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File Nos.: 166-2-13472  
166-2-13473  
166-2-13475

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

BETWEEN:

W. COFFIN, S.T. GLASSFORD AND  
T.D. MOORES,

Grievors,

AND:

TREASURY BOARD  
(Department of Transport),

Employer.

DECISION

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

For the Grievors: C.H. MacLean, counsel

For the Employer: Harvey Newman, counsel

Heard in Toronto, April 14 and 15, 1983.

ART 7  
CODE 402/82

DISCIPLINE

### DECISION

These are three references to adjudication pursuant to paragraph 91(1)(b) of the *Public Service Staff Relations Act*.

The matter concerns two air traffic controllers, namely W. Coffin and S.T. Glassford who in August of 1981 allegedly made transmissions to aircraft to the effect that the United States airspace was unsafe. The matter also refers to a tower supervisor, Trevor Moores, who is alleged to have permitted the above transmissions and to have failed to follow directions. Grievor Coffin is grieving a suspension of 12 days, grievor Glassford, a suspension of 5 days and grievor Moores, a suspension of 13 days. All three were employed at the Toronto air control center.

This is another adjudication relating to penalties imposed on air traffic controllers as a result of activities arising from an illegal strike by air traffic controllers in the United States in August of 1981. I rendered a decision in this regard on November 23, 1982 in Gauthier, Batchelor and Reasin (166-2-12727, 28 and 29). Board member and adjudicator Innis Christie also rendered a decision on June 13, 1983, in Adams et al. (166-2-12832 to 866).

It was agreed by counsel at the outset of the hearing that I could take into account the evidence adduced in Gauthier (supra), to the extent that it was relevant. Counsel added that I was authorized to consider that the present adjudication was more or less a continuation of Gauthier (supra).

I need not, I believe, repeat here in detail the findings of fact in Gauthier (supra). Suffice it to say that at page 109, I concluded as follows:

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

Counsel for the grievors also admitted the following facts relating to each of the grievors:

1. S.T. Glassford, while performing the duties of a tower controller on August 8, 1981, made a transmission to aircraft on the ground while working the clearance delivery position. This transmission was made after Glassford gave the aircraft a clearance and to the best of recollection, the transmission was to the following effect: "Be advised that IFATCA has declared the U.S. airspace to be unsafe because of unqualified personnel and lack of adequate staffing".
2. Trevor Moores, while performing the duties of a tower supervisor on August 8, 1981, was aware that Scott Glassford and other air traffic controllers were on duty on that shift were making these types of transmission and did not tell them to stop doing so until he was so instructed by Ken Riseborough who at that time was the watch supervisor or manager of the area control centre.
3. W. Coffin, while performing the duties of an air traffic controller in the area control centre from August

4 to 12, 1981 made transmissions to aircraft that were destined to the U.S. to the best of Mr. Coffin's recollection as follows: "As far as we are aware, U.S. airspace is being controlled by unqualified or no current controllers. IFATCA has declared U.S. airspace to be unsafe. I feel compelled to advise you of a possible hazard to flight."

#### THE EVIDENCE

Five witnesses testified on behalf of the employer. They include Dick Dyck, Francis Dean Bondy, Kenneth Riseborough, David Lee Campbell and Ronald George Bell. The last three witnesses had already appeared in Gauthier (supra). Seven witnesses including the three grievors testified on their behalf. They are, besides the grievors, Barry Williams, Klaus Pollack, Frank Gauthier (who was one of the grievors in the above case of Gauthier) and Randy M. De Garis.

The letter of discipline sent to grievor Coffin reads that he made "improper and unauthorized transmission" and was insubordinate after he "continued to pursue this action after direction to cease". The letter to grievor Glassford reads that he made improper and unauthorized transmission. The letter to grievor Moores states that he "failed to exercise (his) supervisory obligations in a responsible manner in that (he) on August 8 permitted the transmission on departmental communications of an unauthorized message and on the same date (he) failed to follow the directions of watch supervisor Riseborough in that (he) did not provide other shift supervisors with proper written information."

The admissions made by counsel for the grievors give a summary of some of the events leading to the suspensions but for a complete and thorough understanding of the situation, I am reporting hereunder the various testimonies as they were rendered.

