

Files: 166-2-13810
166-2-13811

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

BETWEEN:

ROBERT RANDALL,
TIM YATES,

Grievors,

AND:

TREASURY BOARD
(Transport Canada),

Employer,

Before: Joseph M. Weiler, Board Member and Adjudicator.

For the Grievor: Catherine H. MacLean, counsel.

For the Employer: Robert F. Lee, counsel.

Heard on August 18, 1983 at Vancouver, B.C.

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MEAL + RELIEF
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DECISION

1. This is a reference to adjudication filed under paragraph 91(1)(a) of the Act. The grievors, Mr. Robert Randall and Mr. Tim Yates, were employed at all material times as air traffic controllers at the Vancouver International Airport. The text of their grievances that give rise to these proceedings are quite similar. Mr. Yates and Mr. Randall complain that the Employer is in violation of Article 13.02(d) of the collective agreement (Code 402/82) in failing to provide the grievors with meal and relief breaks during the midnight shift on June 9, 1982 (in the case of Mr. Yates) and on June 15, 1982 (for Mr. Randall). The grievors request that the adjudicator direct the Employer to increase the staffing requirements at the Vancouver Air Traffic Control Centre to a minimum of two for the midnight shift.

2. The parties were not in disagreement about the relevant facts which gave rise to this case. Rather they disagree on the application of Article 13.02(d) to these circumstances. Article 13.02(d) reads:

13.02(d) Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.

3. The grievors work as air traffic controllers dealing with Instrument Flight Rules (I.F.R.) in the Vancouver Air Traffic Control Centre. Unlike the air traffic controllers in the Vancouver International Airport Tower, who handle the take off and landing of

aircraft according to Visual Flight Rules (V.F.R.) the grievors work in a large room with no windows where they monitor radar scopes and radio transmissions from aircraft in their designated "specialty". One key responsibility of their job is to operate the joint en route terminal system ("JET") in cooperation with other air traffic control centres in Oakland, Seattle, Calgary, Anchorage and Comox. The purpose of this system is to trace the flight patterns of all aircraft within this region, share and correlate flight plan information for the purpose of ensuring that flights do not go undetected and cause "conflictions" or accidents.

4. The Vancouver Air Traffic Control Centre operation has divided its "joint en route" jurisdiction (roughly the airspace over British Columbia and adjacent Pacific Ocean) into three sectors - East Complex, West Complex and Vancouver Terminal Complex. The grievors were assigned to the West Complex - a geographic area encompassing the Northern Interior of British Columbia and the Pacific Coast Region (except the immediate vicinity of Vancouver). Each complex is considered to be unique because of differing terrain and climate, etc. Accordingly, each air traffic controller is qualified and licensed to handle only his or her specific complex. If a controller is away from his job for over 30 days, he must be rechecked and possibly retrained in order to maintain his qualifications for this position.

5. The Vancouver Control Centre is a twenty-four hour operation, with four shifts - day shift from 7:00 a.m. to 3:15 p.m., a swing shift

from 10:45 a.m. to 7:00 p.m., evening shift from 3:00 p.m. to 11:15 p.m. and midnight shift from 11:00 p.m. to 7:00 a.m. From the date of initiation of the "JET" program, normal staffing requirement for the West Complex was two controllers. This normal staff scheduling was maintained even when an employee who was scheduled for the shift was ill or otherwise unavailable. Management would schedule another controller to fill in despite the fact that this would require the Employer to pay him the replacement overtime rates.

6. At the end of May, 1982, the Employer changed its staffing requirements for the midnight shift. In a staff memo dated May 28, 1982, Mr. G.W. Strahl, Chief of Vancouver A.C.C. explained the new staff scheduling measures:

As a result of restraints placed upon public spending, the current practice of staffing to normal levels, regardless of the overtime costs involved, cannot be sustained. In addition, it is obvious that where overtime cannot be avoided, costs can be reduced through the change in the Collective Agreement recently ratified. Effective immediately, therefore:

- a) "Minimum" staffing levels for each complex will be established, and overtime will be limited to maintain only those levels;
- b) Normal staffing levels will be adjusted;
- c) All assigned and call-in overtime will be "first day", or at time and one half, unless there is absolutely no alternative; and
- d) The policy regarding the granting of ad-hoc leave where an overtime replacement can be found is rescinded for the enroute complexes, excluding that which has been approved to date.

