauthier on August 6 when he and Partella approached him regarding safety features to control the situation. He answered that he remembered speaking to Partella and a group of air traffic controllers. He said that there were a number of people in the area. Gauthier could have been there. He does not remember specifically the request for flow control. He probably said that people were genuine in their concern. He did not remember specifically a request by Gauthier to assign Gauthier so as not to have him interfere with the U.S. traffic. He remembered a controller later on speaking with him about this. He remembered this type of conversation from time to time. There may have been a conversation in the hall, but it was not the equivalent of a meeting. He could not remember Partella or Gauthier phoning him. He was asked if he remembered a heated discussion on the 8th. He said that this was on Saturday, and he was not in the building.

He was questioned about his activities on the 10th when he interviewed the air traffic controllers. He said that he reported on Sunday, August 9 between 4 and 6 p.m. He then received an update from Bell. He remained there overnight and he received documents for the air traffic controllers. He photocopied and distributed the documents. The interviews on the 10th were an attempt to get information. He was asked if he remembered an interview with Gauthier. He said that he could not recall, but possibly. He was asked whether unless the controllers replied that they would perform their full duties, they were sent home. He said that he believed so, though he was elsewhere. He said that in all probability this was the case. He was asked if this was part of the

proposals. He replied that the air traffic controllers were asked, and if they answered no, or if they were vague, the intent was to counsel them. There was a potential misunderstanding of duties here. He did not recall how many were sent home. He said that it was an unusual day. They had the PATCO strike, the bomb scare and a gaseous odour in the building. He thought that maybe 30% were sent home because they refused to perform their duties. A considerable number were sent home for not accepting U.S. traffic. He was asked what discipline was allocated to these people. He replied that they got 1 to 4 days suspension. He was asked what was the penalty for a simple refusal to clear U.S. traffic. He said that he believed 2 days. He was asked whether he knew Ottawa's standard 1 day for this period. Mr. Campbell corrected himself and he said that actually it was 1 day.

Mr. Campbell was asked if he felt badly about what was going on. He said no but not about the short clearances. He recalled one instance where a supervisor informed them of short clearances in August. He was not aware of them in Toronto air control centre. He dictated the memo for Mr. Bell on the 9th and he worked on it in the early hours of the 10th. By August 9, he knew about short clearances in the Western region. He was asked whether any of these referred to people other than the grievors. He said that he recalled something about this. There might have been short clearances but he did not know who issued them. He recalled an interview with Mr. Roy. He was asked if he knew Mr. Roy was issuing short clearances to the border. He replied that he could not recall specifically. The thrust of the interviews always concerned whether or not a controller could do the full duties of his position. He said that it was very difficult to recall.

Mr. Campbell was asked about the Racer 22 incident. He was asked when he made the decision regarding his recommendations and if he thought that Reasin was on the tape of Wiarton/Cobalt at 14:46. He replied that he was aware that White was on radar with regard to Air Canada flight 825. He could not recall when he made the recommendation. He said that he would have to check his dates. He was questioned about the investigation report which was delivered to him and upon which he made recommendations. He was asked when he submitted them to his superiors with regard to the action to be taken. He replied that the administrative investigation lead to interviews of the employees which in turn lead to the analysis of considerable information. His recommendations were to the regional manager. He would guess that this was done in the latter part of November or December. This was prior to the final meeting with the grievors on December 21. He was asked when it was with regard to the meeting of Bell and the outside investigation. He replied that this was in the latter part of August or around the 1st of September. He was asked when he discovered that Reasin was not on the first part of this tape. He said that on August 6 and 7, he listened to the tape with Bell all night. He thinks that he heard the Racer 22 tape. Subsequent to the submissions of the administrative investigation, he would have gone back and reviewed the tapes to determine who was talking. He had doubts as to whether it was White or Reasin. He listened twice more to determine that it was Reasin. This was prior to December 21.

He was asked about the initial delay that occurs on the tape before Reasin takes over the duties as the radar man. He replied that listening to the tapes, he would say that Reasin took over before the place where the tapes started. By listening to the tapes, one can identify which people are working which positions according to the conversation. He turned the tapes over to regional air traffic

control. He cannot explain why the only tapes they got started at 14:45. He said that he believed Reasin was on that position immediately prior to that. On listening to the tapes, Reasin was on the radio and turned over to White. White was not penalized.

Mr. Campbell stated that if there was some problem hearing Minneapolis, he would not check with White about this. White did not miss calls for 2 minutes. White was not contacted due to the fact that Reasin was the radar man there according to the taped evidence. Reasin is the radar controller for that position during air control conversation, letting White use the radio. Mr. Campbell said that he knew this because when White ended his conversation, without a second break, Reasin was back on the microphone. He added that Reasin retained responsibility although he let someone else use the radar. The first person that he talked to was Reasin because he had the general responsibility for that position. After Reasin came on is the crucial part. This does not mean that the air control conversation is not part of his decision-making. Reasin was responsible then for that position. Mr. Campbell said that he prepared a recommendation to Bell based on the Racer 22 incident. He expected that Lane would get it. He was aware there was a coordination effort by Ottawa, but the rest was beyond him.

Mr. Campbell was asked about Racer 22. He agreed that MANOPS makes provision for relief of the controller. He also agreed, referring to article 21:24, that one controller relieving another assumes full responsibility. Relating to 21:24:4, where assignment of 2 people on one section by a supervisor is concerned, one person is not responsible for the acts of the other if he is doing something the other is not aware of. The assumption is that they work as a team. He was asked if

this means one is not responsible for transmissions one is unaware of, and that therefore Reasin was not responsible for the transmissions of White. He responded that giving someone else the headphones is not the equivalent of relieving him. He was asked how he could fire a man for not responding to something he did not hear. He answered that given the information on the tape prior to the transcript, this lead to knowledge that he set down immediately. He said that Reasin could be briefed on anything that happened while White was on the headset. He was asked if this was the case even if White did not hear the Minneapolis controller. He said that he seriously doubted that was the case. The reason for discharge was not based on conversation with Air Canada 825 but for the whole of the Racer 22 incident. Part of this related to the first conversation. It is true that therefore he gave some other controllers the benefit of the doubt. It cannot be assumed that to talk to the airplane, you necessarily need a headset. He asked Reasin if he had a headset on but the grievor refused to answer him. He was asked about the evidence of other poor transmissions that there are on the transcripts. He was told that there are 3 times when 1 1/2 minutes go by without picking up a signal. He was asked why White was not charged with this incident as well, especially considering he was having a social conversation. Mr. Campbell said that on the assumption that that is the correct analysis, White would be somewhat involved. In his own judgement, Reasin was at the radar position for 1 1/2 minutes without responding, while he was talking to Montreal. He personally would expect that at 1:49:59, Reasin knew about the call earlier and ignored it. Reasin was charged with regard to the actual actions he took involving Racer 22. The use of the headset by White did not lead to a lack of responsibility on the part of Reasin. He is not prepared to ignore the MANOPS excerpt; if Reasin was truly unaware of White's action, he was not responsible for it. About the remark on the tape that went "the light is going on but I can't hear you", this was possible if the volume was down. This can be adjusted.

The radar man can take an estimate and type it in for the data man. This would not be incomplete, just not so complete. Toronto air traffic control radio men will accept an estimate not pretyped and such an estimate can be taken on the phone if the data man is not there. The normal procedure is for the data man to do this. It is preferable that the information come in advance. Generally, information provided in advance to allow for preplanning is best. If this was the case, it is doubtful that a delay of departure would be suggested, but a different altitude might. He was asked if Reasin could have known that the request was not from the plane when it was still on the ground when Minnesota gave the call. He responded no. When the radar man calls the radar man, it is not normally about a plane on the ground. The way it is put on the tape and on the hot line would make him suspect the plane is off the ground. The plane left at 14:48, 7 minutes before the first call to Toronto. Reasin could have made an assumption regarding his knowledge. Mr. Campbell said that Minneapolis had violated the agreement. Reasin was not entitled to go "tsk tsk". Reasin could have done something for the airplane but he failed to do so. The meaning of "tsk tsk" here means "too bad".

Mr. Campbell was asked about the inbound dials that are mentioned in the transcript and if he was aware that the calls for Canada to U.S. frequency had been changed a few days earlier. He replied that there were a few changes, but these were not confusing. He said that Reasin's response would have been all right if he had actually responded to Minneapolis' questions. If the radar sources were set up to see in that fashion, any Wiarnton or Centralia controller could see them. He was asked how long a normal spin time for the plane would be, and he replied that a normal holding pattern would last 3 to 5 minutes. MANOPS 363.1. says that spin is 1 1/2 a minute inbound and therefore 2 spins would equal 6 minutes. A 360 degree turn with this plane could actually last less than 1 minute.

Mr. Campbell was asked why the air traffic controller would ask a plane to identify itself when it was on screen. He replied that it beat him. He was asked whether Reasin did anything like this before or after, if there was any pattern in his behaviour and if the delays here are delays that could not have happened to any other controller. He said that they could have if the air traffic controller had elected not to take precautions. Air traffic control service in Canada could have eased the problem had Reasin paid more attention to the hand-off.

An extract from MANOPS was marked E-32 and Mr. Campbell was referred to American Airlines flight 265, Exhibit E-4E. He said that when Reasin was on the radio giving an estimate to Minnesota, he followed normal procedure in his language use. If there was a difficulty with the estimates, Minneapolis would for the most part say so. Fourteen minutes later, Reasin gave the information on the hot-line. He gave the radar identification. The word "appreq" is a correct word on a hand-off. He had heard it used in his time. Minneapolis is implying identifying something, and in that context, the word appreq is not the norm but it was not unusual either. The strip would show that he was climbing. That was given 14 minutes before that. Mr. Campbell was told by counsel that all Minnesota would say is that the plane is coming in level, which is not an appreq. He replied that this was not unusual. He said that appreq here did not mean an appreq meaning approval. The word can be used in other ways. Minneapolis is saying "is that plane climbing or is he coming into my area level?" Reasin was obviously understanding what Minnesota is requesting here. Mr. Campbell said that he was faulting grievor Reasin because Reasin says that he does not know what Minneapolis means. This goes hand in hand with the exchange earlier in the transcript. The complaint on this matter was made by the pilot of American airlines 265

who reported it. With regard to Racer 22, the complaint was found in the log book of the east supervisor. In the Toronto reports, the Racer 22 incident is not included although some other hazardous ones were.

Mr. Campbell was told by counsel that on August 8, Reasin gave a letter to management and came back and withdrew it on the following day. He was asked if since that time, Reasin has fulfilled his duties without complaint, or at least if he did safely until December when he was discharged. He replied yes. He was asked whether he did not feel he had to remove Reasin from his duties. He said no. He was told by counsel that the other two grievors were also considered all right until August 10, after they had been interrogated by him. He replied that he just asked if they would fulfill their duties. He did not recall the interview on the 10th with grievor Gauthier. He did not recall that there were three separate interviews with grievor Gauthier and that he was there. He did not recall if he could have said to Gauthier in the stress of that morning "stop playing games"; it is possible however. All the factors including the labour situation led to stress. Being an air traffic controller is also stressful work, depending on the individual. After a near miss, air traffic controllers are removed from their duties to allow for an investigation. It is a very individual thing.

