

Catherine MacLean

No. 1

Files: 166-2-10475 to
166-2-10489

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

BETWEEN:

ALLEYNE, G.N. and fourteen others,

grievors,

AND:

TREASURY BOARD
(Department of Transport),

employer.

DECISION

*for ART 7
CODE 402/19*

Before: S.J. Frankel, Board Member and Adjudicator.

For the Grievors: Catherine H. MacLean, Counsel.

For the Employer: Marguerite-Marie Galipeau, Counsel.

3 DAY SUSPENSIONS

*JS
8/3/83*

Heard at Montreal, July 19, 20, 21, 1982 and October 13, 14 and 15, 1982.

*After grievances from Donald Isaac concerning
3 day suspensions for alleged insubordination
adjudicator found that the Employer had proven
insubordination and saw no reason to disturb
penalties
Grievances dismissed.*

DECISION

1. This is a series of references to adjudication pursuant to paragraph 91(1)(b) of the Public Service Staff Relations Act. It entails the individual grievances of fifteen employees of Transport Canada who were, at the material time, performing the duties of Air Traffic Controllers in the control tower at Dorval Airport. The disciplinary penalties which gave rise to these grievances were for alleged acts of misconduct by the several grievors on some or all of the days of October 3, 4 and 5, 1980. Suspensions were assessed against the grievors as follows (Exhibits E-1 to E-5):

<u>Name</u>	<u>Classification</u>	<u>Number of Days</u>
G.N. Alleyne	AI-3	3
G. Asselin	AI-3	1
G. Bolduc	AI-3	3
D. Dubrule	AI-3	1
C. Durocher	AI-4	1
R. Durocher	AI-3	3
K. Fox	AI-2	3
C. Garayt	AI-3	3
C. Gingras	AI-3	3
A. Larose	AI-3	1
G. Simard	AI-3	3
B. Sturrock	AI-3	3
R. Taylor	AI-3	1
D. Therien	AI-3	3
P. Tuppert	AI-3	3

The corrective action requested by the grievors is that they be compensated for their scheduled shifts between October 3 and 5, 1980 when they reported for work but were not permitted to assume their duties, and that they be fully reinstated in respect of the suspensions imposed on them for their alleged misconduct on any or all of these days.

2. It was agreed by the parties at the outset of the hearing that evidence would be adduced and submissions made only in respect of the grievances of Claude Durocher, Claire Gingras, Denis Dubrule and Kathleen Fox. The disposition by the Board of the grievance of Claude Durocher will apply to all the other grievances involving a suspension of one day and that of Claire Gingras will apply to all the grievances involving a suspension of three days, except that the grievances of Dubrule and Fox will be dealt with on their own merits taking into account common factors and special circumstances.

3. Although it may not go directly to the merits of the case at hand, the evidence regarding the operations of the Dorval Control Tower between April and October 1980, provides a background against which the alleged misconduct of the grievors may be seen in sharper focus. What follows is a layman's summary of the somewhat technical evidence adduced by both counsel in the course of this proceeding.

4. The positive control zone that is the responsibility of the Dorval Control Tower is a "cylinder" of space which extends for a radius of 11 nautical miles from the tower and up to a height of 3000 feet. The tower's control functions apply to all aircraft flying under Visual Flight Rules (VFR) as soon as they enter or until they leave its control zone, as well as to aircraft under Instrument Flight Rules (IFR) as they enter the control zone in order to land at Dorval Airport, or as they take off from their runways and until they leave the zone. The control of VFR aircraft is a direct responsibility of the tower, whereas the control of IFR aircraft in the Tower's control zone involves communication and coordination between the tower and the Terminal Control Unit (TCU) in the Air Control Center (ACC).

5. Prior to the implementation of full bilingualism in Air Traffic Control from the Dorval Air Traffic Control Tower, the tower operation comprised a "control position" for all VFR flights in the zone and a "coordinator position" which involved communication with the TCU and the IFR aircraft entering or leaving the control zone - essentially for landing or take-off. In anticipation of the official implementation of bilingualism on April 1, 1980, Mr. Serge Cormier, Chief of the Dorval Tower, was directed to "implement" a second control position in the tower. This was apparently in keeping with a recommendation in the "Report of the Commission of Inquiry into Bilingualism in Air Traffic Services in Quebec" (Chouinard Report). The implementation of the second control position was accompanied by a rearrangement of the Air Space encompassed in the Dorval positive control zone, and the resulting pattern of air traffic control became known as the "Tower I - Tower II concept". The Tower I control position was given responsibility for all VFR aircraft within a radius of five miles and a height of 1500 feet, as well as for all IFR aircraft on their approach to or take-off from the airport extending to the outer limits of the control zone (i.e. a radius of 11 miles). The Tower II control position was given responsibility for VFR flights only in that part of the control zone that had not been assigned to the Tower I position.

6. The implementation of this concept was scheduled for early February 1980. Implementation was delayed, however, following representations made by the controllers working the Dorval Control Tower urging its postponement pending the acquisition of additional equipment and the development of appropriate training procedures. After some further study, the management directed the implementation of the Tower I - Tower II concept towards the end of March 1980 - just before full bilingual air traffic control went into effect on April 1. During the ensuing months the controllers continued to

make representations. They endorsed the Tower I - Tower II concept, but continued to express their concern about the adequacy of training procedures and the need for a coordinator position along with the equipment for the effective performance of the coordination function and the Tower I control position. This concern was also expressed in a submission to the "Commission of Inquiry into Aviation Safety" (the Dubin Commission) which was dated July 4, 1980 and was signed by 24 of the controllers employed at the Dorval Control Tower.

7. Transport Canada Headquarters undertook an evaluation of the Dorval control tower situation at the end of July 1980. The recommendations that flowed from that evaluation (Kelly-Parker Report, Exhibit G-17) included one for the staffing of a coordinator position "during periods when the IFR workload becomes complex with arrivals and departures from the present position occupied by the Tower I position". It was also proposed that during these periods the Tower I position "be manned from the portable transceiver..." This was qualified by the observation that "radio communications equipment be acquired to meet the staffing of a coordinator if approval is not obtained to operate from Tower I from the portable transceiver". On August 13, the Acting Chief (F. Frenette) of the Dorval Control Tower issued Operations Letter Number 20/80 to become effective on September 1, 1980 (Exhibit G-5). The following extracts from the Operations Letter are pertinent to the background which I am attempting to summarize:

Due to difficulties in obtaining associated equipment and to avoid major procedural changes, the present concept of Tower I/Tower II will remain in force.

...

When the coordinator is needed:

- a) The tower one controller will move to the left of his position

.../5

and use the emergency transceiver on frequency 119.9 to perform his duties.

- b) The coordinator will use the hot mikes position of tower one.

8. It is apparent that the controllers continued to make representations regarding the adequacy of the equipment. While they appeared to be satisfied with the addition of a coordinator position during traffic peaks, they were of the view that with the equipment then available there would be a deterioration in Tower I control to the extent of posing a danger to safety. A number of witnesses testified that the portable transceiver to which the Tower I controller was relegated when the coordinator took up the position in front of the "hot mikes" simply could not carry the communications load. The battery-operated transceiver was essentially an emergency back-up instrument which could function effectively for about 30 minutes before its signal began to fade and communication became subject to distortion. The transceiver then had to be re-charged before it could be used again and this meant that there were recurring periods when the Tower I control position was not properly functional. While I am not competent to make a technical judgement of the validity of these observations I would point out that Mr. Cormier, in his testimony, conceded that there were some problems with the use of the emergency transceiver. He implied, however, that the concerns of the controllers were exaggerated - "It became an emotional issue".

9. In any event, it was against this background that Mr. Cormier, on the basis of instructions from the Manager of Quebec Air Traffic Services (Exhibit G-8, September 30, 1980), issued Operations Letter number 23/80 dated September 30, 1980 (Exhibit G-6) to become effective on October 2, 1980. This letter cancelled Operations Letter 20/80 and set out the following directive:

.../6

As an interim measure and until the proper equipment is installed for TWR 1/ TWR 11 operation we are reverting to the concept of:

- a) One airport controller responsible for the control zone and working all associated radio frequencies.
- b) One radar controller responsible for specified coordination and using hot mikes and telephones only.

In essence, Operations Letter 23/80 temporarily reverted to the one-tower system of VFR control that had been in effect prior to the end of March 1980. The only new element was that with the full implementation of bilingual control on April 1, 1980, the one-tower operation would be required to provide air/ground communications with pilots of aircraft in the official language of their choice. This was to be an interim measure pending the re-introduction of the two-tower concept after the proper equipment had been installed.

10. The employer's main evidence was adduced through Mr. Serge Cormier who was Chief of the Dorval Tower at the material time (which is also his present position). Mr. Cormier gave a brief description of the tower's control zone and the staffing arrangements in early October 1980. He pointed out that with the implementation of bilingualism on April 1, 1980 all of the control functions in the tower were classified as bilingual and the controllers in the tower were qualified to work in both official languages. Mr. Cormier was aware of various meetings and consultations between management and representatives of the employees that took place during the months preceding October 1980. He had himself participated in some of these discussions. On October 2, both as a result of a meeting he had with

the Chairman of the Dorval Branch of the Canadian Air Traffic Control Association (CATCA) and of information he received about a meeting in the Regional Office which he did not attend, it was his understanding that the controllers were intending to use only one of the official languages - the one that corresponded with the particular controller's mother tongue - in carrying out their duties beginning October 3.