EMPLOYER'S CASE

1. Dick Dyck

I am employed by the Department of Transport at the Toronto area centre. I am an air traffic controller AI-5. I am the supervisor in the terminal sector of the Toronto centre. I have been in that position for 12 years. I have been an air traffic controller for more than 26 years. The terminal sector takes care of air traffic at Toronto in a radius of 22 miles and up to 23,000 feet. The responsibility of the tower is 11 miles up to 3,500 feet. The tower works mostly visual. The sector works mostly radar. We line up traffic on a final approach and then turn it over to tower. There are normally 5 controllers on day-shift from noon to 6:00 PM. I recall the events of August 1981. I was on duty for sometime on August 11, 1981. I was working from 3:00 PM to midnight. Coffin was one of the subordinate employees on that shift. I heard what Coffin said on the airways between 10:00 PM and the midnight. I told him not to do that. I sent him to see the watch manager Dean Bondy. I thought that the comments had nothing to do with air control and that they were not pertinent. After August 11, the operations went back to normal. It was a rather confusing time.

Cross-examination

I have been Coffin's supervisor at least 2½ years. I am familiar with Coffin's ability. He is an extremely good controller. I worked on a number of shifts during that period. I cannot recall similar comments from other controllers. It is possible but it does not come to mind. I do not recall having talked to Coffin

regarding his comments prior to August 11. I know that Coffin felt that he had to make these comments that airspace was unsafe. I was more concerned with other things which were happening such as the refusal to move an aircraft or to handle traffic.

When I gave the instructions to Coffin to go and see Bondy, he immediately obeyed.

2. Francis Dean Bondy

I am employed by the Department of Transport. I am an air traffic controller at the Toronto area centre. I am an AI-6. I am a shift manager. I was holding the same position in 1981. I have been an air controller since 1957. I am in charge of a given shift in the air traffic control centre and below me are supervisors in special areas namely the control tower, the terminal control unit and onroute areas including east, west and north and the operational supporters. I report to facility shift manager Dave Campbell. In August 1981, I also reported to Mr. Campbell. On August 11, I was on duty for the 3:00 PM to midnight shift. I met Coffin toward the latter part of the evening shift. The terminal control supervisor advised that Coffin had been making transmissions on frequency to aircraft that he considered unacceptable. I think that Dyck came to me in person. I saw Coffin shortly after. I asked him what the transmission was. He said that aircraft proceeding into U.S. airspace may be going in an area considered unsafe. He advised that he was giving this advice in good conscience and on the advice of a lawyer. He also said that he was giving this advice to all aircraft going to Cleveland. I told him that this was unauthorized and that he did not have the authority to do this. I feel that it was an irregular message and therefore an unacceptable transmission. I said that he should not do that. He said that he was prepared to stop if I or management would give him a letter to that effect, that is that it was unacceptable, etc. I did not prepare such a letter. To my knowledge, Coffin did not continue with the transmission. I said that I was prepared to give him a letter but I did not. The next day, all actions ceased. I reported this to Mr. Campbell.



Cross-examination

An unauthorized transmission is one which does not directly involve aircraft. It is true that at the time, it was an abnormal situation.

3. Kenneth Riseborough

I am employed by the Department of Transport. I gave evidence in Gauthier (supra). On August 8, 1981, my office was located in the Toronto centre. I arrived at 6:00 AM. I went through briefing with the midnight staff. We talked about staffing and notices to airmen. We did this for about 1½ hours. I then walked around. The day-shift was coming on to take over. I learned that there had been some unauthorized communications. I saw Moores around 7:00 AM outside the doorway to operation support room. Moores was scheduled to work as a supervisor in the control tower that day. I talked to Moores concerning the unauthorized communications in the tower and I said that I would like to know if it happened again. Moores said "OK". At about 12:30, I had a call from Ottawa, operation room, about a call from Washington Federal Aviation Agency who had received a call from AA 572 to the effect that it was unsafe to fly American airspace. The operation room asked me to follow it up. I called supervisor Moores in the tower. The transcript of my telephone conversation with Moores as taken from a tape is filed as exhibit E-4. Glassford came on the line later. My instructions were not followed up by Moores. A note could have been done formally or informally. It could have been a written note posted in the log book. It should have been put in the log.