With regard to Air Canada flight 731, he was asked whether Captain Wilding did not have difficulties on grounds having nothing to do with Batchelor and Gauthier. He replied that it appears that way. Captain Wilding did not get his first normal clearance to Chicago. He was only cleared to Kleinburg and Batchelor had only one conversation with him, in which he gave him what he asked for. Batchelor did not refuse a passage through his section on a hand-off. Mr. Campbell was asked if it was not true that Gauthier did not indicate that he knew the

aircraft was in flight. He replied that he did not know. He said that Gauthier would know the estimate called by Montreal on page 33 indicates that the plane is airborne. He was asked if this could be an appreq through Ottawa. He replied that he was not aware of it. He did not know if an appreq off Ottawa was in effect that day. He was asked if, however, that was the case, would the plane be on the ground. He replied yes, and that Montreal would make a request. The flight went on in a normal way, going into Toronto airspace. Mr. Campbell was reminded by counsel that Batchelor did not know Gauthier's conversation. He responded that they worked as a team. He would have thought so unless they were working on the radio or radar all of the time. Batchelor did not say the plane had to land in Toronto. There is not anywhere that indicates Batchelor knew that Gauthier was saying this kind of thing. He was asked what would be on the strip to inform Batchelor as to what Gauthier had said. He replied that there would be nothing. He was asked if he had checked this out. He said no, that the strips are no longer available. He said that the strips would have been there. If he could have gotten them, he would have. The strips are kept 30 days. The night after he started the investigation, the administrative investigation also started.

Mr. Campbell admitted that he had not obtained the whole story from Montreal. What Montreal said to Captain Wilding was untrue if the tapes were right. Possibly Montreal was setting up the Toronto controllers but Gauthier did know what he was doing. With regard to flight 608, which was cleared to Syracuse, he was asked about the holding pattern in the U.S. and he said that he could not recall discussing it with the grievors involved. This came up later, after the interview in October. The way the safest zone around the aircraft worked, the position of the airplane could lead to an infringement of U.S. airspace. The flight takes off from Kingston. He was not sure if

because of the proximity to the U.S., the flight takes off VFR and gets clearance from Boston. The pilot and Boston would be accustomed to a direct clearance. With regard to a communication failure, it is true that only if a controller deviated from the norm does a new communication plan follow. The rules of the air told the pilot what to do in normal cases of communication failure.

At this point, a map of the area was introduced and marked as Exhibit E-33. Mr. Campbell was asked how he knew that the plane and a holding pattern would go into U.S. airspace. He replied that he got staff members to draw a template of the holding pattern at 9,000 feet and then he placed it on the map. He said that it is understood the pattern was not to be used south of Kingston because this would lead to an intrusion into the airspace. He was questioned about his experience as a controller and asked if Kingston was under radar observation. He responded no. He agreed that there was a different template for radar and non-radar. He was referred to Manops 462.4 which lays out a five mile radius from the aircraft to the boundary and he was told that this was 16 miles from the boundary. He agreed. It was suggested that the holding area would total 9.9 miles whereas here we are talking about 16 miles. He responded that he would have to see if the template applies. He did not rely on it last December. He had additional information received prior to December 16. He was asked whether he told this to Bell and he responded that he might have. The standard hold in this case would infringe airspace according to his template. To know this, an air traffic controller would have to use his judgement. The controller would not know that this was radar controlled, the radar being five miles from the boundary line. Five miles of separation between aircraft is desired by the air traffic control system. He was asked about the holding pattern for an aircraft under five thousand feet

and he responded that he would have to check. He requested the pattern for a holder at 9,000 feet and 175 knots; this is not unreasonable in that situation.

Exhibit E-34, an extract from MANOPS, was produced. Kane was the procedures man who did the template. Mr. Campbell was asked what scale was the map that he applied the template to. He said that he asked his offices for whatever chart the template would normally have been applied to. He was then asked about Torontair 800. He said that he claimed Batchelor had cleared the flight short to the Rideau. Gauthier got the instruction on page 21 of the transcript and he should have tried to keep the plane moving to this destination. When asked if this was not up to the pilot and the Montreal controller, Mr. Campbell replied that as a controller, he would try to facilitate the flight. He was asked if normally a controller would query instructions from another one. He replied that he could have asked where he was going to hold. The controller should not necessarily debate but he might try to assist the plane by seeing if something else could be arranged for it. He was asked where the aircraft would be at the point that Gauthier failed to tell Batchelor about the situation. He responded that it was not yet in the Sirling boundary line. East radar, to the immediate left of Gauthier, would therefore be responsible for the plane at that point. It would have been proper for Gauthier to go to the man on his left. He was asked if the east radar tapes showed this. He said that he did not find anything on it but that it was conceivable he might have missed it. When questioned about the communications failure procedure laid out by Montreal, he said that there was nothing to complain about there. Toronto had no active part in this, although Montreal instigated it. He was asked if he inquired about the penalties suffered by Montreal air traffic controllers. He responded only about Air Canada 731. Handling

of those aspects of Montreal were not within his jurisdiction. He did know, however, of the requirement of uniformity. He said that he asked about this by his regional superintendent. He did not know if he was specifically told that these would be one or three days. There was nothing greater than three days.

Counsel asked the witness whether the grievors did not really short clear anything here. He said no. Torontair 608 requested a short clearance. The system was starting to break down beyond Sirling sector. He was referred to reports and a memo from him to Bell, plus attachments, marked E-35. He was asked if he gave Bell a report at the end of September. He said that any report he was aware of was the result of the administrative investigation. He thought that this was the only one with the recommendations from himself. At this point, cassette tapes were introduced into evidence. One concerned Montreal Centre - Cornwall ACC and flight Air Canada 731. This was marked E-36. The second tape was dated August 10th and was called GM/FX position 13. It was marked E-37. The third tape was marked CR, August 6 to August 7, 1981 and filed as E-38. Mr. Campbell said that these were selections from the master tape. He said that therefore they could be part of what has already been seen in transcript exhibits. Extracts from the tape were used to form the transcripts which have been filed.

With regard to the employee interview minutes, those with Batchelor were marked E-35b, Gauthier's were E-35c with Reasin were E-35d. There was also a description of incidents concerning Batchelor marked E-35e. Mr. Hill helped with the tapes. The procedures officer gave no advice with regard to the safety of flight 731. Mr. Campbell was asked if he discussed the cases with John Gold who is the CATCA branch man and was also sought information on the grievors. He was asked whether he told Gold that the suspensions would be ten to fifteen

days. He said he did not say that. He was referred to the minutes of a meeting between himself and Gold in December. He was asked if he did meet with him. He said that he could not recall the date of any meeting. He said that he did not recall specific meetings with regard to those grievors. Ten to fifteen days would relate to people who were not the grievors.

Mr. Campbell was then questioned about E-35, a memo he wrote concerning the grievors recommending discipline up to discharge. He was asked if the recommendation with regard to the last paragraph concerned either Gauthier, Batchelor or Reasin. He said yes. He did not obtain any expert opinion regarding the loss of safety with regard to the grievors. He dealt with the safety issue himself. He and Mr. Graham spoke with the procedures officer about the safety issue.

He was asked if he told Gauthier that he would receive a suspension of ten to fifteen days, and he said no. He said that he thought he met with the CATCA representatives two to three times a week on all kinds of issues. It is possible, he added, that he said the 3 grievors were his friends and had made dumb mistakes. He was asked if he told Gold that he would not discharge the grievors because he needed good air traffic controllers. He said no. He testified that prior to the letters, he had meetings with Bell concerning the difficulties that he was having. He knew of Ottawa's coordination effort. He was asked if he tried to find out what other centers were doing. He responded that he asked Bell about quantum of discipline. He could recall the feedback but not specific cases. He did not know that his recommendations were sent to Ottawa for review. He recalled the memo regarding suspensions of one to three days (E-26). He could not recall but his expectations were that these recommendations would be sent to

Ottawa. He had recommended anything up to and including discharge. He knew even then that this was subject to review. At this time transcripts of the cassette tapes were filed and marked E-39.

When re-examined, Mr. Campbell said that his initial experience with the JETS system started when he was a data systems coordinator in Toronto. The data group reviewed operational needs to see that the system matched them. He was radar - automation specialist, and this included the JETS system. When he was an instructor, he provided instruction on an automated system. He was the project manager making up the testing when the JETS system was brought in.

The purpose of the special log, Exhibit E-30, was to get information as quickly as possible. Not everything in the document was an incident report with regard to problems in the U.S. On page 18, there is a mention of the bomb threat in the building. On page 9, there were general observations and on page 8, there was a "no reply expected". He was asked why no reply was expected. He answered that sometimes controllers just pass business back and forth and do not expect anything back. He was asked if it could then be an observation and he replied yes.

He was asked, with regard to Racer 22 and the possibility of the radar man not hearing the data man, if there was any other method by which he would notice what was on the radio. He replied that when the radar man had his head set on, flashing lights would indicate when a call is in. With regard to American Airlines 265 on transcript E-4e, in the first conversation, he was asked who Reasin is talking to. He replied that he is first talking to the Minneapolis data man and then after that, to the Minneapolis radar.

With regard to the latest transcript entered in evidence, he said that it was taken into consideration in making his decision. He said that when he did so, it was on a cassette. He eventually found it on the master tape. He expected that it is Toronto's master. He was asked when he heard it. He said that it was on there unless someone destroyed the tape. He was then asked if he could identify the voice on E-39, and he replied that this was Reasin, whose nickname is Sparky. The conversation occurred when Reasin was on the shift on August 8 after he said he did not wish to deal with U.S. traffic. This was after he was told he could have an interview but he would have to go back to work then. Whatever the tapes revealed, Reasin did not have any difficulty speaking to the U.S. controllers. It was the next day he withdrew the letter.

Mr. Campbell asked how many air traffic controllers were at the center in August, and he said approximately 125. He was asked how many would be on a shift and he said 35 if everyone scheduled to work showed up.

The disciplinary records of Gauthier and Reasin were filed by agreement and marked E-40 and E-41 respectively. It was agreed also by the parties that the disciplinary records refer to an industrial action that took place. It was agreed that about 55 controllers received a similar penalty; that is, a one day suspension for the same offence.

GRIEVORS' CASE

1. John Batchelor

John Batchelor testified that he resides in Mississauga. He joined the Department of Transport as a radio operator in 1960. He came to Ottawa in 1965 for training as a VFR controller. Until 1969, he

worked in various airports across the country. He has been working at the Toronto Airport since 1969. He has been assigned to east side since 1972. He has had during his career other assignments and he has worked six months as a IFR instructor. He considers himself an operations specialist. He was off on August 3, 4, 5 and 6, 1981. On August 4 and 5, he worked overtime on day shift. He also worked day shift on August 7. On August 8, he was sick. On August 9, 10 and 11, he worked on day shift. He declared that during the period in question he could not recall anything unusual during the first three or four days. However, talking to the American controllers was like continually talking to trainees who did not appear to know relatively simple things. He recalls discussions with aircraft entering the Toronto area without estimates and aircraft not supposed to enter the area at all. He said that on August 7, Doug Graham told him that if he did not operate normally that he would be subject to suspension or disciplinary action. He was rather upset. On August 7, he gave a note to his supervisor Doug Graham but he did not receive any response. On August 10, he reported to work at 6:25 a.m. He had heard on the 6:00 news about the bulletin having been issued by CATCA. He thought that it was a normal press release. As soon as he came in, he was met by either Mr. Campbell or Mr. Bell and he was handed two documents, exhibits E-7 and E-8. He was also advised to report to Graham. When he reached his sector he signed in. He was asked at this time if he was going to work normally or not. He said no. He said that the decision was made in anger. Between August 7 and August 10, he had talked to other US controllers and he had read the log. He felt that it was not a normal situation, that something had to be done and that management was doing nothing.

On August 10, he was asked to work the radar position. He is not sure who was working the data position. It seems that it was McWhirter. At one point, McWhirter was replaced by Frank Gauthier.