11. It became clear to Mr. Cormier on the morning of October 3 that the controllers were using English only in their ground-to-air communications. He went up to the tower in the early afternoon and questioned each of the controllers on duty as to whether he or she was prepared to carry out this function in the two official languages. The controllers who stated that they were not prepared to do so were "invited" to leave the tower. On October 4 and 5 all controllers who reported for work were asked individually whether they would perform their duties in both official languages (under the single tower system set out in Operations Letter 23/80), and those who answered in the negative were told to leave the premises. In Cormier's view, to have allowed them to operate in one language only would have endangered the safety of air traffic. As a result of consultations between management and representatives of the employees during those three days, in some of which Cormier was involved, an agreement was worked out and the controllers returned to their duties on October 6.

12. Regarding the four individuals, the determination of whose grievances will be applied *mutatis mutandis* to the 11 other grievors, Mr. Cormier gave the following testimony. Denis Dubrule was working overtime on October 3 and was taking his meal break when Cormier arrived at the tower. Cormier had already asked P. Tuppert and R. Durocher to leave the premises when they indicated their refusal to work in both languages. He then asked Dubrule to take over one of their positions after his lunch break. Dubrule, apparently after

discussing the matter with some of his fellow employees, informed Cormier that he was cancelling his overtime. Cormier advised him that he would be abandoning his position and exposing himself to discipline. Kathleen Fox was on duty on October 3 undergoing training in order to be certified as a controller at the Dorval Tower. She was required to operate in both languages during the course of this training. When asked if she was ready to work in both languages, she indicated that she was willing to do so, but since she could only work under a licensed controller she would not be able to perform her functions in his absence. It was Cormier's opinion, therefore, that Ms. Fox did not refuse to carry out her duties on October 3. She did, however, refuse to carry out her duties on October 4 and 5. Claude Durocher, who was a supervisor at the time (although still a member of the bargaining unit), had worked his full shift on October 3, but was asked to leave on October 4 and 5 when he indicated that he would not perform his functions in both official languages. Claire Gingras had been scheduled to work the evening shift (1500 to 2300 hours) on October 3. When she reported for the shift she was asked the same questions about her readiness to provide service in both languages. She replied in the negative and was asked to leave the tower. Her refusal to work in both languages was repeated on October 4 and 5. The Work Attendance Sheets of the tower personnel for October 3, 4 and 5 were introduced through Mr. Cormier as Exhibit E-9.

13. Mr. Cormier testified that because of the resulting staff shortage a "Notice to Airman" (NOTAM) was issued on the afternoon of October 3 stating "VFR TRAFFIC NOT AUTHORISED IN THE DORVAL POSITIVE CONTROL ZONE" (Exhibit E-10). This restriction remained in effect until October 6, except that aircraft were notified by a NOTAM dated October 4 (Exhibit E-12) that the Dorval tower would be closed from 2300 hours October 4 to 0700 hours October 5.

14. The greater part of the testimony elicited from Mr. Cormier during cross-examination is related to events and discussions prior to October 3, 1980. The relevance of this testimony to the issues that are before me remains to be determined. Cormier indicated that he knew of the recommendations at pages 256 and 257 of the Chouinard Report (Exhibit G-1) but was not aware of any specific mandate based on these recommendations. He had received some direction about adding a second control position prior to April 1, 1980. This was in relation to the implementation of the Tower I - Tower II concept. He acknowledged that there had been representations by the controllers on the mode of implementing this concept and he had set up a committee to develop the related procedures. Because of apparent disagreement or opposition, Cormier cancelled Operations Letter 4/80 (Exhibit E-16) which called for the implementation of the Tower I - Tower II concept on February 2. There was further study by a different committee which was followed by the order to put the two-tower system into operation at the end of March. Further representations and discussions took place and led to some changes in the procedures. Cormier conceded that during the course of the long and arduous negotiations on this issue, he might have shown some frustration but at no time did he lose his "smile".

15. One of the issues raised in the various discussions was that of providing an extra position of coordinator for communication between the Terminal Control Unit and the tower. As a result of the headquarter's study carried out in August there was a decision to staff a coordinator's position during the peak traffic period (Kelly/Parker Report, Exhibit G-17; Operations Letter 20/80, Exhibit G-5). Because the coordinator's position had not been anticipated the supplementary equipment for that position was not in place and it was necessary, at times, for the Tower I controller to use the emergency (back-up)

transceiver for communication with aircraft. There were some problems with this equipment and, in due course, additional equipment (including equipment modification) was put in place. Cormier indicated that he did not regard the equipment problem to be that serious, but he agreed that the provision of the supplementary equipment was probably accelerated because the issue had been raised by CATCA representatives before the Dubin Commission.

16. Referring to the Operations Letter 23/80 of September 30 (see paragraph 9 above), Mr. Cormier recalled that following its circulation there were discussions at a staff meeting on October 1. Some individuals expressed their concerns about reverting to the one-tower system in a bilingual environment. There were also references to the recommendations of the Chouinard Report about the need for a two-tower system as a pre-condition to the implementation of full bilingualism. He had some recollection that a number of controllers had suggested that VFR traffic be restricted in the positive control zone as long as the tower was to operate under the pre-April 1 system of control. Cormier's position was that if the capacity of the old system to handle traffic in the bilingual environment were to be strained or exceeded, he would have been the first one to recognize that fact and would have taken action to restrict traffic. In his view, the provision in the Manual of Operations which allows controllers to restrict VFR traffic under certain conditions must be related to the practice of the unit in which they are performing their functions. Controllers are subject to management supervision and cannot, unless the circumstances are exceptional, make the decision unilaterally to restrict air traffic.

17. Mr. Cormier stated that while some controllers expressed concern that the effect of Operations Letter 23/80 would be to increase the work load, he did not himself see how it would be increased.

He agreed that when bilingualism was first implemented in April there were a number of "false starts" in the use of language and that they still occurred at times. On the other hand, he pointed out that the traffic under the control of the Dorval Tower had been decreasing steadily since 1978. He believed that there might have been an increase in the number of transmissions during the first six months of the bilingual operation, but that this had been a temporary situation. In any case, if the volume of transmissions were to become excessive there were provisions for controlling it. In his judgment, a situation in which the controllers might have been stretched beyond the capacity of the system would not have arisen during the temporary reversion to the one-tower system.

18. Mr. Cormier recalled that a CATCA representative had notified him on October 3 that an agreement had been reached "somewhere on the west coast" between Mr. Robertson, President of CATCA, and Mr. McLeish, the Administrator of the Air Transportation Administration, to restrict VFR services at the Dorval Tower until the proper equipment for the two-tower system was in place. Cormier stated that he was given no details and was under the impression that this agreement was "in the mail". He received no copy of such an agreement. When he put his questions to the individual controllers on October 3, 4 and 5, some of them asked whether there would be a restriction in traffic; others referred to the "Robertson/McLeish agreement" and indicated that they would perform their duties on the basis of that agreement. Four of the controllers - Simard, C. Durocher, Fox and Kuznircy - completed their shifts on October 3. None of the 15 grievors who were scheduled for duty on October 4 and 5 performed his/her duties.

19. The questions put by Cormier to the controllers did not specify any restrictions. The first question asked was whether they were willing to control air traffic in accordance with Operations Letter

23/80 - i.e. under the pre-April 1 tower system, to which all replied in the affirmative. The second question was "Are you willing to control air traffic in both languages?" By October 4, the grievors were responding to this question in the negative. They were told that their services would not be required and that they were to leave the premises. Regarding Mr. Dubrule's overtime on October 3, Mr. Cormier stated that there was no policy at the Dorval Tower for the cancellation of overtime. Normally it was possible to accommodate employees who did not wish to work overtime, but there were occasions when an employee could be compelled to work overtime because of the particular personnel situation.

20. On the morning of October 4 Mr. Cormier arrived at the tower a little after 9:00 a.m. The NOTAM of October 3 restricting VFR traffic (see paragraph 13 above) was then in effect and there had been no complaints about the controllers' work before Cormier's arrival. Cormier proceeded to put his two questions to the controllers indicating that if they replied to both of them in the affirmative he would cancel the NOTAM of October 3. Controllers replied that they would only continue to provide bilingual services on the basis of the restrictions set out in the NOTAM. The controllers were sent home and it was necessary to continue the restricted operations in accordance with the NOTAM. Mr. Cormier attended various meetings with representatives of the employees during the course of that weekend and was a party to the agreement which was reached on Sunday, October 5 (Exhibit G-7). The controllers returned to work on October 6 and there was a gradual resumption of operations based on the terms of the agreement. All restricted services were resumed later in the fall when the modifications to the equipment were completed and the Tower I - Tower II concept became operational.

21. Mr. Cormier was asked whether there was any connection between the absence of the equipment and the issuance of his Operations Letter 23/80. He stated that he had tried every reasonable way to make the Tower I - Tower II concept work, but in the face of the systematic refusal of the controllers he considered it reasonable to revert to the system set out in the Operations Letter -- as an interim measure. In response to a request by counsel for the grievors, Cormier checked his files and testified that he could find no specific document pertaining to the transmission equipment. There were two documents which were part of an exchange of correspondence between Regional Headquarters and the Dorval Tower which discussed the Tower I - Tower II concept in terms of procedures. There was also a memorandum dated September 30 from the Manager of Quebec Air Traffic Services addressed to Cormier (Exhibit G-8, see paragraph 9 above) indicating that it would take about six weeks to install the new communications package and that during this period "we will revert to the concept of a one-tower air position with a coordinator". This was, in effect, the basis for Operations Letter 23/80.

