

AUG 2 1983 No. 73

File No: 166-2-13809

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

BETWEEN:

DEREK L. NEILSON,

Grievor,

AND:

TREASURY BOARD  
(Department of Transport),

Employer.

DECISION

Before: D.G. Pyle, Board Member and Adjudicator.

For the grievor: C.H. MacLean, Counsel.

For the employer: H. Newman, Counsel.

Heard at Calgary, Alberta, June 21, 1983.

ART 8  
CODE 402/82

INSUFFICIENT TRAINING  
TO CARRY OUT DUTIES

## DECISION

1. This is a reference to adjudication (dated December 21, 1982), pursuant to section 91 of the Public Service Staff Relations Act (PSSRA), of a grievance filed by Mr. Derek L. Neilson (dated June 22, 1982).

2. Mr. Neilson is employed as an Air Traffic Controller (AI-4) at the Calgary Terminal Control Unit (TCU) and has been so employed since 1978. He is represented for collective bargaining purposes by the Canadian Air Traffic Control Association. His terms and conditions of employment at the time of the events giving rise to his grievance were governed by the terms of the collective agreement between the Treasury Board and the Association for the Air Traffic Control Group, Code 402/82, which collective agreement expired on December 31, 1982.

3. Mr. Neilson's grievance reads as follows:

On Wednesday June 16/82 I was given a briefing on the procedures to be followed if I were to work a midnight shift without a terminal specialist. After this briefing, I was told that a letter was being put on my file stating that I was fully qualified to work Calgary Terminal Sector on midnights under specified conditions. I was not asked if I felt qualified to work that sector at any time during or after the briefing. I was also told by the T.O.S., with another individual present in the room, that if I were to report for duty on a midnight shift under the above mentioned circumstances, and state at that time that I did not feel qualified to control air traffic within an area of responsibility in which I was not

properly trained, I would be removed from operational duty, without pay, until such time as I could be trained to an acceptable level of proficiency. This statement was made despite the fact that I would still be capable of controlling air traffic within an area of responsibility in which I was properly qualified. This statement was also a blatant harassment technique aimed at exerting undue pressure on me to work under circumstances with which I do not feel comfortable. The briefing was an exercise in futility and a classic example of a "paper-check-out". It contained absolutely no information that would be of any use to me if such a situation should arise.

4. Mr. Neilson sought, as corrective action, that a comprehensive training program be established, that he be the one to determine whether he was qualified and that the employer withdraw its "threat" of leave without pay. At the outset of the hearing held in Calgary, Alberta on June 22, 1983, Ms. MacLean, counsel for the bargaining agent, stated that the bargaining agent would seek nothing more than a declaration, on the basis of the facts set out, that the employer was in breach of clause 8.01 of the collective agreement, which clause reads as follows:

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

5. By way of background, a trainee for the position of air traffic controller is required to complete his basic (theoretical and practical) training at a national or regional school. Thereafter he is assigned to

a particular tower, terminal control centre or area control centre where he is given his ab initio (on site) training. He is afforded close instruction and guidance until such time as he can meet the standards for the position of an air traffic controller at that location and is "checked-out". His license is then endorsed for his working as an air traffic controller at that particular site.

6. There are 38 air traffic controllers (AI-4) employed at the Calgary TCU. Prior to April 1, 1981, all personnel performed the full scope of duties of an air traffic controller. As of April 1 the employer determined that one half of the air traffic controllers would specialize in the performance of those duties and responsibilities which were identified with the "enroute function" and the balance with those duties and responsibilities identified with the "terminal function". The enroute function relates to the control of aircraft in areas beyond 40 miles from the Calgary International Airport, as well as to the control of those aircraft overflying that city. The terminal function relates to the control of aircraft within 40 miles of the airport, prior to "handing off" an aircraft to the controllers situated in the Calgary Airport Tower for landing and after the latter controllers have performed a similar function for those aircraft taking off. Each of the TCU controllers thereafter confined his activities to one or other of the specialties and was expected to become more proficient in the handling of aircraft in at least a majority of the air space vectors identified with the Calgary International Airport. Once a controller had achieved the expected proficiency a statement to that effect was recorded in a log book. In the event of a prolonged absence (the period of time varied between witnesses), either for extended vacation or extended leave, a controller could be called upon to requalify in his speciality. Moreover, if he were transferred from one speciality to the other he would be closely monitored by supervision to ensure that he was qualified to handle his new assignment and the fact was entered into the log book.