Referring to exhibit E-4B and more precisely page 34, he declared that he does not recall having heard Gauthier say with regard to AC731 "I don't want him in my airspace." He did not take notice of what was said and he was not advised of the conversation. He stated that he was not aware that AC731 was coming. He said that starting at 12:50:30, he was a little confused because he did not know what was going on. He did not discuss the flight with Gauthier. He knew the ultimate destination of the aircraft however, because it was a fairly common flight. He was to clear the aircraft short and have the pilot call the Americans for clearance in their air space. He spoke to the aircraft when it was near Ottawa. He had no intention of asking the aircraft to stop or turn around. He thought that it was not safe for the aircraft to go to the States or at least not as safe as it could be. He wanted no responsibility regarding the clearance of the aircraft in an unsafe area. What he did had no effect on the safety of the flight. He advised Graham and Gauthier at 12:58:02 of the short clearance. Gauthier was not part of the conversation with Graham.

Mr. Batchelor said in connection with Torontair 608 that he was asked for a clearance to Syracuse rather than Kingston. He then replied that he would not clear the aircraft to American airspace. He considered American airspace unsafe and he did not want to take the responsibility of clearing the aircraft. The pilot simply said okay. All he did was to keep the aircraft 5 miles from the American boundary. The aircraft did not have to go into a hold; Torontair was notorious for waiting. The pilot called in shortly afterwards and he asked for clearance to the American border. Batchelor declared that he gave the clearance for the U.S. controllers to take over. He assumed that the aircraft had clearance from the U.S. controllers. He could see the aircraft go into American airspace. He did not coordinate the flight

with Boston. He simply wanted the aircraft to obtain its own clearance to Syracuse. There was no impact on safety. Gauthier was the board man at that time. He did not discuss the matter with him.

Regarding Torontair 800, he declared that he was working the radio position. He had very little conversation with Gauthier. When Montreal called and gave its instructions there was very little that he could do.

On the same day or on August 10, at about 10:30 p.m. he was told to report to Ron Bell. Controllers had then been disappearing gradually. He was asked if he was performing his duties. He said yes. He was told that he was not. He was told that he was being sent home for not performing his normal duties. He was advised to report on his next scheduled shift and to perform his normal duties at that time. He was warned that if he refused, he would be subject to disciplinary action up to and including discharge. He did not reply and he was escorted out of the building. He reported to work the next day and he then controlled traffic into and out of the U.S.A. After being sent home, he had had time to think. He had heard Transport Minister Pepin. He thought that nobody cared and he decided that he was not going to put his job on the line. There was no other day comparable to August 10. He has no disciplinary record.

When cross-examined, Batchelor stated that the PATCO controllers were fired on August 3. He added that on August 4, there was nothing abnormal and he cleared traffic to the U.S.A. He also cleared traffic on August 5. Talking to the U.S. controllers was difficult. He did complain at times and he turned down an aircraft. On August 7, he wrote exhibit G-1, a complaint to management about the warnings given, because management had done nothing about the problems.

Up to that time he had handled traffic normally. He became annoyed. This had never happened before. On August 9 he was still waiting for management to do something regarding safety.

The real problems started on August 10. He heard the news at 6:00 a.m. He heard that Robertson had said that if anything would happen, that the controllers would be protected. He did not discuss with other controllers what had been said by Robertson. He was told to report to the supervisor and he was given exhibits E-7 and E-8. He was angry about getting another warning since he had done nothing. He had then worked for twelve years. He knew that he was highly regarded. He met Graham who asked him if he would work normally. He said no, that he would not clear aircraft to the U.S.A. His decision was based on his knowledge of the situation and also on the fact that management was doing nothing. It is true that on the morning of August 10, he had no intention of handling U.S. traffic. He was mad at management. It is possible that Graham was the culminating incident. It is possible that nothing would have happened if he had not met Graham. It is true that he had conversations with his companions. He does not recall, however, having discussed what Robertson had said. He may have asked what Robertson meant. He knew as early as August 7 that he would open himself to disciplinary action. There is no doubt as to what management expected from him. He knew when he spoke to Graham of the possibility of discipline. He repeated that Robertson had said that if controllers felt that it was not safe in the U.S. and if they decided not to clear traffic in the U.S. that they would be fully represented.

Batchelor stated that his decision to clear Torontair flight 608 to the border was motivated by the fact that he considered the U.S. airspace to be unsafe. He does not think that what he did was unsafe. It is true that a pilot has a number of things to do, among others to

communicate by radio with air controllers. One week before the PATCO strike, with a normal situation, he himself would have called Boston. In the present instance, he left the pilot to do it himself. He did not coordinate. This did not make the situation unsafe but it is a thing that the pilot had to do himself. He was relying on the pilot's ability to get clearance. With regard to telling Torontair 800 to go to Kingston in case of communication failure, it is true that perhaps he could have acted differently but he does not think that he did anything wrong.

2. Frank Gauthier

Mr. Gauthier stated that he resides near Guelph, Ontario. At the beginning of 1972, he began working at the Toronto Island Tower as a VFR controller. Later he took another course and he was accepted as an IFR controller in May 1973. He was acting data systems manager several times. He requested transfer to operation control in 1978. He took, over the years, special courses in management and human relations on his own. He was involved in many special projects and at one time he was part of the management training team and he addressed a new group of trainees.

On August 3 and 4, he was scheduled to work during the evening. On August 5, he had a day off. He also had a day off on August 6 but he worked overtime. The same applies to August 7. On August 8, he had a day off. On August 9, he was scheduled to work during the day but he had illness in his family. On August 10, he was scheduled to work during the day. On August 11, 12 and 13, he was scheduled to work during the evening. He observed after the strike began that the new controllers were not answering their telephones and when they answered they seemed to be very busy. The new controllers

appeared to have no idea of geographical layout and no idea where certain key areas were. Such problems did not exist before. The controllers were not answering the hotline. Coordination was not there. He had to direct aircraft to other directions to avoid collision with incoming aircraft from the U.S. On August 6 in particular, three aircraft penetrated the Toronto airspace with no warning and no permission.

Beginning on August 6, he had several conversations with all levels of management. The first conversation was with Bill Welsh, his supervisor, who simply shook his head and walked away. Mr. Gauthier stated that he talked to other controllers as well and they all felt that it was a very serious situation. He also talked to Messrs. Campbell and Bell at about 10:00 p.m. in the briefing room. He said to Campbell that in his opinion it was unsafe. Campbell replied that he agreed that the concern was genuine, that he knew that it was not a sympathy move and that something was terribly wrong. The next day, Campbell said that he was thinking the matter over. The telephone conversation with Campbell lasted four minutes and it was between 9:00 and 10:30 a.m.

Mr. Gauthier said that on August 10, he heard in the morning about the press release of CATCA. He received a telephone call from Tom Partello, a fellow controller, with whom he discussed the situation. He drove to work with Partello. They both felt that there should be a contingency plan to alleviate the pressure. Upon arriving at work, he was asked to report to the briefing room and he was handed exhibits E-7 and E-8 by Tom Brown. After reading the two documents, he was asked by Messrs. Campbell and Bell if he would do his full range of duties. He replied that he would reserve judgement to see how the American controllers were handling the cases. Shortly after, he had a

heated discussion with Doug Graham. He was again asked the same question by Graham. Graham said that he wanted an answer. Mr. Gauthier declared that he was quite upset. He again repeated that he would reserve judgement. He was told to stop playing games and to make a decision. He then said no. Voices were raised. Graham was very upset and very agitated and he told him to relieve McWhirter. He acted accordingly.

Concerning flight AC731, Mr. Gauthier referred to page 34 of exhibit E-4B where he says "if he wants to land at Toronto I will accept the clearance" and he said that he had no prior knowledge of that flight. He thought that it was on the ground in Montreal. He was confused about it. He stated that he was not going to force the aircraft to land but that he acted to avoid confusion. He felt that it was a clearer situation. What he said is a statement made at the heat of the moment as he was quite upset. He did not even bother to bring this to Batchelor's attention. With regard to flight TOR608, he stated that Batchelor simply leaned over to him saying that the aircraft was changing direction. He called Kingston air radio and that was the end of his involvement. Regarding flight TOR800, he was told by Montreal to clear the aircraft short. He had no choice.

He testified that he said no to management because of the fact that they did not worry about safety, that nobody wanted to help and that there was a lack of positive action. He had to do what he did. He had a moral obligation to bring people's attention to the fact that it was unsafe.

On August 10, there was a bomb scare and after the east side started to close, he was told to see Mr. Bell. Mr. Bell told him that he was sent home for the balance of the day and he added that he was

expected to show up again the next day and to do his full range of duties. Mr. Gauthier stated that he went to see a lawyer in Guelph to verify his legal liability in the event of a disaster. The next day, he did a lot of soul searching. He came to work and he controlled U.S. traffic because he did not want to be disciplined and fired. On August 11, he again approached his supervisor and he told him that he was controlling traffic under duress. On August 12, he again worked and controlled traffic in and out of the U.S.A. and did so right up to December 18. He confirmed having received a copy of the memorandum filed as exhibit E-18, the memo from Mr. Graham to Doug Campbell concerning what happened with AC731. He had several conversations about this with Campbell who kept saying "don't worry, Frank, you are not going to be fired over this, there will be ten to fifteen days' suspension." In late November or early December, in the lunch room, Campbell said that the recommendation for ten to fifteen days was going downtown.

When cross-examined, Mr. Gauthier stated that he was discharged in January 1982. He has gone over the facts several times since then and he still believes that he did not do anything wrong. He added that he would use more sick leave if it were to start all over again. He was emotionally upset at the time. Concerning flight AC731, it goes on a daily basis to O'Hare and he is familiar with it. It is true that he could have asked why the aircraft was cleared short to Kleinburg. That was his first knowledge of the flight. He considers himself a prudent air controller. The time of departure or of arrival was not on the strip. He was confused because the Montreal controller was talking about clearance to Kleinburg. There was virtually no staff that morning and a lot of traffic. He assessed the situation. Going to Toronto would have been a normal pattern and he wanted to reduce the confusion. When asked if he wanted to force the aircraft to go to Toronto, he

replied no, not really. One option was definitely to go to Toronto. He wanted to prevent spinning at Kleinburg. There was a dangerous situation which he wanted to avoid. When he made up his mind on what he was going to do he did not think that he had to discuss this with the pilot. He had no idea why Captain Wilding wanted to go to Kleinburg. He repeated that his job was not to sabotage that flight to Chicago. He felt that the American air controllers were incompetent. It was a dangerous situation but management chose not to act on it. He repeated that he was not aware that AC731 was air-borne. He said that he did not want to wait until there would be a midair collision before doing something, that he had to make a stand and that he wanted to prevent the aircraft from entering U.S. airspace as it was unsafe.

Regarding flight TOR608, it is probable that Batchelor advised him about it. It is true that he could talk easily to Batchelor. He could not have given clearance into American space because he had already made a stand. He was hoping that they would see by his stand how dangerous it was to go into American airspace. He was hoping that the pilot would understand and would re-think the entire situation. The pilot nevertheless went into American airspace. He would have passed the estimate to the U.S. controllers if he had been convinced that they were competent and qualified controllers.

With regard to TOR800 it is true that he was told by Montreal about the short clearance. It is true that he did nothing at all to assist the aircraft to reach its destination. He had no choice.

Mr. Gauthier ended his testimony by saying that his last shift was on December 17, 1981 and that he was put on leave on December 18. He was finally discharged on January 8, 1982.

3. Cecil (Sparky) Reasin

Mr. Reasin testified that after becoming a commercial pilot he spent 2 1/2 years flying. He became an air controller on October 4, 1969. He became an IFR controller on October 14, 1971. He was moved to Toronto in 1977. He is, like the two other grievors, an AI-4. At the time of the incidents, he was a steward. He ceased being a steward in September 1981. He was on duty on August 3, 1981. It was difficult getting through to the U.S.A. The flow of traffic was the same and the coordination was difficult. People started to complain on August 4. Planes were coming close to the boundary. At one time, he had to call Boston and the controller there replied that he was too busy to talk. He waited and he had to call Boston back. Two flights were heading to Halifax. Six sectors were involved at the same time. He had never heard of this before.