22. The other two witnesses called by counsel for the employer were F. Frenette and D.A. Cameron. Both were supervisors (AI-4) at the material time and were called upon to take over control duties because of the staff situation that had developed. Mr. Frenette pointed out that the procedures that the controllers were required to work under as a result of Operations Letter 23/80 were those that had been in effect for 14 or 15 years before the introduction of bilingualism. He had gone up to the control tower with Mr. Cormier at about 11:00 a.m. on October 3. At one point he noticed Cormier having a discussion with Mr. Dubrule who seemed upset and told Cormier that he was cancelling his overtime. He heard Cormier tell Dubrule that this would be considered "abandonment". Frenette did not hear

all that was said, but at the end of this discussion Dubrule went towards his fellow controllers. Frenette did not observe anything in relation to Ms. Fox or Mr. C. Durocher on October 3. He did hear Mr. Cormier ask Ms. Gingras if she would work in both official languages, but he did not hear the reply. However, she left soon after her exchange with Cormier. On October 4 Frenette saw controllers turning up for work. They were asked the question about their willingness to work in both languages in accordance with the Operations Letter and he saw them leave the area five or 10 minutes later. When he came in to work at about 4:00 p.m. on Sunday, October 5, he was told by Mr. Cameron that similar questions had been put to those persons who had shown up on Sunday. Frenette did not see Gingras, C. Durocher or Fox during the time that he was in the tower on October 5. In cross-examination he stated that the first controller he saw leaving on October 3 was Dubrule who "cancelled his overtime shift". Mr. Tuppert had mentioned something to Frenette about an agreement between CATCA and MOT but when he asked what was contained in the agreement, Tuppert could not say and was unable to show him a copy. Frenette's main function during the three days was to carry out air traffic control duties. He did not participate in the discussions regarding the dispute. He arrived for work at about 6:30 a.m. on Monday, October 6 and noted that the controllers were reporting for that shift but that there was some uncertainty as to which NOTAM was in effect at the beginning of the shift. It was not until about 9:00 a.m. that normal operations were restored.

23. Mr. Cameron had been called into work on the afternoon of October 3 and worked a full control position from 4:00 p.m. to 1:00 a.m. He worked from about 9:00 a.m. to midnight on October 4, and from 7:00 a.m. to midnight on October 5. He saw Claude Durocher and other controllers leave after 9:00 a.m. on October 4, after they had been asked by Cormier

whether they would work in the two languages without restrictions. Cameron had heard some controllers mention "an agreement" but they could not show it to him or say clearly what it contained. During Sunday morning, October 5, each scheduled controller showed up, initialed the attendance register, was asked the questions about unrestricted bilingual control and left. There were no initials in the register for Mr. Larose and Ms. Gingras because they did not have their passes when they came to the airport. When they telephoned the tower to request temporary passes they were asked the questions about full bilingual services and were refused because they replied in the negative. Cameron told Gingras that if she was not going to work she would not be allowed to come up and sign the register. In cross-examination Cameron said he was aware of the questions raised by controllers regarding the Tower I - Tower II concept. In his opinion the "difficulties" were disputable. Apart from the problem that sometimes developed when the emergency transceiver had been used, the system worked well. Cameron had signed the controllers' submission to the Dubin Commission (Exhibit G-9) which referred to both the coordinator and the equipment because his main concern was to have the coordinator's position authorized. He did not regard the equipment factor to be very serious since the use of the transceiver was only a temporary expedient. He did not contradict the observation by counsel for the grievors that the transceiver was not used from October 3 to 5 because the operations were not based on the Tower I - Tower II concept.

24. The first few witnesses on behalf of the grievors dealt, in main, with the unfolding situation in the Dorval Control Tower between February and October 1980, against the background of the implementation of full bilingualism in air/ground communication on April 1, 1980. As in the case of Mr. Cormier's testimony, the

relevance and weight of much of this evidence remains to be determined. There was general agreement that the decision to re-arrange the Dorval positive control zone in accordance with the Tower I - Tower II concept - which had been recommended by the Chouinard Commission - was favourably received by the controllers employed in the Dorval Tower. It was during the process of making the concept operational that strains developed between the controllers and management.

25. Mr. Gaston Labonté had been employed in the Dorval Tower from the end of 1977 until August 12, 1980, when he was transferred to Quebec City. At the end of 1979 when the controllers in the Dorval Tower were recognized as a separate branch of CATCA Labonté became Secretary-Treasurer. His testimony at the hearing referred to a number of reports and consultations between February and August 1980 in which he was either directly involved or of which he was aware. These reports and consultations while confirming the controllers' support of the Tower I - Tower II concept raised questions regarding equipment, training and procedures. Representations were made to management about these problems but, in Mr. Labonté's opinion, management was not very responsive. Meetings of Dorval Tower controllers were held on June 10 and July 3 at which the situation resulting from the implementation of the two-tower concept was discussed. The concerns of the controllers were not receiving a satisfactory response from management. The employees decided to advise CATCA Headquarters of the developments and also undertook to make a submission to the Dubin Commission (Exhibit G-9). A meeting with management representatives on July 7 was arranged to discuss the draft of an Operations Letter (attached to Exhibit G-13). The representatives of the controllers were critical of its contents and Mr. Cormier reacted to their criticism with anger, banging the table and turning red in the face. At a meeting of controllers on July 16

a formal resolution was passed setting out criticism of the draft Operations Letter. There was a further discussion with management at the Regional Consultation Meeting and it was agreed to refer the issue to Headquarters of Transport Canada. The outcome of this reference was the Kelly/Parker study and report (Exhibit G-17). The controllers were generally satisfied with the Kelly/Parker report, seeing it as a move in the right direction.

26. In cross-examination Mr. Labonté conceded that he was not present at the meeting of July 7, but had been told by others that Cormier had shown his irritation by banging the table. Labonté believed this because he thought it was consistent with the attitude and behaviour manifested by Mr. Cormier in earlier and subsequent discussions on the issue. In Labonté's view, Cormier responded to the situation as if it were just another union-management dispute. Labonté reiterated that the various discussions and exchange of documents with management did not seem to convince management of the validity of the controllers' position. Labonté, during the time that he worked in the Dorval Tower, had performed his functions in both languages under the old system as well as under the Tower I - Tower II concept without encountering any difficulty. He nevertheless stated his opinion that the introduction of the two-tower concept without a coordinator or without proper equipment would decrease the security of control operations.

27. Mr. Pierre Russell was a controller in the Dorval Tower between May 1979 and December 1980. He became Chairman of the Dorval Tower Branch of CATCA in June 1980. Mr. Russell gave a brief description of the differences between the one-tower operation prior to April 1, 1980 and the two-tower concept. In his opinion there had been a definite increase in transmissions between the tower and aircraft following

the introduction of full bilingualism. It was evident to him that in the two-tower concept a coordinator would be required in addition to the two control positions. Russell stated that he was puzzled by the way in which the Kelly/Parker recommendations were implemented by Operations Letter 20/80 (Exhibit G-5). The letter provided for a coordinator but made the Tower I controller dependent on the emergency transceiver for air/ground communications. Russell was present at the Dubin Commission when the controllers' submission was presented. He was not there the next day when Mr. Trevor Paine of the Department of Transport testified before the Commission, but had "heard" that Mr. Paine had assured the Commission that equipment for the coordinator's position would be installed. Mr. Russell became aware of Operations Letter 23/80 at a staff meeting on October 1 where he and other controllers at the meeting indicated that reverting from two to one frequencies, as directed by the Operations Letter, would create problems and congestion. The controllers took the position that if the two-tower concept were to be postponed there should be a restriction of VFR traffic until such time as the two-tower concept became fully operational. He believed that such a restriction could normally be established under the MANOPS (Manual of Operations) by way of local procedures. He discussed the matter with Mr. Cormier, but Cormier was not prepared to modify the Operations Letter, pointing out that it was concerned only with a short-term matter. Russell reported the results of this discussion to some of his colleagues as well as to the regional officers of CATCA.

23. At about 11:00 a.m., October 3, Mr. Russell received a long distance call from Mr. Robertson (President of CATCA) advising him that he had reached an agreement with Mr. McLeish on the restriction of VFR traffic at Dorval Airport. Russell immediately informed the controllers of this agreement and returned to his home. When he was

advised that something had gone wrong, he returned to the tower and spoke to Mr. Cormier. Cormier told him that he had no knowledge of an understanding between Robertson and McLeish regarding the restriction of bilingual VFR traffic and that he would insist on full bilingual control in accordance with the Operations Letter (23/80). Russell asked Cormier to check with his superiors and spoke to him again at about 1:00 p.m. It became clear that the Robertson/McLeish agreement was not going to be respected. Cormier informed the evening crew that they would have to provide full bilingual services and those who refused were instructed to leave the tower. The controllers, for their part, decided to "stick to the agreement". At a meeting of the Dorval Branch that evening the members discussed the Robertson/McLeish agreement and the developments of that afternoon. They voted "to stick with the Robertson/McLeish agreement". During that weekend, Russell was involved in the negotiations with management in the effort to resolve the "misunderstanding". A tentative agreement was reached sometime before the morning of October 6 and the controllers reported for the 7:00 a.m. shift - although the agreement had not yet been signed. After the agreement (Exhibit G-7) had been signed - at about 11:00 a.m. - the NOTAM that had been in effect during the weekend when the three supervisors were manning the tower was superseded by a new NOTAM incorporating the restrictions set out in paragraphs 1 to 4 of the agreement.

24. In cross-examination Russell indicated that he had occasion to use the emergency transceiver two or three times during the month of September 1980. Although it was not faulty it could not operate properly for very long. The normal procedure when equipment breaks down is to report it to a supervisor who arranges to have it repaired. The time required for repairs depends on the nature of the equipment. Russell conceded that, as a representative of CATCA, he did not always

agree with Cormier, in his capacity as a representative of management. In Russell's opinion, Mr. Cormier had been irresponsible in the sense that by not pressing for the necessary manpower and equipment he did not adequately represent the interests of the Dorval Control Tower. Regarding the hearings before the Dubin Commission, Russell stated that he did not hear Paine's testimony, but had been informed about it by Mr. Robertson and other CATCA members who were present.