Cross-examination

I have known Mr. Moores for 30 years. I was in the Navy with him. I could have tracked the origin of all transmissions by listening to tapes. I met Moores at 7:00 AM in the morning. I said to him that there had been a report about unauthorized transmission and to

keep alert. I have been in the Toronto tower for the last time in 1958. I do not know about a book privy to supervisors. I did not inquire to see if Moores had briefed the next supervisor. I would expect that the other supervisors were advised. I do not know if other controllers were penalized for the same unauthorized transmission.

The issue of unauthorized transmission was not a big issue. The failure of equipment is a big issue. I was simply faced with a violation.

4. David Lee Campbell

I have already rendered testimony in Gauthier (supra). I still hold the same position. I was involved in the events relating to the three grievors. After the disruption was settled, there was an investigation together with a report completed by two senior officers and a series of interviews. All this was in connection with the unauthorized transmission. The interview with grievor Coffin was on October 5, 1981, with Moores on October 9 and with Glassford on October 13. I made notes of these meetings. I had my notes typed. My notes are accurate. Regarding Coffin, the meeting was at 3:30 PM. Coffin was represented by Wayne Berry and he chose not to respond to any statement put to him. Moores was interviewed on October 9, at 10:25 AM. He was not represented and he made a statement. He was not reluctant to discuss the findings. The transcript is filed as E-5. The transcript of the meeting with Glassford is filed as E-6. After the interviews were concluded, I discussed the matter with other individuals and with Ron Bell. I suggested discipline in excess of 5 days. The transmission was unauthorized and inappropriate and it was a subjective assessment controllers were not qualified to make. I did not decide as to the penalty to be imposed.

Cross-examination

It is true that other controllers that is other than the 3 grievors and Reasin within the facility issued similar warnings. I did not make an effort to find out who they were. I cannot recall if Glassford referred to other controllers and said: "Why me?" I cannot recall if I said that it was because he had been cut. My attention was drawn to Glassford because of the complaint by aircraft. I am aware that there

was a similar problem in other regions. A copy of a memorandum from R.M. De Garis is filed as E-7. I cannot recall having seen this memorandum prior to making representations concerning the discipline to be imposed. I received a number of complaints concerning the refusal to clear traffic. It is true that De Garis was not disciplined. Nobody else was disciplined for making transmissions of that nature. I did not attempt to track individuals down. There are so many hours in so many days. We did the best we could in the circumstances. It is true that the transmission had no impact on flight safety and that I was more concerned with a controller who refused to clear traffic. In Gauthier the safety of aircraft was involved. It was much less serious regarding the 3 grievors. My recommendation was 6 to 10 days in the case of these 3 grievors. It is true that 15 or 20 air controllers refused to control traffic in Toronto and that they were given 1 to 3 days. When the air controllers were given 3 days it was because it was on a repeated basis.

5. Ronald George Bell

I already testified in Gauthier et al. I still hold the same position. I am regional manager, air traffic services. Concerning Coffin, I was directly involved at the initial stage and at the time of the subsequent investigation up to and including the disciplinary penalty. Concerning Glassford, I was involved in the disciplinary process. With regard to Moores, I took the final disciplinary action. Coffin admitted transmission to a number of aircraft prior to and after August 10. Coffin was advised by his supervisor Dyck that he should not make that kind of transmission and he did not comply. Coffin explained that he thought that it was not a direct order. Concerning Moores, he said that he had discussed the instructions with the supervisor who had followed him and that he had left instructions on a pad. We could not, however, find the information. In my opinion, Bryce Owen would have been the supervisor who followed Moores. Mr. Lane was the one who finally imposed the disciplinary action and he imposed less than my recommendation. After looking at the nature of the specific offences and the disciplinary record of each employee, my recommendation was a suspension of 15 days to Coffin, 15 days to Moores and 10 days to Glassford. The grievors' comments compromised the integrity of the system. The whole activity had nothing to do with Canada and it was a clear case of insubordination. It is to be noted also that Moores was a supervisor. The compromise to safety was not done in a direct sense as in the case of Gauthier et al.