Mr. Reasin referred to August 6 and exhibit E-4D, the transcript of the Racer 22 incident. He stated that he was not on duty when this commenced. He relieved Rick White at 14:47:26. He did hear the conversation at that time. He did not hear, however, the conversation with Minneapolis. He asked for St-James in Montreal at 14:48:24 because he knew him. At 14:49:45, he caught the light flashing and this is why he called Minneapolis. It could be that the volume was turned down. Concerning his request to have Minneapolis data call his data man, he stated that this was an ad hoc flight plan and that this was abnormal. He added that before the plane was to leave ground, Minneapolis should have called his data man. There was nothing to indicate that the aircraft was airborne and that the call was urgent. There was nothing wrong at his end. Minneapolis was wrong.

Concerning exhibit E-4E, the transcript of his exchange with the Minneapolis controller, he stated that he had never heard before the expression "appreqing climbing". Appreq is asking for prior approving. At 12:04:56, when he said "at least I'm not a scab" he was in anger and he would not do it again.

On August 8, he was working on the evening shift. The condition in the States was unsafe. He made a notation of this in writing to his watch supervisor as confirmed by exhibit E-22. He was asked to work on the Cobalt sector. He accepted. At one time, Bell came by and took him in for an interview. Reasin was asked if he would carry a full range of duties. He replied that he would think about it and then he came back and said no. He was told to come back on the following day and be prepared to carry out full duties. He returned on the 9th for the evening shift after thinking a lot. He was to start working at 4:00 p.m. but he looked around for about an hour before starting. He wrote another note as confirmed by exhibit E-23, saying he would work. Some controllers were sick, some others did not want to handle flights. On August 3, Don Redden came in and refused to work on U.S. flights. He was told to go home. He was suspended for only one day.

When cross-examined, Mr. Reasin testified that air control is a system and that there are rules. He stated that in normal times, everybody adheres to the rules. Starting on August 3, PATCO members were on strike in the U.S. The controllers were less experienced. It made the job harder. He had to be more vigilant. He admitted that his first duty is to ensure safety. He did his normal controller's duties. He had no problem between August 3 and 5. The Boston controller had six sectors at the same time. On midnight shift, a controller can have five sectors at the same time. It is not true that on August 6 he started

certain behaviour to obstruct airplanes. Referring to the Racer 22 incident, he said he does not remember that at a disciplinary hearing held on December 22, he said that radar called in two times. When he wanted to talk to the CATCA representative in Montreal, the traffic was light. He wanted to see if they had the same problem with the U.S.A. It is possible that the lights came on before he called Minneapolis. It is true that the alleged Minneapolis communication failure was not reported. It is possible that the monitor located downstairs would have revealed the failure. Regarding exhibit E-4E, and his remark about unsafe airspace, he admitted that he was told of no accident in the U.S.A. He stated that he did not take his union stand, that he was not protesting and that he was not acting in sympathy. He did hear Robertson's release. Canadian airspace was safe. He repeated that U.S. controllers were proceeding with no estimate, no hand-off and no coordination with them. Regarding exhibit E-39 and his remarks on page 2 of that transcript, he stated that when he said that he was not talking to the States any more, it was because everytime he answered the line, he was running into trouble and was getting into arguments.

4. Tom Partello

Mr. Partello testified that he has been an air controller for 12 years. He was on duty between August 3 and August 10, 1981. He had a day off on August 5 as well as on August 8. On August 7, he was scheduled to work overtime but he refused. He stated that during that period there was great confusion when dealing with U.S. controllers. They were unsure of frequencies, not familiar with points such as Kleinburg, not familiar with airspace and not acting normally. He had one problem on August 6, 1981 as evidenced by exhibit G-8. The flight involved was a military one. Although he called Boston on the hotline several times, he had no answer. He asked his data man to reach the

other data man in Boston. He reported the incident to his supervisor. He told his supervisor also that there were too many uncoordinated flights. He refused to clear aircraft. On the same day, he had a conversation with a group of controllers and Dave Campbell in the briefing room. He talked to Campbell and he asked him what he was going to do. Campbell was evasive but he said that he was concerned due to the quality of people talking to him.

Mr. Partello stated that he again called on Campbell the next day. It was then 10:00 a.m. He was told to work and to perform full duties. He replied that he had decided to cancel his overtime and that he would take time to think about the situation. He went to work on August 9 and he controlled traffic in and out of the U.S.A. although he was frustrated. Nobody seemed to believe that the situation was dangerous. He discussed the matter with his wife as well as with Frank Gauthier. He was not prepared to lose money on the issue and both Gauthier and he agreed to return to work.

There was a press release on August 9. Frank Gauthier called in the next morning and they drove to work together. They both reported to work at about 6:30 a.m. As they arrived, they were stopped and asked to proceed to the briefing room. They were then shown exhibits E-7 and E-8 and they read them. Bell asked him what he intended to do. He said that he would go by the directives of Proulx. Graham then replied that it was not a good enough answer. Mr. Partello was asked to say yes or no. He said that he would think. Voices were raised. He was upset. He finally said to Campbell that he was not going to deal with American controllers. He was upset about the whole situation. He was told by Graham that he was being released from his duties. He was read a prepared statement by Bell saying that he was being relieved but that he was expected the next time to do his regular duties. He went to see a

lawyer in Guelph with Frank Gauthier to find out about his legal liability. He was also concerned about the injunction. On August 11, he worked day shift and performed his normal duties. He was still being frustrated because he was convinced that the situation was unsafe. The decision to perform his regular duties was difficult to make. He served a three day suspension for his conduct. His previous record showed a one day suspension.

When cross-examined, Mr. Partello repeated that the only U.S. incident in which he was involved is described in exhibit G-8. Although he was upset about impending disaster, it did not happen. He intended to perform his full duties on the morning of August 10. His decision was due to management's harrassment.

5. Warren Nahirniak

Mr. Nahirniak stated that he has been with the Department of Transport for three years. Prior to this, he was a constable with the Ontario Provincial Police. He has been an operation controller since 1979. He is an AI-4. He was scheduled to work between August 3 and August 10, 1981. He was on duty as an instructor. When he entered the centre on August 10, he observed Gauthier with Partello and Graham. The school is in the centre. He stood at about 28 feet from the group. Graham had a concerned look on his face and he was scary. He himself was shaken up by what was taking place and he was very scared. It took him 15 minutes to recuperate. As Graham was talking, he was pointing his finger and he was saying: "Are you here to work or not? It is a yes or a no". The notes prepared by Mr. Nahirniak were filed as exhibit G-9.

6. John Gold

Mr. Gold stated that he has been an air traffic controller for 15 years. He has been the president of the Toronto branch of CATCA since January 1, 1982. He discussed the grievors' files with management. He met Campbell in his office on December 4. Other air controllers had already been notified of discipline. Christmas was coming up. Campbell agreed that the matter was dragging. Campbell said that he had recommended a suspension of 10 to 15 days. He added that John and Frank were good friends, that they would not be fired and that he needed them. The discussion was easy-going. Mr. Gold stated that he again saw Campbell the next week regarding the same files. Campbell seemed upset and worried. Campbell talked about the three grievors all being section 4, meaning "putting the government in bad light". Campbell said that he had not put in yet his recommendation.

When cross-examined, Mr. Gold added that his notes are in connection with a first and a second meeting only. He has no notes concerning a third meeting. He also said that Campbell did not promise anything and that he could not make any decisions himself.

7. William Hill

Mr. Hill stated that he has been a licenced air traffic controller since 1958. As of 1971, he was a supervisor. Starting in 1974, he became a facility procedures officer. His job was to write agreements with other airports, to advise management on controlled procedures and to meet with the general public. He was a facility procedures officer in August, 1981. He was asked to listen to the tape regarding flight AC731 on August 10 and to other tapes on August 11 and August 12. He was finally asked to give an opinion regarding the

complaint by Air Canada. He also saw the transcript. His concern was the safety aspect. He said that there was nothing to it, that there was no loss of separation and that the aircraft was not endangered. He has also studied exhibit E-4D at the request of Campbell. He was asked if there was any deviation from procedures by Canadian controllers. He replied to Campbell that there was a deviation from procedures by U.S. controllers inasmuch as there was a departure of an aircraft with no prior approval and also that an aircraft was allowed to enter Canadian airspace without hand-off. With regard to unauthorized conversation by an air controller, this goes on all the time. Concerning exhibit E-4E and more particularly page 3, there was no doubt a departure from standard procedure, but he would not say that it was unsafe. In connection with exhibit E-4B, the short clearance was with Montreal. The lack of clearing the aircraft into the U.S. was a departure from standard procedure but it did not affect the safety of the flight. Mr. Hill was questioned regarding flight TOR800. He noted at page 21 of the transcript the conversation between the Toronto and Montreal air controllers. The short clearance that was issued was at the request of Montreal. It was normal for the Toronto air controller not to question the reason for the short clearance. There was no departure from accepted procedures. Concerning flight TOR608 and more particularly the holding pattern, Mr. Hill referred to a template prepared by him. The aircraft did not enter American airspace and it remained at about 5 miles from the U.S. border. Nothing in the instructions impaired or influenced the safety of the aircraft.

When cross-examined, Mr. Hill stated that from 1969 to 1971 he was the vice-president of the Toronto area for CATCA. As a facility procedures officer, liaison is not his main duty. His main duty is to advise management on procedures. He repeated that he considered himself a safety expert. He only gave a verbal opinion to Campbell and he did

not listen to other tapes. He saw the transcripts about 2 months ago and again yesterday. It is true that giving no hand-off could possibly create a safety hazard and would add to the confusion. He agreed that an air controller should try and remove confusion in his jurisdiction. An air controller should do everything to help rectify the situation. Regarding flight AC731, he did not talk to Captain Wilding. A short clearance normally should be given if the adjacent sectors were overloaded. A stored flight does not give any privilege. Flight AC731 is safe every day of the week. He would not himself question a short clearance. It is true that flight TOR608 entered an area without a hand-off between controllers. Mr. Hill stated that he is no longer a facility officer. He left his position last year. His interim appraisal was not good. He had also had adverse appraisals in 1979. He is now an air controller.

8. Fred Petnauskas

Mr. Petnauskas testified that he is an air controller in Montreal. He is an AI-4 and he has worked as a controller since 1966. Mr. Petnauskas stated that he is the regional director of CATCA for Quebec. He was on duty at the Montreal air controller centre on August 10. He worked from 8:00 a.m. to 4:00 p.m. He was working in the terminal unit. Flight AC731 was a regularly scheduled route to Chicago. Because of the situation which prevailed, he refused to clear the aircraft to American airspace. He was acting as the data man and he advised the tower control accordingly. There had to be an alternate airport and he decided that it would be Toronto. In effect he cancelled the stored plan. He was not disciplined for this. Concerning flight Eastern 173 from Ottawa to Baltimore, it is true that the air controller said that he would not clear the aircraft to the States and that he was

sent home. The maximum penalty at Montreal air control centre for the incidents of August 10 was a three day suspension with a previous record and a one day suspension with a clean record. One of the air controllers was also given only a written reprimand.

When cross-examined, Mr. Petnauskas stated that flight AC731 is normally cleared automatically to Chicago. When he made the decision not to issue the clearance to Chicago, the aircraft was still on the ground. Eastern Airlines 173 was also on the ground. He stated that at one time he was asked if he would carry out his usual duties. He said no and he was sent home. He was aware of the statement by Robertson to the effect that the American airspace was unsafe. Robertson did not say not to clear aircraft into American airspace.