25. Continuing in cross-examination, Russell stated that he told his fellow employees on October 3 of the apparent understanding between Robertson and McLeish and of CATCA's intention to "stick by that agreement, that is, VFR with restrictions". Russell had not expected Mr. Cormier's reaction and he told the membership that, with the support of "National Office", they should insist on the terms of the Robertson/McLeish agreement. The grievors Gingras, C. Durocher and Dubrule were present at the meeting on the evening of October 3. There were two meetings on Sunday, October 5, during which the members were kept informed on the progress of the negotiations.

26. When Russell had spoken to Mr. Robertson and was told about the agreement with McLeish, they did not discuss the possibility that the agreement would not be respected. He, himself, had not been scheduled to work on October 3 but he came to the tower at about 1:00 p.m. to speak to the members. He also spoke to Cormier for about 15 to 20 minutes, but was asked by Cormier to leave the tower between 2:00 and 2:30 p.m. He went down to the floor below and met the controllers scheduled for the evening shift and they discussed what to do about the questions that were going to be put to them by Cormier or the other supervisors. Russell's advice was that CATCA's position was to insist on the Robertson/McLeish agreement and that this was backed up by the National Office. Asked about the questions

put by Mr. Cormier, Russell indicated that there were two questions:

1. Are you willing to provide bilingual air traffic control? (The controllers answered in the affirmative.)
2. Are you willing to provide bilingual air traffic control without VFR restrictions? (The controllers answered in the negative.)

Asked whether the employees were paid by CATCA for the two or three days that they had missed, Russell indicated that he did not know.

27. Mr. W.J. Robertson has been president of CATCA since July of 1979. He was first licensed as an air traffic controller in February 1967. In relation to the subject of aviation safety Mr. Robertson's responsibilities over the years have included the chairmanship of the CATCA National Safety Committee, joint chairmanship CATCA/PATCO North American Safety Committee, representing CATCA before the Chouinard Commission as well as before the Dubin Commission. He had taken various courses on aspects of air safety and is a member of the Society of Air Safety Investigators. Mr. Robertson testified that during the summer of 1980 he had become aware of problems regarding the Tower I - Tower II concept at Dorval - in particular the inadequacy of the communications equipment. He was present at the Dubin Commission hearing when Mr. Labonté made the submission on behalf of the Dorval controllers. After Mr. Labonté's presentation, a Mr. Vigeant of the Department of Transport told Robertson that the Department would announce its intention to purchase and install the equipment needed at Dorval at the next sitting of the Dubin Commission, and that there would be a directive to the effect that the emergency transceiver was for emergency use only. This commitment was made the following day by Mr. Trevor Paine on behalf of the Department.

28. During the week of September 29 Mr. Robertson learned that the problem at Dorval was not being solved and was, in fact, becoming more serious in light of the Operations Letter (23/80) which discontinued the Tower I - Tower II system. Mr. Robertson was in Cranbrook, B.C. at the time. It seemed to him that by trying to continue full bilingual control in the Dorval zone without implementing the Chouinard recommendations regarding various safeguards and extra equipment a safety hazard was being created. Robertson had a meeting in Cranbrook with Messrs. W. McLeish, Administrator of the Air Transport Administration, P. Arpin, Director-General of Civil Aeronautics and P. Proulx, Director of Air Traffic Control. No firm conclusions were reached at that meeting. Robertson was in Vancouver on October 3 when he received an early morning call from the Quebec Region advising him that the problem at Dorval Tower had not been resolved and it was not possible to reach an agreement with management on a workable plan to provide control pending the arrival and installation of the new equipment. Robertson immediately telephoned Mr. McLeish in Cranbrook and reported on the situation at Dorval which had the potential of leading to a confrontation. He suggested that there be a delay of six weeks during which one of the following alternatives should be adopted:

1. To revert to unilingual service in English, issuing a temporary NOTAM to this effect.
2. To maintain bilingual services for IFR flights but to restrict VFR traffic by issuing a NOTAM to this effect.

According to Mr. Robertson, Mr. McLeish agreed to the second alternative. Mr. Robertson then reported this to Mr. Russell and Mr. V. Della Serra, Regional Director of CATCA in Quebec. That would have been a little

after 10:00 a.m. Quebec time. When Robertson later received a call from Quebec indicating that local management at Dorval was of the view that there had been no agreement and continued to require the controllers to provide full bilingual services under the former single tower system (i.e. Operations Letter 23/80), he called McLeish and reported that the CATCA members of Quebec had been told by management "that there was no deal". Robertson testified that McLeish responded that he had been overruled by the "subordinate managers" and that Robertson should have realized that McLeish had no authority to make deals without checking back with the local managers. Robertson expressed his surprise pointing out that he had been dealing with management over the years and agreements reached orally were considered to be agreements unless they had been qualified by some *caveat*. McLeish's response to that, however, was "sorry about that old buddy - that's the way it is".

29. Mr. Robertson then got in touch with Mr. Russell at Dorval and told him of his conversation with Mr. McLeish. He indicated that from his point of view the controllers in Dorval should operate in accordance with the agreement he had reached with McLeish, and that National Headquarters of CATCA would fully support any controller who had conducted himself in accordance with that agreement.

30. In cross-examination Robertson re-affirmed that he had been present when Mr. Paine gave his testimony before the Dubin Commission - he believed it was on September 24, 1980. At the time, Mr. Paine said that the equipment would be in place in about six weeks. When asked by counsel for the employer who had contacted him at Cranbrook, Robertson indicated that there had been ongoing consultations with Quebec representatives, mainly with Mr. Della Serra, during the week of September 29. In reply to the final question during cross-examination, Robertson stated that he had not personally tested the equipment in the Dorval Tower nor had he ever worked under the Tower I - Tower II concept.

31. Mr. V.M. Della Serra has been employed as an air traffic controller since March of 1972. In February 1982 he was made a supervisor at the Montreal Air Control Centre. He was Quebec Regional Director of CATCA during 1980/81. Mr. Della Serra was not present when the submissions were made by the Dorval controllers to the Dubin Commission but received reports on the presentation and Mr. Paine's undertaking regarding the supplementary equipment for the Tower I - Tower II concept. He had a meeting with the representatives of Quebec Region management and was advised that the equipment in question would be installed and be operational within six weeks. Della Serra reported this to Mr. Robertson and to the Dorval executive. He was in Baie-Comeau on October 1 when he was advised of problems developing in the Dorval tower following the issuance of Operations Letter 23/80. He received a call on Friday, October 3 in Val d'Or informing him that Robertson had been in touch with the Dorval executive. He also spoke to Mr. Robertson and kept him informed of the situation. He received a call from Mr. Robertson regarding the agreement with Mr. McLeish and, in turn, informed the Dorval executive about the details of the agreement. Because of the situation, Della Serra returned to Montreal between 5:00 and 6:00 p.m. that afternoon. He happened to meet Mr. Cormier on his way to the Dorval tower and in the exchange of conversation Cormier questioned the validity of the Robertson/McLeish agreement. Cormier informed him of the procedure of putting questions to the employees regarding their readiness to provide full bilingual services under the Operations Letter 23/80. Those who replied in the negative would be required to leave the tower. Della Serra put through a call to Mr. Robertson reporting his conversation with Mr. Cormier indicating that the agreement was not being honoured. At the meeting of the members that evening Della Serra advised them to continue reporting for duty and to continue to answer the questions put to them on the basis of the Robertson/McLeish agreement.

32. Mr. Della Serra participated in the consultations with management on Saturday and Sunday (October 4 and 5) and stated that an agreement was reached during Sunday afternoon (Exhibit G-7), as a result of which employees reported for duty on the morning of October 6 and remained on duty in accordance with the terms of the October 5 agreement. In response to a direct question, Della Serra indicated that he did not know that "lower management" could overrule a commitment made by "higher management".

33. In cross-examination Mr. Della Serra indicated that his reports to Mr. Robertson on October 3 were based on information conveyed to him from Dorval by Mr. Tuppert. He testified that he, himself, had not worked under the Tower I - Tower II concept.

34. Claire Gingras first described her experience working under Operations Letter 20/80 (Exhibit G-5). She found that using the emergency transceiver between the peak hours of 1:00 p.m. and 9:00 p.m. was not satisfactory because the transceiver functioned properly for a maximum of half an hour, after which aircraft began to complain of poor transmission. She reported to her supervisor (Exhibit G-18) that the batteries running the transceiver discharged through use and the signal from the transmitter faded out. However, she received no response to her memorandum. She was aware of the representations made by the controllers to the Dubin Commission and recalled a newspaper report referring to the fact that the Department of Transport was planning to install new equipment.

35. At the staff meeting of October 1, which was called to discuss Operations Letter 23/80, questions were raised whether certain restrictions would be imposed. Various controllers voiced their concerns to the management representatives but were advised that the

Tower I system would be re-established without restrictions of VFR aircraft. Ms. Gingras was off-duty on October 1 and 2 and reported for her scheduled 3:00 p.m. shift on October 3. Prior to reporting, she had been told by a fellow controller about the Robertson/McLeish agreement to restrict bilingual control to IFR traffic only, until such time as the two-tower concept could be fully implemented. She was told that this was CATCA's position. When she arrived at the tower she noticed that employees who would normally have been there were not in the tower. As she approached her position after signing the attendance register, Mr. Cormier (or a Mr. Gauthier from Personnel) asked her two questions which she answered in accordance with the union's position - that she would provide bilingual services, but not without VFR restrictions. In her view, it would not have been safe to have worked the tower in accordance with Mr. Cormier's directive. She attended the union meeting that evening at which the events of the day were discussed and information was provided about negotiations to work out an agreement between management and the union executive. Ms. Gingras presented herself for her scheduled shifts on Saturday and Sunday (October 4 and 5), was asked the same questions and was asked to leave. She confirmed Mr. Cameron's testimony that she did not have her pass on Sunday and arranged with the RCMP to telephone the tower for a temporary pass and was told that there would be no point in issuing such a pass if she was not prepared to work. She was pleased when she learned of the agreement that had been reached on the afternoon of October 5. She felt that the restrictions set out in that agreement would enable the controllers to return to their jobs. The terms of that agreement remained in effect until the equipment was installed. In her opinion, the Tower I - Tower II concept was now working well and was not creating any difficulties.

