

CATCA

Files: 166-2-9787
166-2-9833

CHANGE IN CYCLE

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

BETWEEN:

E.A. GRAHAM,
G.P. ONIEU,

Grievors,

AND:

THE TREASURY BOARD
(Department of Transport),

Employer.

DECISION

Before: Leon Mitchell, Q.C., Deputy Chairman.

For the Grievors: A.C. Fisher and W.J. Robertson.

NOT PRESENT

For the Employer: B.A. MacFarlane.

Heard at Winnipeg, September 3, 1981.

UNILATERAL CHANGE
IN SHIFT CYCLE

JB

May 10/82

ART 13
CODE 402/79

DECISION

1. This is a reference to adjudication of a grievance by each of two air traffic controllers employed in the Winnipeg Area Control Centre, viz., Mr. E.A. Graham and Mr. G.P. Onieu. The grievance of each of these controllers which is in identical language reads as follows:

Staff Memo 80-95-PT assigns me a 5 (days)
on - 2 (days) off, 5 (days) on - 6 (days)
off in contravention of the collective
agreement between the Treasury Board and
the Canadian Air Traffic Controllers
Association Code 402/79.

(The words in parenthesis were added by me.)

2. The corrective action requested by each of the grievors reads as follows:

A declaration by management that my shift
cycle will no longer be changed without my
agreement, (to) reschedule my shift, or pay
the appropriate overtime rate.

(The word in parenthesis was added by me.)

3. All the evidence was adduced by the grievors. The employer called no witness. The facts are not in dispute.

4. On or about October 13, 1980, the employer began a series of training sessions to familiarize air traffic controllers in Winnipeg, Saskatoon, Regina, Kenora, and Thunder Bay with new equipment to be installed in the air traffic control towers at these locations referred to as "C-Jets" equipment. The course included theory and practical training.

5. Memorandum SM-76-46PE (Exhibit G-1) dated August 24, 1976 sets out the decision to implement a "crew system of operation for supervisors and controllers effective September 16, 1976." The shift cycle agreed to by the Association (CATCA) and the employer at that time is set out

in Item 4 of one of the attachments to the aforementioned memo as follows:

As enroute controllers rotate through a complete midnight cycle in 36 days, the shift is drawn on a 36 day cycle.

5 on 4 off
5 on 4 off
5 on 4 off 21 on 15 off in 36 days
5 on 3 off
6 on 4 off

6. By memorandum SM-80-95PT dated November 17, 1980 (Exhibit G-2) the schedule of training for certain controllers, including the grievors, was set out as follows:

Winnipeg Area Control Centre
Subject: C-Jets Training Courses

The following personnel have been scheduled for C-JETS courses:

...

Course 5

Jan 5 - Jan 14	G. Onieu	R. Johnson
	A. Graham	R. Firith
	J. Pischak	G. Noseworthy

7. In order to clarify the actual effect of memorandum SM-80-95PT (Exhibit G-2) the grievors filed a sheet showing the "original shift" which should have been followed to accord with the 1976 agreement between the parties compared to the "revised shift" imposed by the employer during the period January 5 to 22, 1981, which shows the following:

.../3

<u>DATE</u>	<u>ORIGINAL SHIFT</u>	<u>REVISED SHIFT</u>
Jan 5-9	5 days on (duty)	5 days on (duty)
Jan 10	1 day on	1 day off
Jan 11	1 day off	1 day off
Jan 12	1 day off	1 day on
Jan 13	1 day off	1 day on
Jan 14-17	4 days on	4 days on
Jan 18	1 day on	1 day off
Jan 19-22	4 days off	4 days off

8. In sum, the comparison between the shift cycle agreed to and the one imposed is as follows:

<u>AGREED SHIFT CYCLE</u>	<u>IMPOSED SHIFT CYCLE</u>
6 on 3 off	5 on 2 off
5 on 4 off	6 on 5 off

9. The issue is whether the employer had authority to impose the revised shift cycle when there was no agreement between the Association and the employer regarding any revision to the shift cycle agreed upon.

10. To determine that issue one must examine the terms of the collective agreement. The agreement refers to and defines two terms affecting the scheduling of work of controllers, viz., "Shift Cycle" and "Shift Schedule". Under the heading "Definitions" these terms are defined in the agreement as follows:

- (7) "Shift Cycle" means the recurring sequence of an employee's days of work and days of rest.
- (8) "Shift Schedule" means the Employer's advance posting of shifts to be worked by employees within their shift cycle.