It is, naturally, understood that where staffing levels fall below that which traffic demands would normally dictate, flow management

procedures will be utilized to ensure that the volume does not exceed the capacity of the particular sector and/or complex.

7. On June 1, 1982, Mr. Jim Allardyce, acting manager of Vancouver A.C.C. issued a direction to the staff that the "normal" staffing of the West Complex for midnight shifts would be two and the "minimum" would be one. On November 1, 1982, this directive was again changed so that the normal staffing for the West Complex on midnight staff was reduced to one.

8. The impact of this change in scheduling of employees to work the midnight shift on the West Complex became evident during the two shifts which are the subjects of these grievances. When Mr. Yates reported for duty on June 9, his fellow controller on the West Complex was not available. The Employer, in accordance with the memorandum reproduced above, declined to provide a replacement who would be paid at overtime rates. The same situation occurred on June 15 when Mr. Randall reported for duty. The supervisor of the evening shift before he went off duty advised the grievors that they were to "manage" without a fellow controller on duty on the West Complex.

9. During the course of his midnight shift on June 9, Mr. Yates took one break from his post. At 3:15 a.m., he left his position for approximately five minutes in order to go to the washroom and then to heat up a sausage roll in the microwave oven in the kitchen. Prior to his absence he asked Mr. Bruce MacDonald, who worked in a systems control room adjacent to the operations room, to watch his radar scopes etc. at

the West Complex position. Mr. Yates testified that he took no more breaks during his shift because he "did not think it was right to leave my position unmanned."

10. Mr. Randall took three breaks during the midnight shift on June 15. At approximately 2:00 a.m. he went to the washroom and made two pieces of toast in the employees' kitchen facilities. He was away from his post for about three to four minutes. Prior to leaving his position he notified the aircraft that he was monitoring that he would be away at the washroom for a few minutes. At approximately 6:15 a.m. he repeated the same procedure when he went to the washroom. He was absent for five minutes. At 6:35 a.m. a controller from the day shift arrived earlier for work and Mr. Randall took this opportunity to go back to the washroom.

11. The grievors' complaint is that they were denied the two relief breaks and the meal break to which they were entitled under Article 13.02(d) of the collective agreement. They maintain that the lack of qualified personnel to replace them prevented them from taking these breaks during the shifts in question.

12. The Employer submits that there was ample opportunity for these employees to take their breaks. The midnight shift is not nearly as busy as the other two shifts. Consequently the Employer maintains that if an air traffic controller used his "common sense", he could wait for a "down" period on his radar scope, and ask a controller

from either the East or Terminal Complexes to keep an eye on his position. In essence he could take his relief and lunch breaks sometime when traffic allowed. The Employer submits that these two controllers were given ample opportunity to take their relief and lunch breaks and they simply refused to exercise good judgment in taking these breaks during the periods of little or no air traffic.

Decision of the Adjudicator

13. Article 13.02(d) has been interpreted and applied in earlier decisions by Adjudicators. These awards flesh out how this contract language is supposed to operate in concrete factual circumstances. These adjudication references stand for the proposition that Article 13.02(d) imposes a positive obligation upon the Employer to provide operating employees with meal and/or relief breaks save in circumstances where operational requirements do not permit. As stated in Lawes et al (Board files 166-2-6437 to 6440) at page 18:

The Employer does have an obligation pursuant to Article 13.02(d) to supply adequate staff to permit operating employees to take meal and relief breaks of reasonable duration except when unusual operational conditions make the taking of such breaks impractical.

14. What are the circumstances that would excuse the Employer from complying with the obligations assumed under Article 13.02(d)? The adjudication precedents stand for the proposition that the Employer cannot rely upon staffing inadequacies as an excuse to raise artificial barriers to satisfying an otherwise legitimate requirement of the

collective agreement. Deputy Chairman Kates provides some useful guidance on the meaning of this clause in the Noakes decision (Board files 166-2-9688), at page 15 where he identifies the following rules:

1. The parties seem to have recognized under Article 13.02(d) that situations may arise where it would be unreasonable and impractical for employees to have a normal break.
2. These occasions need not be emergency situations.
3. The employer is not bound to engage in superfluous staffing actions for the purpose of guaranteeing compliance with Article 13.02(d).
4. Implicit in the phrase "where operational requirements permit," is the acknowledgement that owing to the duties and responsibilities shared by the parties to the well being of the public, circumstances may arise that might require the continued presence of operating personnel at their work station notwithstanding the potentially adverse mental and physical effects this might have on individual employees.
5. The parties have not defined what "operational requirements" means in Article 13.02(d). Rather they have left this term to be applied in concrete situations according to the dictates of reason. Accordingly, the task of pinpointing those circumstances where operational requirements do not permit a meal and/or relief break is a matter that is peculiarly a question of fact to be determined on a case by case basis. What appears to be the key test in this determination is

whether practical exigencies warrant the Employer in holding in abeyance the obligations it has assumed under Article 13.02(d).