36. In cross-examination Ms. Gingras stated that the emergency transceiver usually began to fade out after about half-an-hour's use and required recharging. In her recollection, she reported the fading to her supervisor each time she used a transceiver which would have been on those days in September 1980 when she was scheduled to work either the Tower I or the coordinator's position. On October 3, she had been forewarned about the questions that would be put to her and was told about the agreement between Robertson and McLeish to restrict VFR service. She stated that she was not instructed how to answer the questions that would be put to her; it was enough for her to know that there was an agreement to restrict VFR traffic and she was prepared to work on that basis. She therefore could not agree to work under the conditions laid down by Mr. Cormier.

37. Mr. Claude Durocher has been supervisor in the Dorval tower since 1978 and was aware of the lengthy consultations between management and the local CATCA executive regarding the implementation of the Tower I - Tower II concept. His experience during the month of September 1980 under Operations Letter 20/80 (Exhibit G-5) indicated that the main problem was in the extended use of the emergency transceiver equipment which was not reliable. He had received memos from various members of the staff describing the problem and he, in turn, sought information about the specifications of that equipment. He sent two memos (Exhibit G-19) to Mr. Frenette but received no response to either of them. He was aware of the submission to the Dubin Commission and saw the press report indicating that new equipment would be provided. He did not recall attending the staff meeting that took place after the issuance of Operations Letter 23/80.

38. Mr. Durocher was supervisor on the 7:00 a.m. shift October 3 and his duties began with the various routine functions of a supervisor. At about 11:00 a.m., he recalled that some of the controllers on duty

were being asked questions by Mr. Cormier and by someone from Personnel and he noted that some of the controllers were leaving. At the time Durocher was working the Tower I control position and he remained at that position for the balance of his shift. He did not recall being questioned at any time on October 3. He came to the meeting of the controllers at about 9:00 p.m. that evening (the meeting had been in progress for some time before he came) and he was told that the controllers wanted the Robertson/McLeish agreement to be confirmed. He, in turn, wanted to know if the Association would stand by him if he took the position based on that agreement. He received written assurance to that effect and the next morning at 7:00 a.m. he reported for work. He noticed that some controllers had come in and had signed the register and he believes that they took their assigned positions for a while. He did not remember whether there was a NOTAM in effect at the time regarding restrictions. When Mr. Cormier came in later that morning, he asked Durocher if he would perform his duties under the conditions of the Operations Letter 23/80 and when he answered in the negative, he was asked to leave. When asked by counsel why he had answered in the negative, he replied that he still found it a strain to work in a full bilingual environment, that it added to the workload and if it was to be done under the single frequency it would jeopardize safety. It was the same when he reported on October 5 - he was asked the questions and was required to leave the premises. In his view, the agreement worked out on Sunday afternoon (Exhibit G-7) satisfied the requirements of safety.

39. In cross-examination Mr. Durocher confirmed that he had worked his full shift on October 3, but did not work on October 4 and 5. He repeated that at the meeting of the controllers on the evening of October 3, he had been assured by CATCA that he would have the support of the Association if he chose not to work unless the Robertson/McLeish

agreement was put into effect. He recalled that the assurance in writing that he requested was given to him by Mr. Aubry. Exhibit E-13, a hand written note signed by Mr. Aubry, was identified by Mr. Durocher as the document in question. In response to a number of questions, Durocher indicated that he had not been paid by the Association for the days that he did not work and had nothing against the Association. He was satisfied by CATCA's assurance on October 3, and refused to work on October 4 and 5 without VFR restrictions.

40. Kathleen Fox had been employed with the Department of Transport since September 1974. She was transferred to Dorval in June of 1980 and began her training in order to be licensed for the Dorval tower during September 1980. She worked at the tower until September of 1981 when she received a leave of absence to teach at a CEGEP (collège d'enseignement général et professionnel). Ms. Fox testified that she became aware of the Operations Letter 23/80 at a staff meeting on October 1 which was attended by controllers, supervisors and Mr. Cormier. One of the aspects of the Operations Letter was a reversion to the system of one control position on one frequency, with a radar coordinator. While she considered it a good idea to return to the old system on a temporary basis until the new equipment was in place, she thought that some restrictions on traffic would have to be applied because of the return to a single frequency. She had heard similar concerns expressed by other controllers. She worked the 7:00 a.m. to 3:00 p.m. shift on October 2 when she was told that they would be reverting to the one-tower system. Mr. Cormier asked her to continue to provide bilingual service as a sign of good faith at least until the beginning of the 3:00 p.m. shift. Because, as a trainee, she was under a licensed instructor, she continued to work with this instructor for the balance of the shift. When she came on duty at 7:00 a.m. October 3, she was told by her colleagues that there had been an agreement between

Messrs. Robertson and McLeish to the effect that because of one-tower control, air/ground communications would be in English only. She worked on that basis during the course of the morning. She was in the tower with her instructor at about 1:30 p.m. when Messrs. Cormier and Gauthier came up and spoke to her instructor. Her understanding of the conversation was that the instructor was asked whether he would be willing to provide full bilingual services without restrictions. His answer was in the negative and he was asked to leave the tower. Another controller was approached, asked the same question and he left. The supervisor asked another controller to supervise her work on the clearance position and eventually Mr. Cormier approached her and asked the questions regarding bilingual control. She told him that she was "in training" on the license of her instructor and would have to follow whatever action the instructor took. Mr. Cormier rephrased his question - "are you willing to continue training in both languages", to which she answered "yes". She completed her shift that afternoon.

41. Ms. Fox had attended the meeting of controllers on the evening of October 3 and, considering her own responsibilities, she was of the view that she had had enough experience, even as a trainee, to be able to judge the problem of trying to operate bilingually on one frequency under conditions of dense air traffic. When she arrived for the 7:00 a.m. shift the next morning, the NOTAM restricting VFR traffic in Dorval was still in effect. She assumed the ground control position to which she had been assigned. At about 9:00 a.m., Mr. Cormier came in and began asking the controllers the same questions as the day before. When Cormier asked her whether she was willing to provide bilingual air traffic control without restrictions, she replied in the negative and was told that her services were not required. When she reported on Sunday, October 5, the questioning was repeated, her reply was

the same and she was asked to leave. She was advised that an understanding between the controllers and management had been reached on Sunday afternoon and she was prepared to provide the bilingual service in accordance with the conditions of that agreement when she reported for work on October 6. She expressed the view that the agreement satisfied her because it eliminated a possible compromise on the question of safety.

42. In cross-examination Ms. Fox indicated that she had worked in both languages on ground clearance. She was advised of the Robertson/McLeish agreement on October 3 by Mr. Tuppert and was told that CATCA would back up this agreement. She neither requested nor received any assurance in writing. From Mr. Della Serra's report at the meeting on the evening of October 3, she understood that there had been an agreement between Messrs. Robertson and McLeish and felt that it was her responsibility to follow it. It was her belief that CATCA would back up the controllers who reserved the right to make a decision on the grounds of safety.

43. In re-examination Ms. Fox indicated that when she spoke of her right to make a choice on grounds of safety she was acting in accordance with the MANOPS and felt that this was consistent with the principles and responsibilities of her air traffic controller license.

44. When the hearing was resumed on October 13, counsel for the employer recalled Mr. Cormier to give rebuttal evidence on the technical and safety aspects referred to by the grievors' witnesses. Ms. Galipeau justified recalling Mr. Cormier on the grounds that most of the evidence led by counsel for the grievors was directed to establishing extenuating circumstances for the conduct of the grievors on October 3,

4 and 5, and it was therefore essential to hear the employer's evidence on these points. There followed a lengthy examination-in-chief and cross-examination, the substance of which may be summarized briefly.

45. The Tower I - Tower II concept, entailing the sub-division of the Dorval positive control zone and re-defining some of the duties of controllers had been scheduled to go into effect on July 14, 1979 (i.e. before the implementation of full bilingualism). Exhibit E-14 is the proposed Operations Letter that was circulated to the controllers in Dorval tower. The project had to be postponed, however, on account of technical problems (Bell Canada employees who were to connect the tower to the transmitter on Mount Royal were on strike) and personnel factors (eg. shortages due to vacation leave, persons on courses, etc). As matters turned out the system did not go into effect by the end of 1979. On January 11, 1980, Operations Letter 4/80 (Exhibit E-16) was issued indicating that the two-tower concept would come into effect on February 2, and describing the responsibilities of controllers and the procedures for performing the functions under the new system. On February 2nd, the system went into effect with the language of control being English only. According to Mr. Cormier the equipment for the two-tower system, as envisaged in the original plan, was in place. After functioning for 3½ days, because of resistance on the part of the employees to this change, there was a reversion to the one-tower system which had been in effect for some 15 to 20 years. Referring to the reports (Exhibits G-2 and G-3) prepared by a committee of controllers, Mr. Cormier indicated his opinion that they were not particularly constructive. Instead of proposing procedures to make the system function, the reports reflected an attitude of non-cooperation. Even so, the reports did not envisage the staffing of a third position as coordinator.