11. The grievors contend that what was changed without agreement was the Shift Cycle in that the recurring sequence of the grievors' days of work and days of rest during the period January 5-22, 1981 were unilaterally altered by the employer from 6 on - 3 off, 5 on - 4 off, to 5 on - 2 off, 6 on - 5 off.

12. The employer contends that what was unilaterally changed was the Shift Schedule, i.e., the shifts to be worked within the agreed shift cycle of 21 days on and 15 days off within a 36 day cycle.

13. In my view, the employer's memorandum SM-80-95-PT dated November 17, 1980 unilaterally altered the "Shift Cycle" as defined in the collective agreement because that memorandum changed the agreed "recurring sequence of the employee's days of work and days of rest."

14. The grievances submitted to adjudication allege no complaint regarding the shift schedule by which the employees are assigned by the employer to the day, evening or night shift on a day of work according to the agreed shift cycle.

15. The question to be decided is whether the employer has the right under the terms of the prevailing collective agreement to unilaterally alter the shift cycle.

16. The grievors rely primarily on article 13.02(b) which reads as follows:

(b) Standard Shift Cycle

The parties further agree that it is both appropriate and desirable that in the interests of the employees, shift cycles within which these hours are worked be standardized.

Accordingly, at those air traffic control facilities or portions thereof where through local consultation between management and the Association, a mutually agreed upon shift cycle is now in effect, such cycle will remain in effect for the term of this agreement unless through local consultation between management and the Association, a different shift cycle is agreed to.

As noted above, a shift cycle for the grievors had been agreed upon.

17. Counsel for the employer relied on articles 3.01, 8.02 (a) and (b), 13.03 and 13.05 of the agreement in support of its position that the employer has authority to alter schedules. These articles read as follows:

3.01 The Association recognizes and acknowledges that the Employer has and shall retain the exclusive right and responsibility to manage and operate the Air Traffic Control Service in all respects including, but not limited to, the following:

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

8.02

- (a) The employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction

on equipment and procedures prior to their introduction and refresher training where appropriate.

(b) In addition to the training referred to in 8.02(a), controllers shall be provided refresher training as follows:

(i) IFR Controllers, VFR Controllers, Performance Development Officers, Data Systems Co-ordinators and Shift Supervisors - five (5) working days each year;

(ii) an additional five (5) days of job-related training each year providing staff permits and such training will not require the payment of overtime.

13.03 Shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee with reasonable notice as to the shift he will be covering. The shift as indicated in this schedule shall be the employee's scheduled hours of work. If it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity. If the employee has serious objections to the amendment, the Employer shall make every reasonable effort to accommodate the employee provided that it will not result in any additional overtime payments that would have otherwise been the case if the employee had not been so accommodated.

13.05 Every reasonable effort shall be made by the Employer:

(a) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift;

- (b) not to schedule shifts of less than seven (7) hours' duration;
- (c) to advise employees affected by changes in their shift schedule as soon as practicable.

18. Counsel for the employer referred me to Elkins et al (Board files 166-2-3046 and 3062) dated August 3, 1977 and Corbett et al (Board files 166-2-3698 to 3700) dated August 10, 1978. The Elkins case is not, in my opinion, relevant. In that case adjudicator O'Shea stated inter alia:

The implementation of the standard work cycle is merely for experimentation. Indeed... the right of the Employer to schedule or reschedule shifts which is preserved by Article 3.01, 13.03 and 13.05(c) has been restricted to the extent claimed by the grievors. (p.9)

Nothing in Letter of Understanding No.10/76 or in the Collective Agreement would justify a finding that a shift schedule which forms part of a shift cycle is immutable and is not subject to change. (p.10)

Even though the rescheduled shifts constituted a deviation from the standard shift cycle, there is nothing in the Collective Agreement to prevent such deviation or which would cause the deviation to be considered overtime work. (p.11)

19. In Elkins the adjudicator found that the then relevant agreement between the parties reflected an experiment involving introduction of a standard shift cycle which was to have no effect on the rights of the employer to schedule or reschedule shifts and found nothing in the Letter of Understanding or the collective agreement that would justify a finding that "a shift schedule which forms part of a shift cycle is immutable". Deviations from the shift cycle were not prohibited by the provisions in that agreement.