7. The event giving rise to the dispute between the parties was the issuance of Operations Letter #4/82, dated March 29, 1982, addressed to these controllers and their supervisors and entitled "TCU Midnight Shift Coverage Contingency" (exhibit 2). In brief, the midnight shift complement was minimal, consisting of one terminal specialist and one enroute specialist, as compared to a normal complement of five of each specialty on the day and the evening shifts. The contingency plan was to be implemented in the event one of the two controllers did not report for work. Among other things the plan contemplated the assignment to an enroute specialist of certain responsibilities which had become, at that time, identified with the work of a terminal specialist. In fact the contingency plan was never implemented and has since been abandoned, as has the program of the two specialties.

8. The text of the operations letter, as it relates to the grievor, reads as follows:

Subject: TCU Midnight Shift Coverage Contingency

In the next 9 to 12 month period the Unit will be faced with a very heavy commitment of resources associated with the training of staff in the preparation for the move of the enroute sectors to Edmonton. This in addition to the normal commitment associated with Unit leave and refresher training programs, along with other projects may impact on our ability to provide a constant level of service. A contingency plan is already in place which provides direction with respect to short staff situations on day and evening shifts. Direction is now required to resolve the issue for provision of service on a midnight shift when short staff situations arise in either of the two Unit speciality areas.

In such circumstances the following procedures shall apply:

Unavailability of Terminal Speciality  
Controller for Midnights

1. Attempt to move a controller from the following day shift schedule to midnights; if unsuccessful
2. Call in an enroute speciality controller and apply non-radar procedural control between arrivals and departures within 30 NM of the airport at 13,000' ASL and below; an evening shift terminal controller is to be retained till such time as the initial midnight rush of arrivals/ departures has been handled; this should not normally be required beyond 0100 a.m. if not possible
3. Retain an evening shift terminal controller for 4 hours and attempt to call in a following day shift controller 4 hours early, if not possible
4. Treat situation as an emergency and retain an evening shift controller to cover the midnight shift and attempt to call in a day shift controller for duty prior to normal day shift commencement.

...

Situations may arise which are not specifically covered by the procedures enumerated above. Supervisors and controllers are expected to exercise their best judgement in coping with such problems, keeping in mind the objective is to maintain service at the highest possible level without compromising safety.

9. The grievor, Mr. Derek Neilson, has been employed as an Air Traffic Controller for nine years. He commenced his employment in 1976 at the Airport Control Tower, Grande Prairie, Alberta. Later he was employed at the Edmonton Control Centre and since 1978, at the Calgary TCU. In each location he has been "checked-out" as competent in all positions in all sectors. From that time until April, 1981, his assignments were performing the work of one specialty or the other. He was then assigned to the terminal function as his specialty without training or familiarization. He stated that others, recent trainees, were monitored for a period, before the supervisor was satisfied as to their proficiency, and entries were made in the log book. In January, 1982, he was assigned to the enroute function. He was then assigned a monitor who, after one day, determined that he was proficient.

10. Mr. Neilson is the branch chairman of the bargaining agent at Calgary TCU. Following the issuance of the operations letter he approached Mr. Gordon Lowe, Unit Chief, and expressed his concern as to the absence of any provision for refresher training for a controller in one speciality to become proficient in the responsibilities of a controller in the other one. In his opinion, some time and effort would be required to establish that each controller was qualified in the other speciality. In his words: "I wanted a check out. I wanted to be told if I was efficient or not. I got an uncomfortable feeling that I might not be qualified to control traffic efficiently."

