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File No.: 166-2-13796

No. 130.

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

BETWEEN:

PETER MINCHIN,

grievor,

AND:

TREASURY BOARD
(Transport Canada),

employer.

DECISION

Before: Guy D'Avignon, Deputy Chairman

For the grievor: R. Marchand, Canadian Air Traffic Control Association

For the employer: R. Levine, counsel

Heard in London, Ontario, May 11, 1983

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PAYMENT FOR SUNGLASSES

DECISION

This grievance was submitted by Peter Minchin, employed as an air traffic controller, Transport Canada, London, Ontario, against a decision by the employer not to reimburse him for prescription sun glasses, contrary to article 23 of the collective agreement between the Canadian Air Traffic Control Association and Treasury Board (code: 402/82). Although this collective agreement expired on May 28, 1982, the provisions thereof were retroactively extended and were in force at all material times by virtue of the Public Sector Compensation Restraint Act (apart from some statutory alterations to the compensation plan which are not relevant to the instant case). The grievor alleges that the employer has failed to provide eyesight protection for the extremely bright conditions encountered in the Control Tower in London, Ontario, by refusing to supply proper sun glasses. The grievor demands reimbursement of \$51.00 for the incurred cost of acquiring prescription glasses. The grievor also requests that the employer provide all controllers with sun glasses to meet operational requirements.

EVIDENCE

The grievor testified that he has been employed as an air traffic controller since 1974. His job is to prevent the collision of aircraft by observation and the use of radio communications. The visual observation is done by looking through a glass window. Weather conditions play an important part in the job. Bright conditions cause great eye strain, making it difficult to spot aircraft. Mr. Minchin also stated that controllers are licenced and must submit to a yearly medical examination to retain their licence. If they cannot pass the medical they cannot work.

The witness stated that he read a National Research Council report (PO-98) submitted as exhibit E-3 on requirements for sun glasses

for air traffic control and became concerned. He was surprised to see that although the employer recognized the problem management still did not take any positive action. After reading the NRC report, Mr. Minchin worried about the possibility of eye damage and procured prescription eye glasses. He discussed the problem with his unit chief who acknowledged the problem but refused to supply sun glasses to the grievor and refused to pay for those which he had purchased.

During cross-examination, Mr. Minchin declared that he was aware that some sun glasses can damage the eyesight. He also stated that he has been using glasses since 1966; he has to wear them to drive. He wore sun glasses to work in the past and always paid for them himself.

Mr. Leo Middlestadt testified on behalf of the employer. He is superintendent of operations for the Ontario Region. He was an air traffic controller for 19 years with Transport Canada and for three years with the Royal Canadian Air Force. He testified that blind type windows are provided in the London Control Tower to lower glare and reduce heat. Controllers do not wear sun glasses all the time; their use is based on need and individual preference. Sun glasses are not mandatory and he would not like to see them become mandatory because of the difficulty inherent in enforcing such a regulation.

ARGUMENT FOR THE GRIEVOR

Mr. Marchand, the grievor's representative, declared that the evidence indicates that air traffic controllers have to satisfy stringent medical criteria. Mr. Minchin had concern for his vision which has to be examined and declared adequate on a yearly basis. He had read documents emanating from Transport Canada and NRC that showed him the

problems that could develop. He did not want to risk damage to his eyesight which would result in the loss of his licence as an air traffic controller. Air traffic controllers should be provided with sun glasses by the employer and Mr. Minchin should be reimbursed by the employer for the cost of the sun glasses which he purchased himself.

ARGUMENT FOR THE EMPLOYER

Miss Levine, counsel for the employer, stated that the language of clause 23.01 of the collective agreement must be the sole basis for the Board's decision. Nothing in that clause says that the employer must provide controllers with sun glasses. There is no evidence that health and safety are in jeopardy. The employer has provided a shade in the window and has met the requisite safety standards. The grievor has to wear prescription glasses and it is his choice to use prescription sun glasses. The employer is under no obligation to reimburse him for their cost. There is no statutory requirement for sun glasses and the relevant clause of the collective agreement is not specific. The use of sun glasses is a personal preference. Miss Levine pointed out that there are many controllers and yet Mr. Minchin is the only one who has grieved on this issue.

REASON FOR DECISION

I agree that the instant reference must be decided on the wording of clause 23.01 of the collective agreement which reads:

23.01 The Employer will continue to make provision for the safe and healthful working conditions of employees and in so far as is feasible, having regard to building and space limitations, will provide proper accommodation for employees

to have their meals and keep their clothes.
The Association agrees to cooperate fully
in the prevention of accidents to employees
and in the enforcement of safety rules.

While this clause is fairly general, it still mentions specific areas, such as provision of proper accommodation for meals and clothing. Nothing in the clause indicates that the parties intended that special equipment and/or clothing were to be supplied by the employer.

The employer does not require the use of sun glasses on the job and in my view the employer does not have to supply prescription sun glasses to air traffic controllers and does not have to reimburse Mr. Minchin for the cost of the sun glasses which he purchased.

The grievance is therefore dismissed.

Guy D'Avignon
Deputy Chairman

OTTAWA, November 7, 1983