46. Operations Letter 8/80 (Exhibit E-17) directed the implementation of the two-tower system as of March 29 and set out operating procedures. There was no provision for a third position. Prior to March 29, Mr. Cormier arranged for briefing sessions on the implementation of the new system, authorizing employees to attend these sessions on an over-time basis (Exhibit E-18).

47. With the implementation of bilingualism on April 1, Mr. Cormier added a third person to the tower in order to facilitate the transition to full bilingualism in the context of the Tower I - Tower II concept. This was intended as a temporary measure only. The third person was given no definite tasks to perform, he was there to provide assistance, answer questions, observe, etc. He was not supposed to use any of the equipment. In his recollection, the person who was put into this role was one who had been involved in elaborating the procedures for this system. In addition, he pointed out that supervisors were close-by if problems should arise. Referring to Mr. Russell's letter of June 12 (Exhibit G-4) Mr. Cormier stated that it raised for the first time the question of a permanent third position of coordinator and of additional equipment. Cormier did not share the position taken in that letter. It seemed to him that the employees were interested in creating a third permanent position contrary to all previous documents and reports.

48. The two-tower system operated from March 29 to October 3. Based on his own observations, the reports of the supervisory staff and consultations with the users of air traffic control services, Cormier was of the view that the system was safe. He received no complaints from pilots relying on the tower during this period. In fact, he received a letter from the "Association des pilotes de brousse du Québec" dated June 18, 1980 (Exhibit E-22) expressing their satisfaction with the new system. Cormier's trip to Toronto together with Mr. Frenette in June to observe the operation of the two-tower system there, confirmed his opinion that there was no need for a third person as a coordinator.

49. Mr. Cormier was on holidays during July when the Kelly/Parker study was undertaken and its report issued. He was asked to comment on the Report's recommendations and indicated the points of his agreement and disagreement. He did not agree with the need for a coordinator. In his view it was precisely the purpose of the two-tower operation to provide for more coordinated communications between the controllers, the Terminal Control Unit and aircraft. The third person as coordinator merely added a layer in the communications flow. He recognized that there were times when IFR traffic could become complex because of its volume. Separation of IFR aircraft, however, is carried out by controllers in the Terminal Control Unit who provide the authorizations to the tower for the release of these aircraft. That is, IFR movements are transferred to the tower in an orderly sequence by the Terminal Control Unit. Cormier pointed out that the system has its limits in relation to the density of traffic but that there are well-established "flow control procedures" to deal with such situations. Nevertheless, Operations Letter 20/80 (Exhibit G-5) was issued by Mr. Frenette who was Acting Chief in Cormier's absence and Cormier did not participate in elaborating it. Thus, despite his reservations it was clear to him that he had to operate in accordance with this Operations Letter. In his view the system, after September 1, was made more complicated and in a sense precipitated the problem regarding the use of the emergency transceiver.

50. Cormier recognized that there was some problem but pointed out that the use of the transceiver had not been contemplated in the original plans. Because of the complaints and because it was only a matter of a few weeks before the supplementary equipment would be in place, he decided to return to the one-tower system on an interim basis (Operations Letter 23/80, Exhibit G-6). The only difference for the controllers would be that they would be required to provide full bilingual air/ground communications.

51. In cross-examination Mr. Cormier reiterated his opinion that the Bourgon report (Exhibit G-3) reflected a resistance to change. He referred, in particular, to the first two paragraphs of the report. He would not say that some of the points raised were entirely without foundation, but suggested that a careful analysis of the report and a review of the first 3½ days of experience after February 2, would show that what was recommended and what was in place were not "worlds apart". He pointed out that the mandate of the Bourgon committee was to make concrete recommendations but that after setting out their criticisms they came up with a recommendation for the creation of yet another committee.

52. In any event, after the re-implementation of the two-tower concept on March 29, Cormier did staff the tower with an extra person. However, there were no specified duties for that person set out in writing. Cormier had approved this person as part of the introduction of the system and did in fact provide a third controller in the tower until the beginning of September. Counsel for the grievors referred to the Asselin Committee report (Exhibit G-13, April, 1980) and its recommendation for a third person as coordinator. Cormier pointed out that in the draft Operations Letter prepared by that committee the section on "Coordination" does not refer to the addition of a person to perform a coordination function. He conceded that the issue of a third person was "on the table" at the time, but it was not until June 12 in the letter from Mr. Russell to Mr. Cormier (Exhibit G-4) that CATCA first put its request for a third person in writing. Cormier did not recall any discussions about, or a formal response to this letter. Ms. MacLean pointed out that the job description of the VFR controller includes a phrase to the effect that "the responsibility of the VFR controller is to assure safe, orderly and expeditious flow of airport traffic in the VFR zone" (a copy of the job description

was not produced as an exhibit). Mr. Cormier replied that a pilot's responsibility under VFR is "to see and be seen" and the controller's responsibility is to provide the necessary information to the pilot so that the pilot can "do his part". There are no specific standards laid down for VFR control, such as minimum separation; the controllers must be aware of the traffic situation and inform the VFR pilots accordingly. Cormier indicated that in the MANOPS there are rules differentiating between light aircraft and large transports. Most of the VFR traffic is that of light aircraft and, in the Dorval context, the existence of two parallel runways eliminates many potential problems.

53. Cormier pointed out that the consultations leading to the Kelly/Parker study took place at the Regional level and the decision to have the study came from those consultations. He was not present during the course of this study and did not issue the Operations Letter 20/80 implementing some of its recommendations. It was issued by the Acting Chief at the time, Mr. F. Frenette. Cormier repeated his opinion that the creation of the coordinator position introduced an extra level of communication which was not really necessary. The major coordinating functions are normally carried out in the air control centres and not in the towers. He agreed that there was a potential advantage in having a coordinator who can respond on the hot lines if a controller receives communications from the Terminal Control Unit and a particular aircraft at the same time. In his experience, this does not usually happen in Dorval. He pointed out that the coordinator position is not involved in direct air traffic control. The system is such that the information needed by the controller is passed on to him in accordance with established procedures and is available to the controller whether a coordinator is there or not. He agreed that the presence of a coordinator could cut down somewhat on the controllers' workload.

54. Questioned about the emergency transceiver, Cormier's opinion was that the system in effect before September 1st was superior to the one introduced by Operations Letter 20/80 which required the use of the transceiver under certain conditions. He was aware of the problems with the transceiver but his concern was not so much with the inadequacy of this equipment as with the system that required its utilization. He agreed that if there was to be a coordinator position as a regular part of the operations then there should be regular equipment.

Argument

55. Ms. Galipeau, counsel for the employer, pointed out that there were four specific grievances referred to the Board, those of D. Dubrule, C. Durocher, K. Fox and C. Gingras. The questions to be answered in determining these references are:

- (a) Was the allegation of misconduct against each of the grievors proven?
- (b) If proven, was the severity of the penalty justified?

In counsel's submission the answer to both of these questions must be clearly in the affirmative.

56. Reviewing the evidence in respect of the four grievances, counsel pointed out that the grievors admitted their refusal to provide their services at the material times unless certain conditions were met. Mr. Dubrule was working an overtime shift on October 3; in the middle of his shift he advised the Unit Chief that he was "cancelling" his overtime. The fact that Dubrule was on overtime does not mitigate his refusal to follow instructions. Once an employee reports for

overtime duties he is subject to the rules governing insubordination. This principle is supported by the Board's jurisprudence. Dubrule did not chose to testify, but his grievance form admits that he was cancelling his overtime and this action is confirmed by Mr. Cormier's uncontradicted testimony. His conduct is therefore established and the remaining question is whether the one-day suspension was a reasonable penalty. Ms. Fox's testimony is consistent with that of Cormier. She was not disciplined for October 3, but she admitted her refusal to work under the conditions required by the employer on October 4 and 5. Mr. C. Durocher completed his shift on October 3, but refused to work on October 4 and 5 in accordance with the employer's directive. It is noteworthy that Mr. Durocher sought the assurance of CATCA, which he received, that they would stand by him if he would follow CATCA's position in response to the questions regarding unrestricted bilingual VFR control. Ms. Gingras admitted to answering the questions on unrestricted bilingual VFR control in the negative on each of the three days - October 3, 4 and 5 - and thus refused to provide her services as instructed by her superiors. The sole question in all of these cases is not whether there has been insubordination, which is admitted, but whether the disciplinary penalties assessed against the grievors were justified and reasonable.

57. Counsel for the employer then dealt with the "historical context" which she anticipated would be relied upon by counsel for the grievors as providing the mitigating factors that would justify a reduction, if not a complete withdrawal, of the disciplinary penalties imposed on the grievors. In counsel's submission "history" does not provide such a justification. It is not enough for employees to say they believed or feared that Operations Letter 23/80, if implemented, would create an unsafe situation. Theirs was the onus to prove that these fears (or beliefs) were grounded on objective evidence if they were to be given weight as mitigating factors. What, then, is the evidence?

58. Mr. Dubrule did not testify and there is thus no explanation for his refusal. Ms. Gingras gave her subjective opinion that it would not be safe to provide bilingual control without restrictions, but she provided no evidence to support her "fear". Mr. Durocher did not refer to the safety factor; he was not prepared to provide bilingual control because his experience in controlling traffic on a single frequency was in English only. Ms. Fox said that she "felt" there might be a possible compromise on safety. Thus, only Gingras and Fox expressed "subjective fears" regarding safety. Against this we have the testimony of Messrs. Cormier, Frenette and Cameron that the "old system" was not unsafe for a full bilingual operation. The most that the grievors could claim is that there was a disagreement between them and the members of management on the issue of safety.