15. Having outlined the adjudication precedents on the meaning of Article 13.02(d), how do these apply to the facts in this case? I agree with the characterization of the relevant questions in this case as suggested by counsel for the Union:

1. Were the grievors provided with meal and relief breaks on the two midnight shifts, June 9 and 15?
2. If not, do the circumstances which existed on those two shifts constitute "operational requirements" which did not permit the Employer to provide the meal and relief breaks?

16. Before answering these two questions, it is necessary to clarify what is meant by meal and relief breaks. The grievors indicated that in normal circumstances when qualified replacements are available to man their position, controllers would take two coffee (relief) breaks of approximately 30 minutes and one lunch (meal) break of approximately 45 minutes duration. Mr. Allardyce stated that the relief breaks should be about twenty minutes and the meal breaks should be approximately 30 minutes long. I make no definitive judgment about how long these breaks should be. In my opinion it is sufficient for purposes of this case to hold that in normal circumstances the employees should get two relief breaks of about 25 minutes and a meal

break of approximately 35 minutes. Presumably this is what the parties have deemed to be "reasonable duration" as mentioned in the Lawes decision (supra). It is agreed by the parties that the purpose of these breaks is to ensure that controllers can maintain their physical and mental alertness in the performance of their exacting tasks. The practical exigencies of the air traffic control service simply do not allow for rigid and formalized procedures concerning these breaks. Consequently, the parties themselves are entrusted to assume the task of determining on an ad hoc basis those circumstances when the breaks may be taken and the length of those breaks. There may be isolated, unanticipated circumstances when breaks as short as three to five minutes or even no breaks may be "practical". However, in the ordinary circumstances, relief breaks of 25 minutes and a meal break of 35 minutes are what the parties have treated as the acceptable norm in order to ensure that the employees maintain physical and mental alertness necessary to perform their tasks in a manner that safeguards the public interest.

17. On the midnight shift of June 9, Mr. Yates says that he was denied these relief and meal breaks. He states that he was only able to leave his position for five minutes at approximately 3:15 a.m. Prior to leaving he asked Mr. MacDonald from data systems control ("D.S.C.") to watch his radar scopes "for a minute". On the midnight shift of June 15, Mr. Randall says he was able to take only three brief breaks, i.e. at 2:00 a.m. for three or four minutes in order to go to the washroom and make some toast and at 6:15 and 6:35 in order to go to the washroom.

18. The Employer submits that if the grievors had used their "common sense" they had ample opportunity to take the various breaks. All they needed to do was to wait until the air traffic in the West Complex was down, get a fellow employee to watch their position, and take their breaks.

19. The key difference between the position of the parties on whether the relief breaks were provided on these two shifts seems to focus on the application to these circumstances of Article 113.1 of the Manual of Operations ("manops") which reads:

Do not leave an assigned operation unless you are relieved by a person qualified to assume responsibility for that position.

The accompanying explanatory note to Article 113.1 states that "a controller that relieves another at an operating position assumes full responsibility for that position."

20. The grievors contend that they could not leave their positions during their shifts because their West Complex board was never "dead" for a sufficient period to allow them to take their breaks. They were not satisfied that any of the other air traffic personnel on duty for that shift could be able to "assume full responsibility for their position" because no other employee on duty had the necessary endorsement to be qualified for the West Complex.

21. The Employer maintains that Article 113.1 is not mandatory but can be applied or not applied according to the exercise of discretion or professional judgment at the local level depending on the circumstances of each case. In the context of these shifts, the Employer maintains that there were several periods when the grievors could have taken their relief and meal breaks. Rather than simply blindly apply Article 113.1, the grievors should have used their "common sense" by identifying periods when there were no aircraft in the same area, notify any aircraft with which they are having contact that they will be absent from their position for a while, inform the controller from the East and Terminal Complexes that they are taking a break and ask them to listen to the radio and keep an eye on their scope. The Employer submits that had the grievors adopted this procedure they could have taken their breaks with no danger to the public interest in safe operation of air traffic.