Cross-examination

I attended the meeting of December 21 with Coffin. With regard to Moores, it is true that he talked about a scratch pad. I did not verify who relieved Moores. I do not know if anybody verified the information. I based my recommendation of a suspension on the fact that Moores had not provided the other supervisor with the information.

I believe that Moores was the one who told me that he had been followed by Owen.

GRIEVORS' CASE

1. Barry Williams

On August 8, 1981, I was the supervisor in the Toronto tower. I worked the evening shift from 3:00 PM. Moores was the supervisor prior to me. I received from Moores the normal briefing during 2 or 3 minutes including information on anything abnormal. I was told about the conversation with Toronto centre with reference to the delays in the U.S.A. Moores advised me that he had been instructed that no comment should be made. At the end of my shift, I passed on the same information to the next supervisor.

Cross-examination

Normally, a briefing is verbal. I, myself, briefed my controllers and nothing happened during my shift. I do not know when I was advised of the penalty to Moores.

No one from the employer contacted me in this regard.



2. Scott T. Glassford

I am employed as tower controller. I have been employed in this capacity for 10 years at Windsor, Kitchener and Toronto. I was on duty from August 3 to August 8, 1981. The situation was hectic and chaotic. We were faced with the holding of aircraft at runways, etc. On August 8, I worked day-shift with 3 other controllers, 2 assistant controllers and 1 supervisor. Moores was the supervisor. I did make one or more transmissions to aircraft. As a result of conversation with other air controllers and on account also of my knowledge of the situation, I felt that it was better from the data position that aircraft be advised before leaving. All controllers participated to the decision. I heard a number of other air controllers issuing the same warning. The supervisor was in the tower and he was aware of this. There was a general agreement. Everybody stopped as a result of the phone call described on exhibit E-4. Moores said something but I cannot say exactly what. I still believe that pilots had to be alerted. I thought that management would stop traffic to U.S.A. I had a conversation with Mr. Campbell on October 13. I expressed deep concern that I was the only one called for disciplinary action. Mr. Campbell said that I had been the only one caught.

Cross-examination

In my opinion, the message was very pertinent. I cannot say that I knew that management would not condone our action and that it would be a controversial item. Everybody was concerned. The message was an advisory to alert the aircraft. My decision was personal.

I cannot swear that Williams replaced Moores. The attendance report would show it.

3. Trevor D. Moores

In August 1981, I was employed as a supervisor at the Toronto airport. I had the responsibility of ensuring that the tower was staffed with qualified controllers. I also had to notify users and others of any closure and to see to safety of the airport. On August 8, 1981, I was on duty during the day-shift. It was very chaotic. We had about triple the work and the delays going to U.S.A. were tremendous. Toronto was to contact point. I had no knowledge of unauthorized transmission prior to that date. I had 5 controllers and 2 assistant controllers under me. We were fully staffed. I observed feelings of increased frustration. I became aware of the notification from IFATCA. The controllers thought that they should issue a warning. I was asked for my opinion. I thought that it was fair to notify the pilots on the ground through IFR frequency. Such a frequency is not a public frequency. I received a call from Mr. Riseborough. I went over to clearance delivery and I was told to cease sending the message. No other messages were sent to my knowledge afterwards. I recall that I wrote the request down on a scratch pad. This pad is on the supervisor's desk and it serves as a reminder. To the best of my knowledge, Barry Williams is the one who relieved me. I told him that Mr. Riseborough had called and that we had caused some stir with the message and that it should be stopped. I assumed that Williams would obey and that he would pass the message in the same manner to everybody else. I cannot recall that, at the December meeting, I would have said that Owen was my successor. If I did, it was an error. I thought that the message was advisory and that a hazard warning was simply passed along to aircraft. I was

not asked about the identity of other individuals who acted like Glassford.