59. Ms. Galipeau argued that the "historical background" covering the period between April 1 and August 31, and September 1 to 30th, 1980, is irrelevant. A disciplinary action was imposed on account of the grievors' conduct on October 3, 4 and 5 in the context of Operations Letter 23/80. The issue is not whether the technical difficulties with the transceiver that were encountered between September 1 and 30 under Operations Letter 20/80 provide grounds for mitigating the disciplinary penalties. The question is whether the decision of management to revert to the pre-April 1 system with full bilingualism - for an interim period - was a legitimate one. There was no evidence, other than the subjective opinions of Ms. Fox and Ms. Gingras, that the "old system" operating bilingually would be unsafe. The grievors simply did not meet the burden of proving by way of objective and substantive evidence that there are grounds for mitigating their disciplinary penalties.

60. Counsel contended that the real issue for the employees involved in the events of October 3, 4 and 5 was less a concern for safety than for union solidarity. Their President, Mr. W. Robertson, was on the

west coast when he received telephone reports that the Dorval controllers felt that Operations Letter 23/80 would create an unsafe situation. Mr. Robertson had some discussions with Mr. McLeish (who was in Cranbrook, B.C.) and they apparently reached some agreement on the desirability of restricting services at the Dorval Tower. Neither Robertson nor McLeish were in a position to know the actual situation at Dorval. Robertson assumed that McLeish's subordinates would be informed of, and be bound by his "agreement" with Robertson. Counsel emphasized that Robertson knew or should have known that McLeish could not bind his local managers on this kind of issue. In his telephone conversations with various union officers in Quebec, however, Robertson conveyed the position that the union should "stick" to what was agreed between himself and McLeish. In other words, the union was going to decide what was safe and what would be done to pressure the employer. Counsel pointed out that experts could disagree on what constitutes the necessary degree of safety, but in the final analysis it is management that makes the decision and bears the responsibility. In the present case, it was the management of the Dorval Tower that was best placed to make the particular decision. This does not mean that the controllers may not voice their opinions or concerns, but the decision ultimately must rest with management. It should be clear from the evidence that the actions of the grievors on the days in question were primarily a way of demonstrating union solidarity. This is underlined by the evidence of the written "assurances" given Mr. Durocher by Mr. Aubry - "provided the members follow the National Direction, CATCA will provide total support to those members". The grievors' concern with union solidarity and pressure on the employer may explain their conduct, but it does not excuse it. If safety was in their minds, was it safe to leave the Tower unmanned, thus making it necessary to issue a NOTAM restricting operations?

61. Counsel concluded her submission with the assertion that there was no basis for reducing the disciplinary penalties. It was common ground (confirmed by counsel for the grievors) that the "formula" used in assessing individual penalties was a three-day suspension for employees who had a previous disciplinary record and a one-day suspension for those without such a record. Thus Gingras and Fox who had been previously disciplined were suspended for three days. Dubrule and C. Durocher who had not been disciplined before were each assessed a one-day suspension.

62. Ms. MacLean, counsel for the grievors, emphasized that the issue before me is whether the grievors had been insubordinate on the days in question. To establish insubordination it is necessary to show that the employees had failed to obey clear and direct orders. In counsel's submission, the evidence does not support the allegation of insubordination. Instead of ordering the employees to work, management asked them to answer two questions when they reported for duty. The employees answered the questions but, because management did not find the answers acceptable, they were told to go home. Although the "incidents" were proven they did not, in the context, constitute insubordination. In responding as they did to the questions put to them the employees were acting in accordance with the requirements of their licence, the regulations and the Air Traffic Control Manual of Operations (MANOPS). This may not have been consistent with the Unit Chief's instructions, but it was not insubordination. In refusing an affirmative answer to the second question the controllers were exercising their primary responsibility as set out in Part II of the MANOPS.

63. Counsel agreed that the matter had been discussed by the employees - with management at staff meetings, during the course of

union/management consultations, as well as at union meetings. However, as each of the grievors testified, they arrived at their own assessment of the situation. They were not told what to do by the union, although they might have been encouraged to exercise their discretion by their knowledge of the existence of the Robertson/McLeish agreement and of the union's position. The MANOPS go beyond the general reference to an air traffic controller's obligations regarding safety. Section 212.1 confers a right on an air traffic controller to restrict traffic if considerations of safety warrant it. In the Dorval situation, at the material time, the controllers had been requesting that restrictions be placed on VFR traffic, but this was not acceptable to management. Mr. Cormier's position that a potentially dangerous congestion of traffic could be handled by established procedures of flow control does not meet the problem of a long-term situation. It was the honest belief of qualified air traffic controllers that a general restriction covered by a NOTAM was the appropriate way to deal with the fact that four to six weeks would elapse before the equipment necessary to make the Tower I - Tower II concept operational would be installed. The controllers' attitude was therefore reasonable and in conformity with the recommendations of the Chouinard Report for attaining an optimal level of safety in bilingual air traffic control, particularly in view of the increase in traffic which was a direct consequence of the introduction of bilingual air/ground communications. Mr. Cormier's testimony supports that of the grievors, that the introduction of bilingual air traffic control increased the workload and caused some transitional difficulties. In sum, the grievors were sincere and acted reasonably. It is not correct to say that they acted under union pressure or in terms of union solidarity.

64. In the alternative, if it is determined that the grievors were in the wrong because of the method they used to achieve restrictions

on VFR traffic, there are still good grounds for mitigating the disciplinary penalties imposed by the employer:

- (1) Their honestly held belief on safety was an issue which was shared by the majority of the controllers in the Dorval Tower, as well as by others experienced in air traffic control.
- (2) There was no evidence to contradict the fact that an agreement was reached between Messrs. Robertson and McLeish. Had the grievors not believed that there was such high-level support for their position, they probably would not have acted as they did.
- (3) The ultimate resolution of the issue by agreement reached on October 5 confirms the position taken by the grievors and follows the lines of the Robertson/McLeish agreement.
- (4) The history of relations with local management between February and October 1980, on the safety factors related to the introduction of fully bilingual air traffic control, reveals the negative attitudes of management. The controllers finally "had to go to the wall" and put their own professional judgment ahead of the Unit Chief's assessment of the situation. Mr. Cormier's own testimony shows that he did not take the controllers' concerns about safety very seriously. He tended to regard the various representations made by controllers as pressure tactics to bring about the establishment of an extra position in the Tower.

65. Against this background one can readily understand the ultimate reaction of the grievors. Even though Operations Letter 23/80 was an interim measure, six weeks represented a significant period of time. The safety of the system and the credibility of local management were overriding factors, and the controllers felt that they had to take a stand.

66. Counsel then referred specifically to the cases of Dubrule and Fox. Mr. Dubrule was working a voluntary overtime shift and therefore had the right to refuse to continue or to cancel his overtime. Ms. MacLean asked for a clear ruling on this point.

67. As for Ms. Fox, her position was different from that of the other grievors in that she was a trainee and could not perform control functions on her own. If anything, she should receive a lesser penalty.

68. Finally, counsel asserted that because it was the employer who decided to send the grievors home although they reported and were prepared to work, they should be paid for the days on which they so reported.

69. In rebuttal, counsel for the employer rejected Ms. MacLean's argument that the grievors had not been given an order but were merely asked to answer two questions. Operations Letter 23/80 was a clear directive as to how the Tower was to operate for an interim period of time. Mr. Cormier, who had become aware of the possible resistance to this directive, adopted the "civilized" approach of asking each of the controllers whether they would abide by the directive. This approach did not alter the fact that the Operations Letter was an order, and that the negative responses of the grievors constituted insubordination. As for the controllers' professional judgment that

the directive would create an unsafe situation, this must be weighed against the professional judgment of Quebec Regional management. The fact is that there had been no experience in providing fully bilingual control under the one-tower system (i.e. pre-April 1980) and, therefore, there was no basis for concluding in advance that it would be unsafe. The controllers might have been sincere in their opinions, but they could have been wrong at the same time.

70. Regarding the alleged agreement between Messrs. Robertson and McLeish, Ms. Galipeau suggested that it existed largely in Mr. Robertson's mind. His own testimony admitted that when he had spoken to Mr. McLeish for the second time on the morning of October 3, McLeish advised him that there was no agreement because he had been overruled by local management. It was then up to Mr. Robertson to advise the union officers at Dorval that there was no agreement which they could invoke as a reason for their refusal to work in accordance with Operations Letter 23/80.

71. Finally, counsel noted that the historical background of discussions and consultations between February and the end of September 1980 concerned the implementation of the new two-tower system. What is in issue, however, is the conduct of the grievors on October 3, 4 and 5, 1980 when they were instructed to work under the one-tower system which had been in effect prior to April 1980.

72. In a supplementary submission dated November 3, 1982, counsel for the grievors provided the Board with a volume containing the MANOPS. The Manual is issued under the authority of the Minister of Transport pursuant to the Aeronautics Act, R.S.C. 1970, Chapter A-3. Her position was:

As I indicated in oral argument, by virtue of 201.1 and 201.2, Airport Controllers are directed to maintain a safe, orderly and expeditious flow of airport traffic for those aircraft outlined in Section 201.2.

The power to restrict VFR traffic is found in 212.1 of Man Ops. It is submitted that all the Controllers were doing in this case was, based on their knowledge and experience in controlling traffic bilingually at Dorval Tower, attempting to restrict the VFR aircraft to a number that they felt they could control safely and efficiently.*

73. In her response dated December 14, 1982, counsel for the employer pointed out that although "a controller can, at a given moment, restrict VFR aircraft for considerations such as safety and efficiency", a number of factors must be borne in mind. The primary responsibility for the operation of the control tower is that of the Tower Chief and, in the present case, he exercised his responsibilities and discretion in issuing Operations Letter 23/80. This was in keeping with management's right to assign duties and the Department of Transport's responsibility in matters of air safety. The MANOPS is a "working tool" which does not have the force of law, and section 212.1 cannot be construed as authority conferred on individual controllers to impose their particular views on the method of traffic control. Neither does the MANOPS alter the rules of discipline in respect of employees who refuse to obey a legitimate order by their Chief. Counsel concluded her response as follows:

* Section 212.1 states:

"If traffic density warrants, restrict VFR traffic to a number you can control safely and efficiently".