20. The collective agreement to be interpreted in this case is one dated March 21, 1979 and effective January 1, 1979 to December 31, 1980 (Exhibit G-4). The provisions of the agreement considered by Mr. O'Shea are not the same as the relevant provisions in the current agreement which apply to the case before me. Indeed, in Elkins the words used in article 13.02(b) were not contained in the collective agreement in effect at that time.

21. I shall now address article 3.01. It is similar to the usual management rights provision found in many collective agreements. Such rights are subject to the express and implied obligations contained in other provisions of such agreements including in this case the express provision contained in article 13.02(b). That "such cycle will remain in effect... unless through local consultation between management and the Association a different shift cycle is agreed to".

22. I adopt the following view expressed by the adjudicator in Corbett et al (supra) dated August 10, 1978 regarding the effect of article 3.01 on article 13.02(b).

In brief it ought to be emphasized that it does not follow from the comments made in this award that the employer may safely rely on its management rights under Article 3.01 to schedule, for whatever the reason, its work force in contravention of its commitment under Article 13.02(b). (para 12)

23. Counsel for the employer then referred me to articles 13.03 and 13.05. Articles 13.03 and 13.05, in my view, are irrelevant because they deal with shift schedules rather than shift cycles. The grievances in the instant case involve a unilateral revision of the shift cycle of the grievors by the employer contrary to article 13.02(b).

24. The facts in this case arise out of the changing of the shift cycle of the two grievors for the purpose of providing "adequate training and instruction on equipment and procedures prior to their introduction" as provided in article 8.02(a) rather than the refresher training courses as provided in article 8.02(b) and 8.02(c).

25. It is nevertheless interesting to note for the purpose of interpretation that article 8.02(b)(ii) provides for "additional 5 days of training each year providing staff permits and such training will not require the payment of overtime". It indicates that when the obligation to provide a broad spectrum of training was negotiated the parties addressed the issues of both staff requirement and payment of overtime. On the other hand, the obligation to train controllers on new equipment and procedures as provided in 8.02(a) does not contain any proviso relating to adequacy of staff or payment of overtime.

26. The evidence before me in this case is different in another important respect from what was dealt with in Corbett (supra). In this case Mr. R.M. McFarlane, who was Unit Chief of Winnipeg Area Control Centre when the subject memorandum 80-95-PT dated November 17, 1980 was issued and has been Acting Regional Superintendent of Operations since May 14, 1981, testified that the shift cycle was changed to avoid "considerable overtime costs". Indeed, Mr. McFarlane conceded that it would have been possible to arrange the attendance of the controllers without revising the shift cycle. The question to be decided in this case is therefore simply whether the agreement contemplates that the employer may change the shift cycle of the grievors to avoid payment of "considerable overtime" when arranging "adequate training and instruction on equipment and procedures prior to their introduction" as set out in article 8.02(a).

27. The grievors as stated contend that Article 13.02(b) deprives the employer of the authority to alter a shift cycle because it provides that where "a mutually agreed upon shift cycle is now in effect, such cycle will remain in effect for the term of this agreement unless through local consultation between management and the Association, a different shift cycle is agreed to". These words are clear and capable of only one interpretation namely that during the term of the agreement the shift cycle can be changed only by agreement of the parties.

28. The employer, however, submits that the adjudicator in Corbett held otherwise. In that case the adjudicator held that where the agreement imposes conflicting or competing obligations namely, to adhere to a mutually agreed upon shift cycle on the one hand, and to provide mandatory refresher training on the other hand and if these competing obligations cannot be arranged without "difficulties in the scheduling of the training courses (then it should be presumed that) there was an implicit attempt by the parties to exempt such disruptions from the grievor's shift cycle." (The words in parenthesis were added by me). In Corbett the adjudicator found that the disruption in the shift cycle "was necessitated by the demands made of the employer in the arranging of the grievor's annual refresher training course." Refresher training courses are dealt with in articles 8.02(b) and 8.02(c).

29. However, in the case before me the evidence is that it would have been possible to arrange attendance by the controllers at the C-JETS training course without changing the shift cycle but it would have resulted in considerable overtime costs. In the instant case, the difficulty did not relate to scheduling the training but rather to avoid overtime costs. That was not the evidence in Corbett. Furthermore, it is evident that the parties addressed the issue of overtime costs related to training in article 8.02(b)(ii) which reads:

In addition to the training referred to in 8.02(a), controllers shall be provided refresher training as follows:

...

- (ii) an additional five (5) days of job-related training each year providing staff permits and such training will not require the payment of overtime.