Cross-examination

I did not volunteer the names of other persons who acted like Glassford. I did not feel that I had an obligation to do this. I had no concern about the legitimacy of the message. My subordinates, however, were not sure. I did not feel at any rate that it was necessary for me to go to Mr. Riseborough. I was surprised at Mr. Riseborough's reaction. I did not act as I did to support CATCA. My purpose was not to issue a political message. I did not write in the log book. I am positive about the scratch pad. I pointed out the pad to Williams. I do not believe that Owens was the one who replaced me. To the best of my recollection it was Williams. I thought when we had our meeting in December that this question of advising the other supervisors was settled. A pad is usually kept until the information is given and then it is destroyed. I am sure that I wrote on a pad and that I briefed the next supervisor as I was told. I simply wrote on the pad: "No IFATCA message". There were 3 or 4 other messages on the pad. I did tell Williams to relay the same instructions to his reliever.

4. Derek Coffin

I was an air traffic controller in August 1981. I have been employed by the Department of Transport for 16 years in Sept-Iles, Quebec, Cartierville, Mirabel and Toronto. I have been at the Toronto centre for the last seven years. I was on duty from August 4 to August 12, 1981. It was chaotic and difficult. I performed my duties normally as best I could. It is true that I was making transmissions regarding safety. I felt obligated by the manual of operation requiring me to give pilots advice on safety. I was also concerned for my personal liability. I was aware that other air controllers were doing the same thing. I issued the warning to aircraft still on the ground at the departure position and also to airborne aircraft. I recall two conversations with Dyck. On August 8 or 9, Mr. Dyck came to me and he said: "Are you making transmissions?" I said "yes". He said: "They want you to stop." I wanted to explain my situation. He said: "They won't like it." There was another conversation on August 11 or on or about August 11. It was towards the end of my shift. Dyck came to me and asked if I was still making transmissions. I said "yes". He said that he wanted me to go and see Bondy, the watch manager. Frank Gauthier was there. Bondy asked what was the nature of the transmission. I said that the transmission was about unqualified controllers or a lack of controllers and unsafe U.S. airspace. There was no argument. Bondy said that they felt that it was an unacceptable use of frequency and that I should stop. I mentioned to Bondy the manual of operations and also the fact that I was worried and that I had met with two friends who were lawyers. I indicated to him that I would be willing to cease if written directions would be given to me with reasons. I asked him if he thought that it was a fair position. He said that he thought that it was a fair position. He said that he

would issue written directions but he did not. I continued to issue the same transmission during the shift. I had the impression that I could continue until such time as I would receive written instructions.

Cross-examination

Dyck did not put it to me on August 8 or 9 as a direct order. I did not consider it to be an order. I did not see an order in what was said to me. I knew that "they" meant "management". I thought that the information that I was passing along was pertinent to safety. I realized that management would not be happy with my action but I was not alerted to the possibility of discipline. I felt that my decision was a reasonable one. I had no confidence in management's action. It seemed to me that management was doing its best to cover up the fact that the airspace was unsafe. I thought that Dyck was happy with my answer. I was not defying management. Defying means to willingly decide to disobey. That was not my case.

I am aware that other air controllers conveyed the same message. I can think of four of them excluding Moores.

5. Klaus Pollack

In August 1981, I was a tower controller. I acted as supervisor in the Toronto tower. I was on duty from August 3 to August 10. I took over from Trevor Moores on the afternoon shift on August 7 and 8. Moores told me that he had received word from Mr. Riseborough about the controllers saying something on the frequency. Moores said that he had been advised to cease and desist.

Cross-examination

I recall that this happened one time. Moores definitely used the words "cease and desist". Moores left it to each crew. I do not remember if Moores said that I could do what I wanted. I also recall something printed. I cannot recall if I was directed to the scratch pad. I had a conversation with the crew who agreed that we should cease and desist. I am not sure of the date.

I was not replaced by any other supervisor.

6. Frank Gauthier

I recall that I was present at a meeting on August 11, 1981 as Coffin's union representative. I took notes. These notes are filed as exhibit E-10. Bondy was at the meeting. He asked if other air controllers were doing it. Coffin said that he was not aware of anybody else doing it at that time. Coffin said that if he got written instructions to stop, he would stop.

Cross-examination

The meeting lasted 5 minutes to 1½ hours at the most. The quotes in my notes are not direct quotes. It is, however, what was said. Perhaps somebody in management did not like the statement. Bondy seemed to be seeking information. I did not say about other air controllers doing the same transmission. I thought that Bondy felt that there was no problem.