It cannot be reasonably argued that by withholding their services when ordered to work, the employees were in fact exercising an alleged unfettered discretion set out in the Manual of Operations. Rather, the evidence demonstrates that the employees were withholding their services to force their employer to run the operations in the manner they deemed fit.

Reasons for Decision

74. As indicated, my determination of the grievances of Claire Gingras and Claude Durocher will apply to those of eleven other grievors whose names are listed at page 1 above, depending on whether they were given suspensions of one day or three days. The grievances of Kathleen Fox and Denis Dubrule are to be determined on their individual merits because of particular factors that distinguish them, in part, from the other thirteen.

75. Both parties agree that the primary issue to be determined is whether the grievors were insubordinate on any, or all, of the days of October 3, 4 and 5, 1980. If insubordination is established, the question is whether the disciplinary penalties assessed by the employer were just and reasonable. The evidence adduced by the parties covers a great deal of ground and I have attempted to summarize it in some detail. Conceptually, it is divisible into two parts - the problems encountered in adapting the system of VFR control from the Dorval Control Tower in light of the implementation of full bilingualism in air/ground communications as of April 1, 1980, and the specific incidents that occurred on October 3, 4 and 5. The employer's position, as set out in the disciplinary notices (Exhibits E-1 to E-4) and argued by its counsel, is that the evidence regarding the grievors'

conduct on October 3, 4 and 5, standing by itself, supports the allegation of insubordination and justifies the disciplinary penalties imposed on each of the grievors. Counsel for the grievors, on the other hand, argues that the evidence as to what transpired in the Dorval Tower between February and October 5, 1980 is all of one piece and that the conduct of the grievors between October 3 and 5, seen in this larger context, was a reasonable exercise of their responsibility to ensure safe and efficient air traffic control.

76. In my judgment, the employer's decision is the more tenable one. The incidents involving the grievors on October 3, 4 and 5 are separate and distinct from the abortive efforts during the spring and summer of 1980 to make the two-tower system operational at Dorval. The failure of these efforts may have fed the frustrations of the grievors - whether or not they were justified - and may have accounted for management's decision to issue the Operations Letter of September 30, 23/80 (Exhibit G-6). I do not find that the grievors' conduct on the days in question was integrally related to the problems encountered in implementing the two-tower system; it was a direct challenge to the operational instructions issued by management on September 30. At no point during the proceedings before me was the legitimacy of Operations Letter 23/80 challenged. The grievors' defence rests on their allegation that Mr. Cormier's directive could not be construed as a clear order, that it was imprudent, that it would create an unsafe situation, and that it was therefore within their professional discretion, indeed responsibility, to decide whether and to what extent they should be bound by it. The grievors did not succeed, however, in establishing their case on the basis of objective and substantive evidence.

77. The primary onus on the employer was to prove insubordination on the days in question and, on the basis of the evidence, it succeeded in establishing grounds for disciplinary action. (The particular factors relating to the grievances of Ms. Fox and Mr. Dubrule will be dealt with below). The instructions issued by the Tower Chief on September 30 (Operations Letter 23/80) were clear. There was no question that they were issued under the aspect of bilingual air traffic control which had been in effect since April 1, 1980. In light of what transpired at the staff consultation on October 1, and the meeting with the Chairman of the Union Local on October 2, it was not inappropriate for Mr. Cormier, when he became aware that the controllers were using English only in their air/ground communications during the morning of October 3, to ask the individual employees if they were prepared to provide unrestricted bilingual air traffic control in conformity with Operations Letter 23/80. The grievors might have had their reasons for disagreeing with these instructions but, unless they were able to prove exceptional circumstances, their first duty was to obey. This would not have precluded them from having recourse to the grievance process or to less formal means of seeking changes in the instructions. Instead, they declared themselves unwilling to abide by the directive and thus gave the employer grounds for disciplinary action against them.

78. Having found that the extensive evidence regarding the problems related to the implementation of the Tower I - Tower II concept provided no substantive defence against the employer's allegation of insubordination, there remains the submission by Ms. MacLean that the grievors were not insubordinate insofar as they were exercising the discretion given them by the MANOPS to restrict VFR traffic under certain conditions. I am not persuaded by this argument. There is no way that I can read into the sections of the MANOPS adverted to by

Ms. MacLean an open-ended discretion for individual controllers to determine the conditions under which they would provide VFR control on the basis of their subjective opinions, unrelated to an immediate or imminent fact situation, that considerations of safety warrant it. To accept such an interpretation is to invite anarchy in a complex, hierarchically organized system of air traffic control. Surely, Section 212.1 of the MANOPS refers only to a situation where a controller on duty is confronted with a problem of traffic density for which the established procedures of flow control are either not being used or prove to be inadequate. Thus, if one of the grievors working in accordance with Operations Letter 23/80 had decided to restrict VFR traffic because of a particular situation of congestion and had been disciplined for it by the employer, he would have been in a position to file a grievance based on section 212.1 of the MANOPS, which would have carried a good deal of weight. The MANOPS does not, however, provide a warrant for the refusal in advance by controllers to perform their duties in conformity with the legitimate directives of management because they happen to take issue with the professional judgment of their superiors.

79. Ms. MacLean's submission that Kathleen Fox's case should be assessed differently from that of the other grievors is based on the fact that as a trainee Ms. Fox was dependent on the supervision of another controller and could not perform control functions on her own. The evidence shows that on October 3 Ms. Fox agreed to complete her shift after some of the other controllers had been sent home. Ms. Fox's own testimony, however, makes it clear that her refusal to work in accordance with the Operations Letter on October 4 and 5 was unrelated to the question of her status as a trainee and the availability of a licensed instructor to supervise her work. She had attended the union meeting on the evening of October 3, and decided that it would not be safe to operate bilingually on one frequency under conditions

of dense air traffic. When, on October 4 and 5, the same questions were put to her as had been put to the other controllers, her response was in the negative - without any qualification related to her status as a trainee. I therefore see no reason for distinguishing her conduct from that of the other grievors.

80. The alleged misconduct of Denis Dubrule is of a different order. He had been working an overtime shift on October 3 and when he was asked, after his meal break, to take over the position of P. Tuppert or R. Durocher who had been sent home because of their negative response to Mr. Cormier's questions, Dubrule informed Cormier that he was "cancelling" his overtime and he left the tower. October 4 and 5 were off-days for Mr. Dubrule. Ms. MacLean's submission was that because overtime at the Dorval tower was voluntary (see Board decision 148-2-61 and 62) he had a right to discontinue or cancel his overtime at any time during his overtime shift. Counsel cited no jurisprudence in support of this argument and I have no difficulty in rejecting it. Where overtime is "voluntary" an employee may or may not agree to work a particular overtime shift, but once having committed himself to work the overtime and, more particularly, having worked part of the overtime shift, the employee cannot unilaterally decide to "cancel" all or part of his commitment to work the overtime. It is obvious that if Ms. MacLean's position on voluntary overtime were to be accepted as a general proposition, no employer could rely on the scheduling of overtime to meet its operational needs. If the jurisprudence on this question is scanty it is probably because the answer is self-evident. Brown & Beatty in Canadian Labour Arbitration refer to a number of cases and state at page 358:

... arbitrators have upheld the discipline imposed upon an employee who, though initially agreeing to work an overtime shift, prematurely leaves the premises before the end of that shift.

Mr. Dubrule's action on October 3 therefore constitutes misconduct as alleged in the employer's disciplinary notice (Exhibit E-1).

81. I have considered the alternative submission advanced by counsel for the grievors to support the mitigation of their disciplinary penalties (see paragraph 64 above) but do not find it convincing. I have already indicated that the problems encountered between February and the end of September 1980 in implementing the two-tower system are severable from the incidents of October 3, 4 and 5. I would add that the responsibility for at least some of these difficulties must be shared by both parties. The argument that the majority of the controllers honestly believed that safety was the overriding issue, and that the Robertson/McLeish "agreement" would be honoured by local management, does not persuade me that the disciplinary penalties for their individual acts of insubordination ought to be mitigated. Indeed, the argument seems to undermine counsel's earlier claim that the decision of the grievors to respond to Mr. Cormier's questions in the negative was independently made by each of them, on the basis of his or her individual assessment of the safety issue. Which brings me to Ms. MacLean's submission that because the agreement reached between the union and management on October 5 followed the lines of the Robertson/McLeish "agreement", it should be regarded as vindicating, at least in part, the position taken by the grievors. In my opinion, the agreement reached on October 5 is unrelated to the merits of the grievors' conduct at the material time. It was a pragmatic settlement, between the local union and regional management, of an issue that was threatening to escalate into a concerted and sustained withdrawal of services by the controllers employed at the Dorval tower. I therefore see no reason to disturb the disciplinary penalties assessed by the employer.

82. For all of these reasons, the grievances of Claire Gingras, Claude Durocher, Kathleen Fox and Denis Dubrule must be denied. This decision applies, *mutatis mutandis*, to the grievances of the eleven other employees who are identified at page 1 above. It follows that the grievors who were scheduled to work on October 3, 4 or 5 are not entitled to compensation for time not worked on those days (i.e. after they were instructed to leave the tower).

For the Board,

S.J. Frankel,
Board Member and Ajudicator.

OTTAWA, January 12, 1983.