22. It is obvious that the witnesses differ on the proper exercise of judgement about whether there was any safety risk involved in the decision of the grievors not to take extended breaks and seek replacement help from other employees to monitor their positions. I am persuaded that each of these people firmly believes that his judgment calls in this regard were made with the public interest in mind.

23. I would emphasize at this point that these opinions of Messrs. Randall, Yates and Allardyce about whether it is safe or unsafe for a controller to leave his position on the nights in question are professional judgments made by highly trained specialists. As an

adjudicator with no such training or experience, I hesitate to second guess either view of whether these controllers could have taken longer relief and meal breaks according to the dictates of "common sense".

24. What is clear on the evidence is that the shifts in question were not overly busy nor was the amount of actual traffic unanticipated. Yet in these circumstances the grievors were convinced, based on their interpretation of Article 113.1 of the "manops", that they could not leave their positions to be monitored by personnel who did not have a current endorsement on the West Complex. In my view this is a reasonable position for the grievors to take, based on the language of Article 113.1 of the "manops" as well as the past practice at Vancouver Air Traffic Control Centre. As mentioned earlier, prior to June 1, 1982 there had always been a second qualified controller on the midnight shift available on the West Complex. It was reasonable for the grievors to assume at that time that the purpose for the second controller was, inter alia, to provide the necessary back up relief for the controller who would leave his position in order to take his relief or meal breaks. Consequently it is not surprising that the grievors would be worried about leaving their positions to be monitored by personnel who were not fully qualified on the West Complex. Nor were the grievors given any guidance from management about how they were to handle this situation. In my judgment, the grievors acted properly in these circumstances in remaining at their positions even during the periods when their board was relatively inactive.

24. Mr. Allardyce testified that Article 113.1 of the manops was not mandatory but rather was open to interpretation and could be deviated from depending on the circumstances. He stated that the procedures in Article 113.1 could be modified by local managers and that he would take responsibility for deviations by controllers from strict adherence to Article 113.1 in circumstances such as existed during the two shifts in question. While this may be the case at the time of this hearing, prior to the June 9 and 15 midnight shifts the grievors had not been advised that management would assume responsibility when controllers left their positions to be monitored by non-qualified personnel. Up until that time the only communication that the grievors had received about the manning of the West Complex was that because of the "restraints placed upon public spending" overtime costs were to be kept at a minimum and consequently the second controller on the midnight shift for the West Complex was no longer considered essential. In these circumstances, I am persuaded that the grievors cannot be faulted for staying at their positions except for very brief breaks on June 9 and 15 through their shifts. Accordingly, I am of the view that they were denied meal and relief breaks of reasonable duration in violation of Article 13.02(d) of the collective agreement.

26. The relief sought by the Union in this case is that I direct the Employer to increase the staffing requirements at the Vancouver Air Traffic Control Centre to a minimum of two for the midnight shift. I decline to accede to this request for several reasons: First, the evidence at the hearing was directed almost exclusively to the

circumstances on the midnight shifts of June 9 and 15. My ruling that the Employer did not fulfill its obligations in Article 13.02(d) is based on the evidence of the circumstances only on those shifts. I cannot make any declarations about the circumstances on other shifts where there may be substantially less traffic or else qualified personnel available to fill in for the West Complex controller during these relief and meal breaks. There is some evidence that the experience on the JET system during the latter part of 1982 and early 1983 has shown that there is no need for two controllers in the midnight shift on the West Complex. In these circumstances it would be dangerous for me to comply with the Union's request that from this day forward a minimum of two qualified controllers be assigned for the midnight shift on the West Complex. The second reason why I will not grant the remedy sought by the Union is that it is a well recognized principle, (see Lawes (supra)), that adjudicators should not make a declaration that is prospective in nature since the issue as to whether operational requirements permit a break is a question of fact to be determined in each case.

27. In these circumstances, I am persuaded that the prudent course for me to take is to make the declaration that the Employer violated Article 13.02(d) by refusing to provide adequate staff to permit meal and relief breaks on the midnight shifts on June 9 and 15, 1982. The means by which the Employer arranges in the future to ensure that operating employees receive these meal and relief breaks during their shifts is not an issue which should be decided by adjudication

but rather should be determined by negotiation between the Employer and the Union.

Joseph M. Weiler,
Board Member and Adjudicator.

VANCOUVER, October 19, 1983.