30. It is clear then that the parties addressed directly the issue of overtime arising out of the obligation to provide training each year by providing that no additional five days of training would be provided if it required payment of overtime.

31. I am, therefore, unable to conclude that "there was an implicit attempt by the parties to exempt (such) disruptions from the grievors' shift cycle" by reason of resulting overtime costs.

32. Counsel for the employer relied on two main arguments. Firstly, that what was altered in this case was the shift schedule and not the shift cycle. I have already found as a fact that the contrary is the case. Secondly, he relied on Corbett et al (supra) and particularly, the following comments made by the adjudicator:

In brief the standards set by the shift cycle are not carved in stone and adjustments thereto may occur in the scheduling of work where bona fide reasons exist particularly having regard to the employer's obligations to meet other commitments negotiated by the parties. (para 8)

I am of the view that the new provisions introduced into the agreement have not altered the priority recognized by the parties in extending refresher training courses in accordance with the time periods determined in Article 8.02(b) and (c).

And when such time periods are scheduled the parties must surely have anticipated difficulties would arise that could disrupt the standards established by an employee's shift cycle. (para 9)

33. In my view, the "shift cycle" established pursuant to article 13.02(b) is analogous to terms in most collective agreements involving non-shift workers which provide for a work week of Monday to Friday and establish Saturday and Sunday as the days of rest in each seven day work period. Such provisions may not be carved in stone but where the parties use words which reflect an unequivocal agreement to adhere to a specific number of consecutive days of work and a number of consecutive days of rest in each seven day period, I am not aware of any decision which held that either party may unilaterally alter such an agreement for any reason whatsoever. This does not mean that the employer may not require an employee to work on either Saturday or Sunday or on both days but if it does so then such work is deemed to be work performed during a day of rest. I am not aware of any decision in which it was held that the employer had authority to unilaterally alter a mutually agreed upon shift cycle, e.g., a 5 days on - 2 days off work week to a 6 days on - 1 day off work week and a 4 days on - 3 days off work week the following week. In short, where the words of an agreement clearly impose an obligation neither party may unilaterally impose an alteration to what was agreed to on the ground that to fulfil the obligation would involve additional cost.

34. I find that the words used in article 13.02(b) are clear and unequivocal and capable of only one meaning, viz., that the shift cycles agreed to by the parties cannot be altered in order to save overtime costs except by agreement between management and the Association. The parties agree that management in this case unilaterally altered the shift cycle in order to avoid overtime costs. Management has

no authority under this agreement to do so without prior agreement of the Association in my opinion.

35. In the case before me the issue involved the employer's duty to train controllers on new C-JETS equipment which is intended to become operational at some future date and therefore article 8.02(a) is the governing provision. That article reads as follows:

- (a) The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction on equipment and procedures prior to their introduction and refresher training where appropriate.

36. The evidence adduced in the instant case is that it would have been possible to arrange the attendance of the controllers to take the C-JETS training course without altering the shift cycle but considerable overtime costs would have resulted. The question in these circumstances then is whether article 8.02(a) is to be interpreted as permitting the employer to unilaterally alter its commitment and obligation to adhere to an agreed upon shift cycle in order to avoid or minimize unspecified "considerable overtime costs". In Corbett it was decided that in circumstances where the agreement imposed two competing obligations namely, the duty to provide training and the duty to adhere to a shift cycle and these obligations could not be accommodated simultaneously, then the duty to provide training was held to be a paramount obligation. Those are not the facts in this case.

37. As already stated, the parties addressed the issue of overtime costs in relation to the obligation to provide annual refresher training and agreed that the additional five days of job related annual training

will not be provided as contemplated in article 8.02(b)(ii) if payment of overtime is required. If the parties had intended that the same or similar consideration regarding the overtime costs shall apply to training pursuant to article 8.02(a) they would have said so.

38. It will be noted that the evidence before me clearly distinguishes the instant case from that of Corbett. It does not necessarily follow that I would have followed the ratio relied on in Corbett. However, I consider it unnecessary to address that issue.

39. For all the above reasons, I find that the employer had no authority to alter the shift cycle of the grievors in the circumstances of the case before me. The corrective action requested in the grievances submitted reads:

A declaration by management that my shift cycle will no longer be changed without my agreement, reschedule my shift or pay the appropriate overtime rate.

During the hearing the grievors' representative confirmed that no redress other than a declaration was being requested. No other redress is awarded.

For the Board,

Leon Mitchell, Q.C.,
Deputy Chairman.

OTTAWA, March 24, 1982.