I cannot recall if during the meeting the word "Cleveland" was said. I cannot recall also if Bondy said that the message was irregular.

7. Randy M. De Garis

In August 1981, I was an air controller in the terminal sector of the Toronto control centre. I was on duty from August 6 to August 12. I remember my memorandum of August 10 to unit manager Campbell. I submitted the memorandum to the watch supervisor's office. I discussed it also with Mr. Riseborough. Mr. Riseborough asked me what I meant. I said that the memorandum was self-explanatory, that I was concerned and that I felt that it was my responsibility to warn the pilots. Mr. Riseborough said that it was fine but that I should not do anything special. I continued to do the same thing on Monday and on Tuesday. I believe that Dick Dyck was my supervisor at the time. Nobody ever said anything about it to me except today. I received no disciplinary notice.

Cross-examination

My meeting with Mr. Riseborough was at 21:40 Greenwich time. I made no notes of the meeting. I indicated that I would continue my radio warnings. Mr. Riseborough accepted my concern and he said that I was to carry on normally as long as I would say nothing foolish or stupid. The only point discussed with Mr. Riseborough was the question of the notice. Mr. Riseborough is the one who said the word "stupid". Mr. Riseborough did not say that the message was improper. It was understood that I would continue to issue the message. A copy of the memorandum was given back to me later on during the same day with Mr. Riseborough's reply. I am 65% to 70% sure that I spoke with Coffin and my supervisor Dick Dyck before my memorandum about the transmission. I was never told that what I was doing was improper. I do not remember exactly what I was saying in my transmission. I did tell Mr. Riseborough that I would continue to transmit the warning.

I am not aware of other controllers transmitting the same warning.



EMPLOYER'S CASE (rebuttal)

1. Kenneth Riseborough

I saw exhibit E-7 in the evening on August 10. I had been working on day-shift that day. Mr. De Garis gave me the memorandum. I would have told him that I did not require him to work that day because of the tone of the memorandum. Mr. De Garis explained that the memorandum was simply to express his feelings and that he would not do anything stupid. I allowed him to work. I must have discussed every one of the points raised in the memorandum. I believe that everything was discussed. Mr. De Garis said that he would not do anything stupid when I told him of the two options, that is, either stop working or continue. I was left with the impression that Mr. De Garis would behave normally.

Cross-examination

I might have asked Mr. De Garis to withdraw the letter. He said that he was prepared to retract the letter. I probably asked Mr. De Garis if he intended to continue doing what was said in the memorandum. I remember that he said: "I won't do anything stupid." I do not recall any discussion with Dick Dyck about De Garis.

I did not inquire if De Garis had issued previous similar warnings.

### ARGUMENTS

Counsel for the employer argued that in August of 1981 a very difficult situation prevailed and the tension was great. He argued that the clients of the Department of Transport were not well served. All this added to the already existing burden. The suspensions which were imposed in the present cases are not inappropriate but one cannot expect that the penalties will be greater than the ones which were imposed in Gauthier et al. (166-2-12727, 28 and 29). Assuming that misconduct has been established, the Gauthier case has to be used as bench mark. There is no doubt that the misconduct was very serious. Even if the misconduct was less severe than in the Gauthier case, penalties in the same range can still be imposed. It is obvious, however, that a penalty of more than five days can probably not be imposed. It is also obvious that Glassford's misconduct is less severe than that of the two other grievors.

Counsel continued by saying that Coffin committed a very serious act of misconduct and the fact that he had a previous record has to be taken into account. He displayed an attitude of intransigence. He understood very well that transmission was not permitted by management. The memorandum of August 6 from Campbell is to the effect that management expected a high degree of adherence to procedures. Coffin played a political game by expressing solidarity with PATCO members.