11. Following these discussions Mr. Lowe arranged for the development of a briefing package and for a series of briefing sessions to be conducted by one of his supervisors. There was to be a review of what would be required of a controller on the midnight shift in the event the contingency plan was implemented, with "give-and-take" from all participants. All controllers were invited to attend, on an overtime basis, and did so in groups of three or four.

12. On June 16, 1982, the grievor attended a briefing session but, after 20 minutes, walked out. He testified that he did do so, not in protest of the content of the briefing session but rather because of the absence in the program of any provision for "time for qualification". When he left the meeting he went to see Mr. Lowe and at that time apparently expressed a desire to have a qualified terminal controller watch him, to point out his deficiencies and to supply him with the information which he needed. At this point I should note that while the written grievance refers to a "threat" and "harassment" no further testimony was given as to the conversation which Mr. Neilson had with any representative of the employer.

13. Mr. Neilson further testified that a terminal controller after a period of absence, which he established as 30 days, would no longer recall instantly precise information as to the location of NAVAIDS, changes in attitude requirements, information as to systems on runways, etc. "It is nice to rely on memory and not have to look it up in the sector handbook."

14. Mr. Thomas Fudakowski is the Terminal Operations Supervisor, (T.O.S.) Calgary T.C.U. and reports to Mr. Lowe, the Unit Chief. He testified that he had drafted the operations letter (exhibit 2). It was his submission that there had been a rapid expansion in Calgary air traffic but a limited staff of technically qualified personnel. A substantial amount of overtime work was being required of his staff and, with extensive vacation commitments approaching, he foresaw problems in securing adequate personnel on short notice to cover absences for such reasons as casual sick leave. A matter of particular concern was a possible absence on the midnight shift where there were but one terminal and one enroute controller. As a consequence he developed this contingency plan.



15. Mr. Fudakowski emphasized that the contingency plan did not require an enroute controller to perform the full scope of the duties of a terminal controller and there was no need for refresher training. He did respond, however, to concerns expressed by a few controllers by delegating to Mr. Sorochian, another supervisor, the task of preparing a briefing package and of conducting the series of briefing sessions. He attended one or two of the sessions for a short period of time. At one meeting, on June 16, 1982, the one concern expressed by the controllers present related to the area of legal responsibility. He had assured them that, provided they stayed within the terms of the contingency plan, the legal responsibility was his, not theirs.

16. Mr. Fudakowski disputed the testimony of the grievor to the effect that a terminal specialist would rely on his memory for explicit information as to NAVAIDS, etc., rather than referring to the sector handbook. In his opinion a controller should not rely upon his memory alone but, at best, "double check" the information. In any event, all that information was readily available to a terminal controller at his station. Moreover, each controller is, in accordance with the terms of the collective agreement, afforded a period of 15 minutes at the commencement of each shift to familiarize himself with all of the reading required at his station.

17. Mr. Gordon Sorochian, an Air Traffic Control Supervisor (AI-5), testified that he conducted the briefing sessions and each session lasted between 45 minutes and 1 1/2 hours. The sessions were designed to explain to, say an enroute controller, the level of service he could be expected to provide in the event the contingency plan was implemented. The responsibility for overflights could be handed off to another nearby airport. The airport control tower could take over responsibility for inbound aircraft at an earlier point and, at the same

time, be denied any discretion as to releasing an aircraft without prior approval from the terminal control centre. Finally the controller could increase the separation between inbound aircraft, all so that he could be assured of working within his capacities and the safety and security of aircraft would not be compromised.

18. The witness confirmed Mr. Fudakowski's observation that the one concern expressed by the controllers related to their legal liability. Apart from that one observation the general concensus was that there was nothing new in the briefing: it was a waste of time but "thanks for the overtime". Mr. Neilson had attended the meeting on June 16, 1982, but had left early, after announcing that he was going to see Mr. Fudakowski, that the briefing session was not enough.