9. James McKinnon

Mr. McKinnon stated that he resides in Gander, Newfoundland. He has been an air traffic controller, AI-4, during the last eight years. He worked on August 7 or 8, 1981. He had read information from the national office of CATCA on different happenings and he felt that he had a moral obligation. He wanted no part in clearing traffic to and from the U.S.A. He had a letter when he came to work and he handed it to the central operation supervisor indicating that he was not prepared to clear traffic into the U.S. because he thought that it was unsafe. On August 10, he was at the radio position. He cleared an aircraft short. He was advised that he was relieved of his duties and he was told to go home. His supervisor was behind him at the time of the short clearance. He reported on the next shift. He was asked if he had changed his mind. He said no. He was sent home. The same thing happened again on the next shift. He was off the day after. He was

given a three day suspension. In 1981, he was a branch chairman of CATCA for Gander. The maximum penalty to an air controller in Gander was three days. He had no prior record.

When cross-examined, Mr. McKinnon stated that he himself would not have flown in U.S. airspace. He talked to U.S. controllers who were presumably on strike. He obtained information to the effect that U.S. airspace was unsafe. He knew that there were restrictions in the flow of aircraft. He did not know exactly what restrictions there were. All in all, thirty-five air controllers were disciplined in Gander with suspensions of one to three days as stated in exhibit E-25, page 69.

10. Terry Arnold

Mr. Arnold stated that he is employed as a VFR air controller in Winnipeg. He is an AI-4. All in all, he has been an air controller for eight years. He worked during the period extending from August 3 to August 10, 1981. Passing estimates was taking three times as long as usual. U.S. controllers were not aware of their own boundaries. Canadian controllers were asked several times to spell out identifications. The work was slowed down considerably. At one time, he was given a hand-off on an aircraft when no estimate had been given. He had never seen such a situation. The Canadian air controllers had to watch the south boundary constantly. He reported to work on August 10 at 11:30 a.m. He was asked to go to the office. He was then asked if he would handle flights to and from the U.S.A. He said no. He was told that he would be subject to a fine. He asked to handle Canadian airspace only. He refused to clear several aircraft to the U.S.A. He was given a one day suspension. The maximum penalty imposed on a controller in Winnipeg was five days, subsequently reduced to three days.

When cross-examined, Mr. Arnold added that passing estimates was taking twenty to thirty seconds when normally it should take about ten seconds. He felt that American airspace was unsafe. He witnessed a hand-off with no prior estimates. The U.S. controllers were not aware of their own airspace. It is true that conditions are more unsafe if there is no estimate and no hand-off.

11. Ralph Johnson

Mr. Johnson testified that he is from Winnipeg, Manitoba and an air controller. He was on duty between August 3 and August 10, 1981, although he was on leave on August 4, 5 and 6. He was involved with a flight from Anchorage to O'Hare. There was a problem with a hand-off. He initiated a call to Minneapolis but he received no response. He tried several times to reach Minneapolis. When the aircraft was about ten miles north of the border, he advised the pilot that radar services were terminated. He also told the pilot that he was to enter the U.S. and to contact Minneapolis. He said to the pilot to try it or to come back, but he never heard from him.

He had a discussion with his supervisor on August 10 at about 3:30 p.m. He was read a telex (exhibit E-7). He was asked if he would be performing his full range of duties and if he would clear aircraft into and from the U.S. He replied that he would make a decision at the appropriate time and he went back to work. Later on, he was involved with three flights from London, being Western flight 1 to Winnipeg and Laker 1 and 3 to Los Angeles. He was surprised to see these flights on the board, bearing in mind events that had transpired. The flights were denied clearance. It was then 21:00 hours and he wondered why these flights had been cleared through. The departure time was checked and he realized that the flights had left at 14:00 hours, that is after the

call of time. He then decided to reclear the flights. He made an offer to the pilots and he gave them a choice of four airports. He eventually recleared the flights to Calgary. It is possible that one of the flights did not accept the clearance. Referring to exhibit G-2 Laker flights 1 and 3, the pilots simply said that they would go on with the original flight plans. He first recleared the aircraft to Calgary and then to Winnipeg. He learned later on that when the flights got to Red Lake at about 50 miles from Winnipeg, they were recleared to Los Angeles. Laker flights 1 and 3 were discussed when he reported to work the next day. He was asked once more if he would resume his regular duties. He answered as he had done previously. He was told that he was being suspended without pay and he was sent home. He later on received a letter of reprimand with a one day suspension. The letter said that he was disciplined for refusal to clear aircraft across the border. He eventually received another letter for another day of suspension.

12. Steve Hall

Mr. Hall stated that he has been employed as an operational controller in the Edmonton area for the last seven years. He is now stationed at Calgary. He testified that Edmonton relates to the U.S.A. through northern control centre for Anchorage. He had no direct interface with U.S. controllers in August, 1981. On August 11, 1981, he started work at 3:00 p.m. About one hour later, he was involved with a flight known as Flipper 125 or PA125. He was passed an estimate showing that Calgary was its destination. The pilot sought to change his destination to the border. He refused clearance at this time. He stated that he was not clearing any aircraft to the U.S.A. The pilot said that he would go without a clearance. There were some arguments. His supervisor was standing behind him and relieved him. The pilot

accepted the clearance but continued along. For his actions, Mr. Hall stated that he had a one day suspension. In Edmonton, the maximum penalty was two days.

When cross-examined, Mr. Hall testified that other controllers were asked if they would provide full service. Some said no, some said that they would wait and see. He was not asked himself if he intended to handle U.S. traffic.

13. Garry Davey

Mr. Davey stated that he resides in Vancouver. He works in the area control centre and he has been there for five years as an AI-4. He has interface with American airspace. The situation began to deteriorate between August 3 and August 11, 1981. It was erratic. The Canadian controllers were not getting estimates or getting late estimates. There was fluctuation in the coordination with the U.S. controllers. Prior to August 11, he handled aircraft as usual except that several aircraft had to be warned, and he did this. He was to work during the evening shift and when he arrived at work, he was asked by a supervisor if he was prepared to handle U.S. traffic. He said that he was not prepared to do that. He was warned about a court injunction. He wanted to talk to his own lawyer. He finally said that he would make up his mind later. He then went to his position and worked. Traffic was then coming in under VFR and when the pilots were reaching the border, they were calling the Canadian controllers and asking for a clearance. There were problems also with outgoing traffic. There was no coordination at all. He did refuse himself to clear an aircraft flying from Oakland to Anchorage. He was advised shortly after that he was in contempt of the injunction and he was told to come back the next day. He lost the remainder of his day and he also had a one day suspension. The maximum penalty at Vancouver was three days.

When questioned further, Mr. Davey stated that on August 11, the atmosphere was terrible and that when he left work he had tears in his eyes. The Canadian controllers were upset and some left the premises saying that they were sick. He could not believe what was going on. At one time, he saw two aircraft which were about to collide and which were using the same altitude. The pilots seemed to treat this like a game.

When cross-examined, Mr. Davey stated that he never told his superiors that he would refuse to handle aircraft. The pilots were violating their own company rules. It was unsafe for them to do this.

Following the above testimony, a number of exhibits were filed by consent including G-14, G-15, G-16 and G-17.

The parties also agreed to the following statement of facts concerning Mr. Glen Horoshok:

1. Mr. Horoshok is employed in the Winnipeg area centre as an enroute controller in the West specialty.
2. On August 10, 1981, Mr. Horoshok was scheduled to work the evening shift from 4:00 p.m. to midnight. When he reported for duty, he was asked by Mr. McFarlane, the acting Regional Superintendent of Operation, whether he would handle transborder traffic. He was read a copy of a memorandum being exhibit E-7. He believes that he said that he would not. He was told to go back to the job.
3. When he assumed responsibility for his position, Winnipeg East sector, he noted that they had received an estimate on Western flight WA-1 from Gatwick which had been cleared to Winnipeg. Although the

flight plan showed aircraft destination from Winnipeg, he knew from previous flights that its ultimate destination would be Denver.

4. There was a unit training officer standing behind Mr. Horoshok during his contact with flight WA-1. The next day representatives of management advised him that they had listened to tapes of the incident and that they were therefore sending him home for the rest of the day. In addition to that penalty, Mr. Horoshok also received two additional one-day suspensions. Mr. Horoshok had a clear discipline record prior to this incident.

EMPLOYER'S CASE (reply)

Mr. Gordon Allen testified on behalf of the employer. He stated that he is employed by the Department of Transport. He has been in the Public Service of Canada for fifteen years. He became Chief of Staff Administrator with the Department of Transport in 1969. He left the Department of Transport in 1974 to go to the Treasury Board as a Senior Negotiator. He remained there for two years. He moved to the Department of Transport in 1980 and he became Director of Employee Relations. He holds the same position at this time. He handles all matters relative to the collective bargaining process and he looks after about 22,000 employees. He is involved in negotiations, grievances, designations and disciplinary actions. He reports to the Assistant Deputy - Personnel. On the air side, there are 12,000 employees. Regarding air traffic services, there are 2,200 employees across the country. There are six major centres. He has under him 12 officers divided into 2 units, the first unit being responsible for the negotiations and the second unit being responsible for the grievance process and adjudication. His office was involved in the disciplinary

actions taken as a result of the PATCO strike and discharges of its members. Over 200 air controllers were disciplined. All air controllers involved received suspensions with the exception of three who were discharged. The penalties were in the main 1, 2 or 3 days, although some controllers were suspended 5 days. In Toronto, some controllers were suspended 10 to 15 days.

Mr. Allen testified that he received information in the latter part of July that they might have trouble with their controllers because of a potential strike in the U.S. He was advised that the Canadian air controllers were about to take sympathy action. On August 5 and 6, he established an operation centre also known as a contingency centre with excellent communication facilities. The centre was activated on August 6 and manned on a twenty-four hour basis with contacts to each of the regions to find out what was going on. On August 7, he received a call to the effect that problems were starting in Toronto. He went to the centre and he remained there on Friday evening. He then discussed the matter with Bell. He was advised about a number of controllers who were saying that they were not prepared to handle U.S. traffic. The only area with problems at that time was Toronto. He advised Bell not to react. He said to Bell that if a controller had said no, that he should be removed and cautioned and given the opportunity to explain to management what his rationale was. The stated reason was that they were having problems with traffic coming from the U.S.

The same situation continued on Saturday when controllers started to be sent home in Toronto. On Friday and Saturday, he was in contact with other regions and there was only one reported incident in Montreal. On Sunday, at 9:00 or 9:30 a.m. he received information that the president of CATCA, Mr. Robertson, would make a statement to the press that could have an effect on the situation. At 10:00 a.m.,

Robertson's statement was carried over the radio. The same message was carried on T.V. at 11:00 a.m. Briefly, Robertson said that based on his assessment and that of his members, he was supporting the action to refuse to handle traffic to and from the U.S.A. Mr. Allen referred to exhibit E-25 at page 56. He also referred to the telex, exhibit E-7, prepared and sent to all regions. He stated that his efforts were not successful. On Monday morning, he started to experience problems at Moncton. He reassured the air controllers there. The situation in Quebec was sporadic. There were six or seven incidents on August 9 and 10. In Toronto, a number of air controllers were sent home. There were also problems in Winnipeg, Edmonton and Vancouver. The activity continued until August 12. It was hectic for two days. He came very close to shutting the entire service down. On Monday, there were serious problems in Gander. Traffic was diverted to Moncton. On Tuesday, the unit chief contacted all controllers to verify how many of them he would have available. He managed to get only 2 controllers. Most of the controllers were saying that they would see their lawyer. A decision was made to shut off the transoceanic flow. His advice was to document the situation. The discipline would be determined afterwards. He decided that headquarters would have an input to insure consistency. He would see to this with Proulx.