All grievors knew that what they were doing would not find favour with management. The employees were called in as early as the eighth. Coffin for one was called in and was spoken to by a supervisor. He was told: "They want you to stop". How could it be more clearly expressed? Instructions do not need to be in

writing. They only have to be clearly communicated. Any reasonable person would conclude that Coffin was given an order. All the transmission could do was to upset pilots and create problems and indeed there was a complaint filed by Washington. A political message was being passed on. Exhibit E-4 clearly states that that kind of comment should not be issued. Coffin was flagrantly insubordinate by continuing to act as he did. Coffin's evidence has to be viewed with caution. He defied management openly. It could be that other employees were doing it but management did not know about it. Management could obviously take action solely against the people they knew specifically. Coffin committed an infraction and a suspension of five days is appropriate. Perhaps what Coffin did was less serious than a refusal of clearance. It was, however, repeated and it became very serious. There is no evidence that other employees were treated differently.

Counsel argued concerning grievors Glassford and Moores that the evidence is also clear. Exhibit E-4 relates to a telephone call to Moores. It is unequivocal. There was a concerted action on behalf of the controllers, contrary to what management expected. Glassford and Moores definitively acted in concert. Glassford knew that what he was doing was wrong. Glassford's action, however, is less serious than that of Moores. Moores authorized a message to be issued although he tried to minimize the effects by issuing the message to pilots on the ground. Concerning Glassford, a suspension of three days would be appropriate under the circumstances.

According to counsel, Moores was a very senior man with many years of experience. He should have known that what he was doing was improper. He condoned his subordinates to engage in unlawful

activities. As a result, the flight of American Airlines was upset. Even after he was warned, Moores was not cooperating. Moores took no reasonable step. Moores openly invited Pollack to defy management. Moores should have followed what he said that he would do. If it did not happen again, it is "no thanks to Moores". The conduct of Moores was serious and he did not comply with the direction to provide other supervisors with written information. A penalty of five days suspension is suggested concerning Moores.

Counsel for the grievors replied that I have to consider the context but not with a view of showing that the controllers' actions were more serious. On the contrary, the context should be a mitigating factor. Counsel continued that there were very real and grave concerns and the operation was not normal. All witnesses have said that there was no question of air safety involved. It is to be noted also that transmissions were made when the aircraft was on the ground and the pilot would have an opportunity to make a decision. Were the messages gratuitous? Perhaps the messages were not normal if we accept management's opinion but all controllers felt that they could be of assistance and of benefit to pilots. Was it a political game? There was obviously no press release. On one shift, all the controllers discussed what they should do.

Counsel for the grievors contended that they no doubt acted out of good faith. Coffin, as the evidence shows, heard what could happen and he even consulted two lawyers.

The decision in Gauthier is a bench mark decision. The cases in Gauthier were, however, the most serious. Mr. Campbell admitted that

the refusal to perform duties would be more serious and that what Coffin had done was less serious. The decision in Choquette and Hodgson (166-2-8945 and 8946) was referred to. The decision in Gauthier, however, is the landmark decision.

Concerning grievor Glassford, he should not be penalized for what he did. First of all, he had the supervisor's permission to do it, and secondly, he asked Moores and Moores said yes. Other controllers did what Glassford did and received no disciplinary penalty whatsoever. The employer certainly did not have to go on a witch search. In Glassford's case, there had been a complaint but that is no reason to treat him differently. His behaviour did not differ from that of the others. Mr. Campbell, who was one facility manager, had to make sure of equitable treatment.

As regards Moores, should he be disciplined for the message? Moores thought that he was doing his duty normally and he explained why. He also believed it. There is no doubt that he acted in the best way he could. He did not admit having done anything apart from what the MANOPS said. The word "unauthorized" means "not related...". There was no indication that employer considered this to be unauthorized transmission. Mr. Campbell was under the impression that the message had not been passed along. Moores wrote the message on a scratch pad and then proceeded to tell the person who came after him. Williams' testimony is hard to explain but he obviously made an error. Mr. Pollack is adamant that he was advised by word of mouth. Moores simply followed the instructions that he received. Moores did not have to put it in the log and he had no intent to disobey. The employer had the shift records and could

have talked to Mr. Pollack but did not bother.