19. Finally, Mr. Sorochian testified that prior to the specialization one controller had been assigned to the midnight shift, that thereafter some controllers on the midnight shift made a practice of combining the equipment, the terminal displays required for the two functions, so that one controller would perform both functions at the same time. He stated that on occasion he reports for work at 5:45 a.m. at which time he has found two consoles so connected. His only concern would be that the two controllers should have separated the two consoles by that time for the commencement of the day shift operation.

#### Argument for the Bargaining Agent

20. Clause 8.01 of the collective agreement reads as follows:

The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate

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

Ms. MacLean, counsel for the bargaining agent, acknowledged that the employer has some discretion to determine what training and how that training is to be conducted, but it also has a responsibility to provide adequate training, instruction and refresher training where it is warranted. In this instance the employer has decided to implement new procedures and, at the same time, has decided that no training was required, as though it is within the exclusive jurisdiction of the employer to determine when refresher training is appropriate and when it is not required.

21. An adjudicator must be able to weigh the evidence and determine whether an employee is entitled to refresher training. The employer has emphasized the need for training and in official departmental publications identified requirements for training of personnel such as air traffic controllers. Two publications of the Ministry of Transport, one entitled "Air Traffic Control Training Program, Refresher and Familiarization Training, (exhibit 3) and the other, "Personnel Licencing Handbook, Volume 2" (exhibit 5) have been identified by the grievor. Specifically, in exhibit 3 the statement of the employer, at page 24 reads as follows:

.../11

Needs Identification for Re-Qualification Refresher

The needs for unit staff after short term absences are usually identified by:

- (1) checking their knowledge of the local area and unit procedures, particularly where changes may have been implemented while they were away; and
- (2) permitting controllers to work under the surveillance of a qualified controller for a short period.

The needs of employees who after an absence from unit duties of more than one year....

22. Finally, these controllers have been transferred on occasion from one speciality to the other and the employer has required that each one be monitored by supervision so as to establish his proficiency. In this situation the grievor felt that, to be able to act comfortably in the situation contemplated by the contingency plan, he would require "hands on experience" with a terminal specialist. He was well aware that there were but few aircraft to handle on the midnight shift and that it would be a "non-radar" situation. Nevertheless, there would be aircraft to handle and every one is a critical assignment. He was, therefore, entitled to be assured that he was competent to provide the services which might be required of him.

Argument for the employer

23. Mr. Newman, counsel for the employer, submitted that the parties did not contemplate in their collective agreement that an adjudicator would determine a very technical question relating to the safety and security of the Canadian public. The area of arbitral review

must, at best, be a confined one. The adjudicator may determine that the employer has refused to make a decision as to whether any training was necessary or that the employer has acted capriciously. In either case he may admonish the employer but not substitute his opinion for the judgment of the employer as to refresher training.

24. The evidence is that the employer did exercise its judgment and did conclude that the grievor already had adequate training for the performance of those duties which he might be expected to assume in the case of an emergency. The grievor was licensed to perform the work of an air traffic controller at Calgary T.C.U. Mr. Neilson was not to be called upon to perform the work of an terminal specialist. Instead he was informed of limited duties which he might be called upon in the event of an emergency, duties which were well within the area of his expertise as a qualified air traffic controller and duties which could have been reviewed with him in a briefing session.

#### Decision

25. The grievor, Mr. Neilson, seeks a declaration that the employer violated clause 8.01 of the collective agreement when he was denied a period of familiarization, or refresher training, with the duties of an air traffic control terminal specialist before he was assigned to a position where, in a critical situation, he might be called to perform duties outside his regular duties of an enroute specialist.

26. The grievor has been a qualified air traffic controller since 1976. Between 1978 and April 1, 1981, his regular duties at the Calgary T.C.U. included those which, after that date, became the specialty of either a terminal controller or of an enroute controller. From April, 1981 to January, 1982, the grievor was a terminal specialist and then,

in the latter month he was assigned the role of an enroute specialist. On the occasion of the latter assignment his work was initially monitored by another controller to establish his proficiency.