There was a conference call in September to reach a consensus. At the same time efforts were made to enforce an injunction obtained in the Federal Court. The right to discipline was removed from the supervisors; he referred to exhibit E-26 relating to a memorandum to staff relations officers. They were looking at a substantial number of situations where there had been disobedience and a refusal to handle U.S. traffic but there were no refusals to handle flights in progress. In some cases situations went beyond a simple refusal to handle traffic. Before a decision was reached, there were a number of

telephone calls relating to four situations in Winnipeg and six or seven situations in Toronto. It was agreed that if the action involved a technical assessment, it would be examined by a technical specialist. He referred to exhibit G-14, a memorandum of October 30, 1981, where there were three listed categories of offenders. The three grievors fell in category number three. He stated that they had to maintain consistency across the country. Toronto had by far the most activity from Friday, August 7 to August 12. In the other regions, there was activity, mostly from August 9 to August 11. Toronto had the bulk of the cases. There was a meeting in Ottawa in early December involving Mr. Lang, Dick St-John, Pierre Proulx and himself. They decided to go over the cases in Toronto. All collectively concurred in his decision. He told the others only in general terms what was going on elsewhere. If the action involved a technical analysis, he had to have a professional opinion as he had himself no technical training. In the cases involving the three grievors, the situation went beyond what was contemplated in the formula developed in his office and to which the memorandum of September 29 referred. Other cases were also taken into consideration.

When cross-examined, Mr. Allen stated that he is not sure that he participated in the conference calls of August 9 and 10 regarding the flow of traffic. To alleviate the concern of the air controllers it was agreed that they would communicate with their U.S. counterparts. Nothing however, was done to alleviate problems before they would occur. The log book was recommended in all regions. It is true that some controllers refused to handle U.S. traffic for a number of days. It was decided that controllers would be sent home after being counselled and advised as to the consequences of their actions and given another opportunity on the next day. Grievors Gauthier and Batchelor had to be treated differently because they played around with traffic in

the air. Their actions went beyond a simple refusal. As long as the aircraft was on the ground, it represented no hazard. The grievors' actions placed aircraft into unnecessary hazards.

In many cases, evidence was lacking. He participated in the collecting of affidavits for the proceedings in the Federal Court. He relied on the evidence which he gathered and he still stands behind the affidavits which were filed. It is true, however, that some affidavits would have to be amended. It is true that as far as Winnipeg is concerned, a technical staff was consulted. This was not done in Toronto in connection with the three grievors. A decision had already been taken with regard to them when Lang came to Ottawa. It is true that the Ontario region reacted similarly to other regions. It took Toronto, however, a much longer time to investigate. The decision to discharge the three grievors was reached in Toronto. The meeting in Ottawa did not rubber stamp the decision reached in Toronto. Toronto was simply advised later that it was supported by Ottawa. The three cases involving the grievors warranted a very serious penalty in view of the hazardous situation. He did not know if there was insufficient separation. He was aware that short clearances to airborne aircraft were issued elsewhere. It is true that there has to be consistency but not a rigid consistency. He was unable to find the tape concerning the conversation between Montreal and Toronto. It was not possible to review every tape for every controller. He did not have to investigate Montreal when the basis of an incident occurred in Toronto. He only became aware lately that Montreal was also involved. He relied on statements obtained from individual supervisors. Proulx is a former air traffic controller with extensive experience.

ARGUMENTS

Counsel for the Employer

The evidence shows that last August the three grievors engaged in a sympathy strike with their PATCO brothers. The PATCO strike started on August 3 and it was followed by a dismissal of the majority of its members. The three grievors no doubt intended to help their brothers. They committed serious acts of misconduct and the penalty which was imposed was not excessive. The reasons are set in exhibits E-1, E-2 and E-3. The letters to Batchelor and Gauthier are basically the same. The grievors said clearly to Graham that they would not do their job and they caused grief to pilots in flight. They did not give the service needed and relied upon for passage into Canadian airspace. The grievors insist that they did nothing wrong. It is obvious that they did not comprehend the seriousness of their duty and that they did a number of things wrong. They conducted their case on the premise that they were doing the public a service and acting as good samaritans. They claim that management was acting with ignorance. They acted as if they were the victims of oppressive authority. CATCA had a role to play in this matter. The bargaining agent is not free from blame. The grievors were obviously incited by the bargaining agent to act as they did. This however should not be found as a mitigating factor. Gauthier and Batchelor committed themselves on August 10.

There were disruptions during that period. It is common knowledge that 10,000 traffic controllers were removed from their job by President Reagan. A number of disruptions were caused by Canadian controllers. It is notorious that all controllers' associations in the world were concerned. The grievors gave evidence that prior to August 10, they intended to work as usual. Something occurred that

morning between the time the grievors left home and the centre: Mr. Robertson made a statement to the press, the effect of which being that he was urging the Canadian air controllers not to control traffic, failing which the association would help them. The grievors knew that they would be subject to disciplinary action. What Mr. Robertson said appears at page 56 of exhibit E-25. It is said that "the board of directors of CATCA have agreed to inform aircraft operators that effective August 10, 1981 at 0700EDT Canadian air traffic controllers will no longer process the handling of flights operating to or from United States airspace except for emergency flights." It is this presumptuous and arrogant statement which caused problems to the public and induced the grievors to behave as they did. There is no doubt that Batchelor and Gauthier were acting in response to this statement, although they tried to play it down during their testimonies.

They said that they would have performed their duties on the 10th if management had not treated them as they did. They more or less said: "How dare management tell me how to do my job!" Management had the right to issue both exhibits E-7 and E-8 and to tell the grievors that they were expected to do their duty. The grievors were simply striking back at management. The statement was perhaps a contributory factor but the grievors decided to show solidarity with their union at the expense of the public who relied on them for their lives. When they met Graham, the grievors said openly that they were not prepared to do their jobs. The grievors behaved in a juvenile fashion which is unacceptable behaviour in air traffic. There was potential for disaster. The grievors were not playing with toys. They were entrusted with the passage of aircraft containing people through their airspace. They were not there to make their point or to engage in public relations. If so, they were at their own risk and peril and with criminal consequences.

Fortunately there was no disaster here. Otherwise the grievors might be today before a criminal court. Captain Wilding was so outraged that he filed a report to his company. He said that he was subjected to a form of aerial piracy. The grievors did everything they could to obstruct Captain Wilding. Their intentions were to make a point and they were not honourable. The controllers had no right to do what they did in aid and support of their union. Captain Wilding's flight was close to a nightmare. Batchelor and Gauthier were the principal actors in that nightmare. Some credit has to go to Montreal who did not help Captain Wilding either. There is no evidence that Batchelor and Gauthier initiated the troubles or the problems but they definitely participated and did not help Captain Wilding in reaching his destination. Captain Wilding asked for a reason to show that he could not go to O'Hare but there was none. Batchelor and Gauthier would have let Captain Wilding land at Toronto. The latter had to fight his way to Chicago and he made it, no thanks to Batchelor and Gauthier. Captain Wilding had to call his company and he had to outwit the Canadian controllers. Captain Wilding talked about the safety aspect of the flight and he said that he should not have been asked to put up with this. Batchelor and Gauthier were busy enough without having to think about a scheme. They neglected their duties and complicated the system in a deterioration of air traffic services.

We heard witnesses Campbell, Bell and Graham. The latter was even sympathetic with the grievors. There is no question that Graham thought that the grievors were harshly treated. Graham is a human being. There was no technical safety problem with AC731. There were not near misses, no lack of separation. Graham was emotional and very mad. He came to his supervisor and he wanted to close down his side. He did not like such a mess. He wrote a conciliatory memorandum and he tried to mitigate the effects on the stand. Concerning AC731, the

aircraft was a large passenger jet and it is the most serious incident. Everyone knew that the aircraft was going to Chicago. At 12:44:41, Gauthier asks if this is the guy going to O'Hare and he says that he does not want him in his airspace and that he will not accept him. The plane at the time was in the air. Still Gauthier did not care and he repeats that he is not going to take him. How arrogant, how presumptuous, how wrong! At page 38, Batchelor says that he guesses that he wants an estimate and that then "we will see what happens". Is this the statement of a pious man? Batchelor is obstructing a flight and doing what he can to render Captain Wilding's life difficult. The grievors were not disciplined for initiating the AC731 incident. They were disciplined because they intended to obstruct the flight.

Gauthier talked to Montreal and asked "what is the situation there?". He was asking if the air controllers in Montreal were following the CATCA directive. Gauthier wanted to make sure that he was not alone. It is clear that the grievors did not care about the aircraft. They acted in a cavalier fashion and certainly not as expected from traffic controllers. Safety depends upon the controllers doing their job. They have no business in defying management and entering politics. The grievors only cared for their own goals and they wanted to support their PATCO brothers in the USA and their CATCA brothers in Canada. There was no evidence of accidents or critical incidents. It is true that the situation was not normal as inexperienced US controllers were on duty in the USA. The role of CATCA, however, was not to usurp the role of management. Otherwise, this could lead to anarchy. The problems were well set out in the testimonies of Graham, Campbell and Bell. There was a deterioration of the air traffic system but the grievors failed to do their job. AC731 was left to itself. Batchelor and Gauthier knew what was going on and

they were happy to continue their role. They probably did not want a crash but they should have known that their behaviour could not be tolerated.

Reasin's actions were, however, somewhat different. The letter of discipline, exhibit E-1, is self-explanatory. The most serious incident involving Reasin is Racer 22. If it were not for Racer 22, a short term suspension might have been appropriate. The evidence is clear with regard to his comments. He said: "Be careful now, the US space is unsafe", etc. Such comments were unwarranted and only made to antagonize and upset and to serve the purposes of CATCA and perhaps PATCO. Reasin was a union steward and his union motivation is clearly established. Sparky (Reasin) says that something is coming up, that they better do something, that they know what they have to do, that he is not going to work, etc. The comments clearly show Reasin's attitude. Reasin did not care, although he was bound by the highest duties, by a position of the utmost trust. Reasin was concerned about CATCA being treated like PATCO. Reasin was not concerned about safety. Reference is made to exhibit E-4d. It is obvious that Reasin is not answering Minnesota because he does not want to. Reasin was engaged in the same industrial action on the 6th. Reference is made to page 4 when Reasin says that he can hardly hear. This is an excuse. Reasin had to find an excuse. It is possible that the US controller violated the intersector agreement but this is immaterial. Reasin is nonchalant and cavalier. Reasin is simply not credible. The Racer 22 incident is an example of his disregard to the solemn duty entrusted to him and he ought to be discharged.

The other incidents are also serious. There was definitely a common understanding in Canada that controllers should not cooperate with US controllers and this is brotherhood. The grievors destroyed the

integrity of the air traffic services for behaving as they did. One should not be misled by the grievors' rationalization. There are here ample grounds for discharge.

Are there mitigating factors warranting disturbance of the penalty? The records indicate that the grievors had respectively 10, 13 and 22 years of more or less unblemished conduct. Batchelor in particular has 22 years of exemplary service. It is shocking that Batchelor should have put his job on the line. Sometimes, however, long service can work against an employee as it was said in Swan (166-2-3579). Long service is a knife with two edges. The nature of the job of air controller has been summed up in a publication of CATCA as follows: "Each and every controller has a responsibility towards the pilot, his passengers and the public." Not many air traffic controllers have been discharged in the past. There would be only two, Warner (166-2-8412) and Liske (166-2-8153 and 8405 to 8408). A mitigating factor would exist if the incident would have been isolated. This is not the case here. Concerning the rehabilitation potential, the Department of Transport thinks that the grievors are unworthy and the deterrent effect has to be given some weight.

Concerning the question of disparity of or unequal treatment, the grievors were not singled out at random. Their situation was unique in the Ontario region. Other controllers in Ontario did not obstruct airborne traffic. It is only now that we know of similar situations elsewhere in Canada. It is obvious that in other provinces the instructions issued by headquarters were not appreciated. At any rate, the rule does not apply here as if we were dealing with a small company (see Langstaff (166-2-10028)). Discipline in the present case was taken against about 200 employees. We do not know exactly what happened in all these cases. It could be that the technical opinion was wrong. It

could be that some employees got off too lightly. The employer should not be bound by the lowest denominator. Can it be said that because one manager took a different stand, the decision in the present matter is wrong? Disparity of treatment has to be viewed differently in the public service and a greater allowance has to be made. The grievances should be dismissed.