Concerning grievor Coffin, the employer talks about a serious question of credibility. It is only yesterday that Coffin gave information as to the other controllers. Coffin never did give information to Bondy. Coffin's and Bondy's statements are relatively similar. Coffin gave a straightforward and candid statement. He must be assessed no penalty for the same reason as Glassford. It is difficult to believe that management did not know about the transmission. Coffin explained very well why he was acting as he did. Bondy could have said: "I'm sorry, but you have to stop." Bondy said that he would report this to his supervisor, meaning that he would not do anything. Coffin showed that he would be prepared to obey if he would get instructions in writing. Bondy agreed to give written instructions but he did not. The order had to be clearly given and clearly understood. There is no evidence here of insubordination. What about the conversation with Dyck? He cannot recall similar transmissions by other controllers. He was not ordered to stop making transmissions.

Counsel for the grievors concluded in saying that the employer was not entitled to impose disciplinary penalty on any of them.

Counsel for the employer replied that Dyck said that he did not remember and when pressed he said that it might have been a passing comment. Coffin admitted that Dyck asked him if he had made the transmission and that he was told: "They want you to stop...They won't like it!" We are dealing here with intelligent people, with people with superior IQs. Whatever they say now, they knew. On August 6, clear instructions were given and this has to be kept in mind.

This is the context in which the case has to be reviewed.

REASONS FOR DECISION

This decision relates to penalties imposed on two air traffic controllers and a tower supervisor as a result of activities arising from an illegal strike by members of the Professional Air Traffic Controllers Organization (PATCO) in the United States in August of 1981.

The incidents in the present case and in the Gauthier case took place at Toronto whereas in Adams and others (supra) they occurred at Gander. The alleged misconduct in each case is, however, of a different nature.

In the Adams case, the grievors with whom board member Christie was concerned were found to have refused to confirm that they would fulfill their duties. The facts in the present case are entirely different.

It is admitted that grievors Coffin and Glassford made transmissions to aircraft on the ground to the effect that the U.S. airspace was unsafe because of unqualified controllers. It is admitted also that grievor Moores failed to advise air traffic controllers to stop making these types of transmission.

In my opinion, the transmissions were unauthorized and improper. In my opinion also, grievor Moores did fail to give the necessary advice in this regard to air traffic controllers and he, therefore, permitted

the transmission. I find just cause for discipline.

I have no doubt that the misconduct of the grievors in Gauthier and others (supra) involving aircraft in flight is much more serious than that alleged against the grievors in the present matter.

I am satisfied that grievor Coffin knew the employer's instructions regarding this type of transmission. Dick Dyck stated that he told Coffin "not to do that". Coffin admitted during his testimony that management wanted him to stop. He continued to issue the same message for the duration of his shift after he was warned by Francis Dean Bondy.

I am not satisfied that grievor Glassford was advised as clearly as Coffin that he should refrain from making transmissions. I come to the conclusion however that he knew or should have known nevertheless that the transmission was unauthorized and inappropriate.

Concerning grievor Moores, I accept that he did not follow up the instructions received from Kenneth Riseborough. I also accept that he permitted the transmission of the message. He has no excuse. I would add that I am not impressed by grievor Moores' testimony when he referred to Barry Williams as having relieved him and when he said that he had briefed him. The evidence shows that Klaus Pollack is the one who relieved him.

What about the disciplinary measures which were imposed?

In his statement, Kenneth Riseborough readily admitted under cross-examination that "the issue of unauthorized transmission was not a big issue" nor "an important issue". David Lee Campbell also stated



under cross-examination that "the transmission had no impact on flight safety".

It seems to me that taking into consideration the finding of fact and the conclusion in the Gauthier case, and the extent in the present matter of each grievor's misconduct, the penalties imposed by the employer are much too severe. Counsel for each party has stated that the decision in Gauthier was a bench mark decision. Counsel for the employer has suggested that the penalties be reduced to 5 days for grievors Coffin and Moores and 3 days for grievor Glassford.

Taking into account all circumstances and the absence or presence of a previous record, I would substitute for the suspension of 12 days imposed on grievor Coffin a suspension of 2 days, for the suspension of 5 days imposed on grievor Glassford a suspension of 1 day, and for the suspension of 13 days imposed on grievor Moores a suspension of 2 days.

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

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

OTTAWA, July 22, 1983.