27. Under date of March 29, 1982, the employer issued Operations Letter #4/82 (exhibit 2) which set up a program for covering a situation when one of the two speciality controllers failed to report for work as scheduled on the midnight shift. The program provided for limited services to aircraft but, in the final analysis, an enroute specialist could be called upon to assume some responsibilities which, at that point in time, were associated with a terminal specialist. In fact Mr. Neilson was never assigned to the midnight shift and the program has since been abandoned.

28. Mr. Neilson is satisfied that he was entitled to refresher training, to work for a period of time under the surveillance of a terminal specialist and in such a manner be assured that he had lost none of his proficiency as a terminal specialist. The employer denied his request but did provide a series of briefing sessions. In this manner the controllers were afforded an opportunity to familiarize themselves with all of the duties they might be called upon to perform in the event the contingency plan was implemented. Mr. Neilson attended one of those briefing sessions but then walked out after 20 minutes, not in protest to the content of the briefing session but in protest to the absence of what he described as a "period of familiarization".

29. In my opinion, clause 8.01 does place an obligation upon an employer to:

...provide operating employees with  
adequate training and instruction on  
...procedures prior to their introduction  
and refresher training where appropriate.

.../14

It is accepted that the contingency plan did contemplate one or more new procedures. At issue could be whether Mr. Neilson had adequate training and instruction or whether refresher training was appropriate.

30. Has the grievor discharged the burden of establishing that the employer violated clause 8.01 of the collective agreement when it did not provide him with refresher training or a "period of familiarization"? Much of my problem with this juncture rests with the grievor's own testimony. Mr. Neilson is a qualified air traffic controller with years of experience in the terminal control of aircraft inbound and outbound from the Calgary International Airport. For three years, from 1978 to 1981, his regular assignments included duties and responsibilities which subsequently became those of one of two specialities. Beginning in April of 1981 he was assigned to the terminal speciality for eight or nine months. He was then assigned to the enroute speciality where, after only a few months, he was informed that on occasion he might be called to perform some of the responsibilities which he had previously performed as a terminal specialist. Given that background, Mr. Neilson would be accepted as one well qualified to detail what difficulties he could anticipate in performing those limited responsibilities of a terminal specialist under the contingency plan and how his performance could have an impact upon the safety of aircraft. Mr. Neilson clearly was in a position to present clear and convincing proof, if such existed, of weaknesses in the contingency plan and hazards it presented. This he failed to do. It may be "nice to rely on memory", rather than examining the information otherwise readily available, but would the grievor have been any less proficient, having regard to the environment in which he would then be working? His conviction that he would feel "uncomfortable" may have been genuine but such a subjective assessment is scarcely persuasive, in face of all of the evidence, of a conclusion that the employer violated

the collective agreement, and that he was entitled to be relieved of his regular duties in order that he undergo a refresher training program. Mr. Neilson, moreover, could have participated in a briefing session and could have expressed, in the presence of his colleagues, his concerns as to the adequacy of the instruction provided by Mr. Sorochian. In his grievance Mr. Neilson stated:

The briefing was an exercise in futility and a classic example of a "paper-check-out". It contained no information that would be of any use to me if such a situation should arise.

In these adjudication proceedings Mr. Neilson has elected not to challenge the content of the briefing sessions, which he literally refused to attend.

31. In view of all of the foregoing, I do not feel compelled to comment upon the scope of authority of an adjudicator in matters relating to training. Clearly Mr. Neilson did not establish a prima facie case that his training, with or without instruction, was inadequate for him to cope with the duties and responsibilities that might have been required of him. It follows that the grievor has not discharged the burden of establishing that the employer violated clause 8.01 of the collective agreement when it determined that refresher training was not warranted.

32. Accordingly, the grievance is denied and these proceedings terminated.

D.G. Pyle,  
Board Member and Adjudicator.

OTTAWA, July 25, 1983.