Counsel for the Grievors

Was this a sympathy strike? There is no evidence in that regard. It was not a labour problem but rather a safety problem. The American air controllers went on strike and we know what happened. The evidence is clear that the Canadian air controllers became increasingly distressed by what was happening. Every Canadian air controller was concerned and not solely the three grievors. The answer of management was simply: "Write it down". The grievors reported to the employer that there was a safety problem. The employer replied "this is sympathy, we will investigate the problem later". The log shows that the problem was serious. Management nevertheless decided that it was a ploy by CATCA to support another union. Mr. Campbell said that up to August 6, the Canadian air controllers had reason to believe that the safety of the system was compromised. Management however never said it openly. The Canadian air controllers were simply told to stay at the job and report. If the neighbours' house is on fire, is it sufficient to stay in your own house and simply report? The air controllers were obviously trying to protect the people.

Some air controllers reported sick when some others would not work overtime. The grievors tried, however, to stay on the job. There was a crisis of conscience. The inferior at one point may have to say that he cannot go further. The grievors had a conscience and they tried

to do the best in the circumstances and they did not do worse than the others, although they may have made errors. Assurance was given to air controllers in New Brunswick that they would entail no responsibility personally. The same assurance was not given to the air controllers in Ontario.

On August 6, Reasin had already had problems and he found that the situation was deteriorating. CATCA is a professional association and a meeting place for improvement of the profession. CATCA did speak to management. Concerning Racer 22, Reasin made a note about the air controller in Minnesota. Reasin was the one, however, who was investigated. Concerning the conversation in E-4d at page 1, it is definitely a continuation of a conversation. The air controller is on the radio but we do not know what was said before. Perhaps it was not hearable. Constantly people are saying: "I can't hear you". All accusations of the employer are speculations because Reasin was a member of CATCA. Why did Reasin pick up this flight if he was to disturb it? There is nothing in this regard to contradict Reasin. He became aware of the flight when he saw the light. Reasin knew the procedures and there was no need to take it down himself. Reasin is courteous and helpful and there was no risk to anyone. Counsel for the employer has referred to Reasin as being nonchalant. Is this sufficient for discharge? August 6 and 7 were difficult days for Reasin. On August 8, Reasin reached his crisis of conscience and he went to his employer as he felt that he could not carry on with his duties. Reasin was put on Canadian airspace and when talking he simply said that he was not dealing with Americans. There is no suggestion that he had refused any calls from the U.S. air. There was no premeditation on the part of Reasin. A memorandum was filed, he was sent home, he thought the matter over, he came back and he said eventually that he had reached a personal

decision and that he could handle American traffic. Where is the concerted action? Reasin worked until a few days before Christmas when he was sent home and fired shortly after. There is no suggestion that the employer had lost confidence in him as otherwise he would not have been allowed to continue to work. Blood simply had to flow and Reasin was there. It cannot be said that safety was compromised.

Concerning August 10, there is a new set of players. Other controllers were agonizing. Gauthier was trying to resolve his problem with his seniors and he was told to write any incident in the log. He continued to work until the morning of the 10th. By then, he and Bachelor had not seen Robertson's memorandum. They concluded that they would still attend to perform their functions until they came to work. They then faced a management team which was also under pressure. There was no doubt a heavy strain on management. The net result was a fiasco. Everybody had problems difficult to resolve. This did not justify the conduct of the grievors but it explains it. There was provocation. It was a unique situation. Gauthier said so and he was involved in several interviews. Exhibit E-25 sets out people in the same position across the country. The affidavit signed by Mr. Bell at pages 93 and 94 of E-25 is self-explanatory. The grievors were trying to make points not for public relations but for public safety.

Concerning flight AC731, there was a complaint on the part of Captain Wilding. The employer knew of the short clearance in Montreal. In Toronto, the situation was tense. Toronto simply asked the question as to what was happening in Montreal. On AC731, Gauthier simply said to Montreal what he had told his employer. He did not know at the time that the aircraft was airborne. No one said to Gauthier that the aircraft was in the air. Gauthier was at that point emotionally upset.

He may have been wrong but he thought that he was right. His act of insubordination, if it was insubordination, is not greater than the acts of others who got only one day of suspension.

Bachelor was unaware of what Gauthier had said and he declared that he would take the aircraft. He did not impede its flight. He accepted the flight to the point that it had been cleared already. He did what other controllers had done before him. He did not deal differently with the aircraft. Everyone including Graham agrees that the flight was safe. In AC800, Montreal issued a short clearance and Toronto passed it on. On flight 608, clearance was to Kingston and there was no impairment of safety in any case. The experts never said that there was an impairment of safety. The grievors honestly believed that safety was involved and they discussed it regularly with the employer. The employer was saying to the employees to do their job but it never said that their views were unfounded. In fact their views were founded. The grievors simply came to the conclusion that they had gone far enough and they demonstrated their good faith in returning to work. The grievors had nothing to gain personally.

Concerning Racer 22, there is a note on the log book but it never got to the investigating committee. White is the one who failed to answer a number of calls, in fact many more calls than Reasin. White is also the one who carried on an unauthorized conversation with aircraft. Regarding flight 731, the short clearance was given by Montreal. With regards to Torontair 800, the air controllers in Montreal gave the short clearance while the aircraft was in the air. There was, however, no investigation in Montreal. With regard to Eastern 173, once more the air controller in Montreal is the one who refused to deal with it. Yet he only had a suspension of one day. The employer knew all along of the actions on the part of the air

controllers across the country as shown by the affidavits in the Federal Court and the transcript which was available. The employer attempted to make sure that there would be equality of treatment by issuing instructions on September 29. Mr. Allen clearly understood that it was a national situation. In Winnipeg, reports were filed on what was thought to be more than a single refusal to carry instructions. These cases were referred to technical branch and categories were established. Categories were good enough for Winnipeg but not for Ontario and in particular Toronto. Toronto obviously did not take into account what was going on in other provinces. Mr. Bell said that he passed on Mr. Campbell's recommendations. But we know that Mr. Campbell did not make such recommendations. The decisions in Liske (166-2-8153 and 8405 to 8408) are worth reading. For having mislead an aircraft, an employee had a suspension of five days. The discharge penalty in each case was totally inappropriate and it should be directed that the grievors return immediately to their former sector.

REASONS FOR DECISION

These cases refer to the discharge of three Toronto air traffic controllers for various acts of misconduct which allegedly took place in August 1981.

Frank Gauthier and John Bachelor were told in the letters of discipline addressed to them (E-3 and E-2) that on August 10, they failed to perform their duties as required, contributed to a needlessly complicated and unsafe situation by denying proper air traffic control service to an aircraft in flight and were insubordinate.

In the letter of discipline addressed to him (E-1), Cecil Reasin is being blamed for actions on three different dates. He is said to have failed on August 6 to perform his duties as required, to have

contributed to a needlessly complicated and unsafe situation by failing to provide proper air traffic control services to an aircraft in flight and to have used departmental communications facilities in an unauthorized manner. He is said to have made on August 7 unauthorized and improper transmission to an aircraft in flight and to another controller. He is said finally to have been on August 8 insubordinate in refusing to perform normal duties.

The situation which prevailed in the U.S.A. at the time is of common knowledge and should be mentioned. On August 3, about 13,500 air traffic controllers, members of the Professional Air Traffic Controllers Organization (PATCO) began an illegal strike. The time was 7 a.m. At about 11 a.m., on the same day, President Ronald Reagan gave the striking controllers an ultimatum which was to return to work within 48 hours or be fired. The regularly scheduled flights were immediately reduced and the United States government imposed a 25% cut in commercial flights designed to reduce peak traffic at air towers. Approximately 11,500 PATCO members were eventually fired for not respecting the back to work ultimatum. The evidence shows that between August 6 and August 12, at least 200 of the 2200 members of the Canadian Air Traffic Controllers Association (CATCA) refused to fly air traffic in and out of the United States airspace. On August 12, a joint government union fact finding team was established.

On or about August 11, a motion was filed in the Federal Court of Canada by Her Majesty the Queen and the Attorney General of Canada, seeking an order requiring a number of air traffic controllers to show cause why they should not be held in contempt of court for their refusals to handle air traffic in and out of the United States in contravention of an interlocutory injunction granted by Walsh J. bearing

number T-4640-80 of the Federal Court (see E-25) and dated October 9, 1980. In its decision of September 16, 1981, the Federal Court (Jerome J.) refused to issue the order as requested as there had been no display of an attitude of contempt but it ruled in part as follows:

The actions of Canadian Air Traffic Controllers in refusing to process U.S. air traffic on the basis of safety considerations may have been beyond their authority and may very well have rendered them liable to internal disciplinary measures. They may even fall within the above description of what is included in a strike, but if they do, it is, in my opinion, only in the extreme technical sense of those words. (page 9)

The above decision has been appealed to the Federal Court of Appeal and I understand that the case is still under consideration.

It seems to me that to reach a decision in the present case, the following questions have to be answered:

1. Was there an act of insubordination on the part of the grievors?
2. If so, is there any defence to the charge of insubordination? In particular, is the safety of the public or of others a reasonable defence?
3. If there was insubordination, was discharge the appropriate penalty?

Was there an act of insubordination on the part of the grievors?

The answer is yes.

Each grievor was handed on August 10 a copy of two documents being respectively E-7 and E-8 and reading as follows:

IN VIEW OF THE STATEMENT MADE LAST EVENING BY WILLIAM ROBERTSON, PRESIDENT OF CATCA, WHICH INSTRUCTED ALL CATCA MEMBERS TO REFUSE TO HANDLE ALL U.S. TRAFFIC AS OF 7 A.M. AUGUST 10th, IT HAS NOW BECOME NECESSARY FOR THE DEPARTMENT OF TRANSPORT TO ADOPT THE FOLLOWING POSITIONS.

1. ALL CONTROLLERS ARE EXPECTED TO PERFORM THE FULL RANGE OF THEIR DUTIES WITHIN AIRSPACE UNDER CANADIAN JURISDICTION.
2. IN THE DEPARTMENT'S VIEW, MR. ROBERTSON'S STATEMENT COUNSELS CONTROLLERS TO VIOLATE THE EXISTING FEDERAL COURT INJUNCTION WHICH PROHIBITS ANY RESTRICTION OR LIMITING OF OUTPUT BY ANY CONTROLLER. VIOLATION OF THE INJUNCTION MAKES A CONTROLLER SUBJECT TO CONTEMPT OF COURT CHARGES AND THUS LIABLE TO A FINE UP TO \$5,000 AND/OR UP TO A YEAR IN JAIL FOR EACH OFFENCE.

END PART 1

3. IN THE DEPARTMENT'S VIEW, MR. ROBERTSON'S STATEMENT COUNSELS CONTROLLERS TO PARTICIPATE IN AN UNLAWFUL WORK STOPPAGE AND ANY CONTROLLERS WHO PARTICIPATE IN SUCH AN UNLAWFUL WORK STOPPAGE ARE LIABLE TO THE SANCTIONS PROVIDED FOR IN THE PUBLIC SERVICE STAFF RELATIONS ACT AND/OR DISCIPLINARY ACTION.

4. SHOULD CONTROLLERS FOLLOW
MR. ROBERTSON'S INSTRUCTIONS, IT WILL
CREATE AN EXTREMELY SERIOUS SITUATION
INVOLVING THE DEPARTMENT AND OUR
GOVERNMENT IN A LABOUR DISPUTE TAKING
PLACE IN ANOTHER COUNTRY.

END 2 PARTS

P J PROULX

DIRECTOR, AIR TRAFFIC SERVICES, DPR/X,
OTTAWA. (E-7)

IAE127 TBE028TDE015 TFE103 THE101 TIE015
TKE100 TLE138 100800
JJ CYZZLY KDCAYN
100758 CYHQYN
810494 NOTAMN CYHQ OPS
ATS CONTINGENCY NO. 7 CANADA/USA

THE CANADIAN AIR TRAFFIC CONTROLLERS
ASSOCIATION (CATCA) HAS ADVISED ITS
MEMBERS TO REFUSE TO HANDLE AIR TRAFFIC
PROCEEDING TO OR FROM THE UNITED STATES
WHILE WITHIN CANADIAN CONTROLLED AIRSPACE
EFFECTIVE 1100 GMT 10 AUG 81

TRANSPORT CANADA HAS ADVISED THE
CONTROLLERS THAT FAILURE TO PERFORM ALL
OF THEIR NORMAL DUTIES WHICH INCLUDES THE
HANDLING OF AIR TRAFFIC TO OR FROM THE
UNITED STATES WILL RESULT IN DISCIPLINARY
AND LEGAL ACTIONS BEING TAKEN BY THE
DEPARTMENT AGAINST ANY OFFENDERS

AIR CARRIERS ARE ADVISED THAT SOME DELAYS
MAY OCCUR AS A RESULT OF ANY ILLEGAL
ACTIONS THAT MAY BE TAKEN BY SOME
CONTROLLERS

IN ADDITION WE ARE INVESTIGATING THE
VALIDITY OF INCIDENTS CLAIMED TO HAVE
COMPROMISED THE SAFETY OF FLIGHTS
OPERATING BETWEEN CANADIAN AND U.S.
CONTROLLED AIRSPACE

AIRCRAFT OPERATORS KNOWING OF SUCH INCIDENTS WHICH MAY HAVE OCCURRED SINCE AUG 01, 81 ARE REQUESTED TO ADVISE DGCA OTTAWA TELEX 053-3130 ON AN URGENT BASIS

AIRCRAFT OPERATORS ARE ADVISED TO MONITOR CLASS 1 NOTAM FOR FURTHER INFORMATION (E-8)

Even without the reinforcement of exhibits E-7 and E-8, I believe the grievors knew that they were expected to clear traffic in and out of the U.S. without deviations in procedure. John Batchelor admitted in his testimony that his normal procedure in handling T0608 would have been to contact the Boston controller with the flight. Given the atmosphere of tension in the Toronto Air Control Centre during the time of the PATCO strike, as attested to by several witnesses, I feel that everyone working there must have been especially alerted as to what was and what was not expected air traffic control procedure.

The three grievors admitted having been asked personally if they were going to work normally. They admitted having said no. Each of them testified that despite having had various requests, they had no intention of handling U.S. traffic. Each of them also knew and was advised that he would open himself to disciplinary action. Cecil Reasin (known as Sparky) also stated openly in a conversation of August 8 with a Montreal air controller that he did not intend to clear traffic. This conversation is self-explanatory:

20:21:37	MONTREAL	WHO'S THIS
	TORONTO	SPARKY
:38	MONTREAL	OH MY GOD, COMMENT CA VA?
:39	TORONTO	HOW ARE YA, PRETTY GOOD, YOURSELF?
:40	MONTREAL	OH PRETTY GOOD, I'LL SURVIVE
:42	TORONTO	HEY WHAT'S GOING ON DOWN THERE, IS ANY SUPPORT GOING ON FOR ...

:44 MONTREAL AH, IT'S STARTING TO BOIL OVER
NOW, THERE'S SOMETHING UNDER
THE MILL YOU KNOW ITS LOOKS
LIKE, SOMETHINGS GOING TO COME
UP SHORTLY

:53 TORONTO YOU'D BETTER DO SOMETHING BERNIE
MONTREAL I KNOW, I KNOW, WE'RE NEXT

:57 TORONTO I KNOW THAT, WELL HALF THE GUYS
HERE SAID THEY WOULDN'T WORK
THERE, BELL'S COMING OUT NOW TO
FIGURE OUT WHAT'S GOING ON,
I'VE PUT IN MY LETTER, I AIN'T
GONNA WORK THEM, THAT'S IT,
GOING INTO THE STATES OR COMING
OUT OF THE STATES I WON'T KEEP
... I WON'T EVEN ANSWER THE
LINE ... I'M NOT TALKING TO THE
STATES ANYMORE (GARBLED) THAT'S
IT.

20:22:11 MONTREAL THAT'S IT

20:22:12 TORONTO BALL GAME AND YOU CAN TELL
EVERYBODY IN MONTREAL THAT
WE'RE EH, THERE'S OVER FIFTY
PERCENT OF THE GUYS HERE
TONIGHT THAT AREN'T WORKING
FLIGHTS INTO THE STATES.

20:22:19 MONTREAL I SEE: OK
(E-39, page 2)

Cecil Reasin confirmed his decision not to work normally in writing on the same day (See E-22).

I do not propose here to ask myself if it was unsafe and dangerous at the time to allow aircraft in and out of the U.S.A. There is no necessity to do so, although there is no doubt that since safety was involved, insubordination was more serious.

Is there any defence to the charge of insubordination? In particular, is the safety of the public or of others a reasonable defence?

In Canadian Labour Arbitration, Brown and Beatty refer to a general principle which is as follows:

As a general proposition, employees who dispute the propriety of an employer's orders should, subject to the considerations which follow, carry out those orders and only subsequently, through the grievance procedure, challenge their propriety. (page 343)

Christie states in Employment Law in Canada:

The implied obligation on the part of employees to obey the lawful orders of their employer within the scope of their employment is a natural and necessary extension of the implied obligation to work. "Work" consists in complying with the employer's directions. There is no doubt that, as a matter of express contractual obligation, an employee is obliged to comply with rules unilaterally established by the employer, either in writing or verbally, at the time the employee is hired. (page 274)

There are in the above excerpts a number of cases referred to where it was held that an employer may not order the employee to do work that is dangerous to his health and safety. To succeed with his defence, the employee then has the obligation to prove that he honestly believed that his health or well-being was endangered. I refer in this regard to Steel Company of Canada Ltd. (1973) 4 LAC (2nd) 315. I could not find in Canada any precedent to the effect that the exception also applied if the safety of others was involved. Such an exception exists however in the U.S.A., as mentioned in How Arbitration Works by Elkouri and Elkouri, at page 671. I must say that even if I were to recognize

the admissibility of the exception, I would not be prepared to say that it can be applied successfully in the present case as I am not convinced that the grievors honestly believed that the safety of others was in jeopardy. The grievors in my opinion aggravated the situation by acting as they did instead of going out of their way to help incoming and outgoing traffic. The only defence in this case to the charge of insubordination is safety of the public or of others but for the above reasons, this defence must fail.

Was discharge the appropriate penalty?

In his testimony, Mr. Allen who is Director of Employee Relations at Transport Canada stated that about 200 air controllers, members of CATCA, refused to fly air traffic in and out of the United States air space. All of them were disciplined and received suspensions of 1 to 15 days, excepting the three grievors who were discharged. Mr. Allen admitted openly that as soon as the incidents took place, he had in mind to ensure consistency of disciplinary measures across the country. He added further that if the action involved a technical assessment, his intention was to rely on a technical specialist.

Counsel for the grievors argued that the discharge penalty against each of the grievors was totally inappropriate and that the principle of equality of treatment was not respected.

Peter Westen has defined the word "equality" as follows in an article entitled "The Empty Idea of Equality", Harvard Law Review, volume 95, #3, January 1982:

By "equality" I mean the proposition in law and morals that "people who are alike should be treated alike" and its

correlative that, "people who are
unlike should be treated unlike"
(pages 539 to 540)

In Canadian Labour Arbitration, Brown and Beatty report that:

Arbitrators have generally been sensitive to the basic principle that similar cases must be treated in a like fashion, which simply reflects a universal precept of fairness and justice. Accordingly, in assessing the reasonableness of a sanction imposed on an employee, arbitrators have regarded the penalties imposed by the employer in similar circumstances in the past as tending to reveal the actual concern that management has for such behaviour. Accordingly, when an employee is able to prove that other employees who engaged in the same conduct for which he was disciplined were either not disciplined at all, or suffered much less severe disciplinary sanctions, arbitrators generally will find the employer to have discriminated against that employee even though it may be established that the employer did not act in bad faith or did not intend to discriminate against him personally. To the contrary, in the former circumstances arbitrators would likely completely exonerate the employee of any wrongdoing, while in the latter, the penalty imposed would be reduced to conform to that which was or had been traditionally imposed in the past. However, it is obvious that the principle demanding equality of treatment is only applicable where it can be shown that the material circumstances of the grievor's case

substantially conform to the
circumstances of those who were treated
more leniently.

(pages 378 to 380)

The three grievors are blamed for having failed to perform their duties as required, for having contributed to a needlessly complicated and unsafe situation by denying proper air traffic control service to an aircraft in flight and for having been insubordinate. Cecil Reasin is also blamed for having made unauthorized and improper transmission to an aircraft in flight and to another controller.

I have heard the testimonies of a number of other air controllers who, in August 1981, acted in my opinion similarly to the grievors and yet received only minor suspensions. I will refer to three of these controllers. Ralph Johnson worked at the Winnipeg Airport. He denied clearance to three air-borne flights from London. Later on he recleared the flights. He was asked the next day if he would resume his regular duties. He flatly refused to clear aircraft across the border. He was suspended for 2 days. Steve Hall is an air controller in Edmonton and he refused to clear an aircraft in flight, in the presence of his supervisor. He also argued with the pilot. He stated then that he was not clearing any aircraft to the U.S.A. He was given a 1 day suspension. Garry Davey operated at the Vancouver Airport and he refused to clear an aircraft flying from Oakland to Anchorage. He also said that he was not prepared to handle U.S. traffic. He furthermore told pilots that U.S. airspace was unsafe. He was suspended for the remainder of his shift and he also had a 1 day suspension.

The affidavits contained in exhibit E-25 refer to other cases involving acts of misconduct for which the other air controllers received only short term suspensions.

Mr. Allen contends that the grievors had to be treated differently because "they played around with traffic in the air". It would seem from the evidence adduced before me that other controllers acted alike but had only minor suspensions.

It would also appear from the evidence that in Montreal, the maximum penalty for the incidents of August 1981 was a 3 day suspension with a previous record and a 1 day suspension with a clean record. In Gander, the maximum penalty was a 3 day suspension. In Winnipeg, the maximum penalty was 5 days, subsequently reduced to 3 days. In Edmonton, it was 2 days. In Vancouver, it was 3 days. In Toronto, the most severe suspension was 15 days.

It is to be noted that in Winnipeg a technical staff was consulted, whereas, according to Mr. Allen, this was not done in Toronto with regard to the three grievors. This surely is not equality of treatment. In his arguments, counsel for the employer stated that "unfortunately two different teams reviewed the cases". This was an error. The same team should have reviewed all cases to avoid any possible discrimination.

I come to the conclusion that even if the grievors' acts of insubordination were very serious, that their conduct could have had serious consequences, and that as argued by counsel for the employer their behaviour cannot be tolerated, the principle of equality of treatment has not been respected and a short term suspension in line with the disciplinary measures imposed on the other air controllers throughout the country should be substituted for the discharge.

In light of the evidence, the penalty of discharge is reduced to the following penalties: for Frank Gauthier, a 3 day suspension, for John Batchelor, a 3 day suspension and for Cecil Reasin, a 5 day suspension.

I already stated in my decision of August 19, 1982 that the grievors were to be reinstated immediately.

I have taken into consideration the grievors' personal files and the fact that the acts of misconduct of grievor Cecil Reasin were more serious than those of the other two grievors.

I will remain seized of the matter in the event of any difficulty in implementing this award.

For the Board,

J.-Maurice Cantin, Q.C.,
Vice-Chairman.

OTTAWA, November 23, 1982.