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Mr. J.C. Butt,
President,
Canadian Air Traffic Control
Association,
1 Nicholas Street, Suite 604,
Ottawa, Ontario.

Dear Mr. Butt:

Re: Grievor: Daniel H. MacDonald et al
Dept.: Transport Canada
Adjudicator: S.M. Ashley
Date of decision: November 21, 1983

Enclosed is a copy of the English text of the decision concerning
the above-cited matter.

The French text will be forwarded to you as soon as translation
has been completed.

Yours truly,

(for) J.A. Vautour,
Deputy Registrar.

*RETURN 3 COPIES
TO RAM
29/11/83*

Enclosure.

cc: D.H. MacDonald
C.H. MacLean

*ART 31
CODE 402/82*

*Copy grievor (D.H. MacDonald,
W. Sellick,
P. Coolen, F. Stanislaw)*

*OFP FOR SPURS CONTROLLING
/cc IN TCUs + TOWERS.*

*Halifax Branch Chairman,
A.H. Derbyshire, Saskatoon
Branch Chairman,
Regina Branch Chairman,
Thunder Bay Branch Chairman
B.O.D., J.M. Linnipston.*

JB 29/11/83

NOV 24 1983

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

BETWEEN:

DANIEL H. MACDONALD ET AL.,

grievors,

AND:

TREASURY BOARD
(Transport Canada)

employer.

DECISION

Before: Susan M. Ashley, Board Member and Adjudicator

For the Grievor: Catherine H. MacLean, counsel, Canadian Air Traffic Control Association

For the Employer: Sheila Ray, counsel

Heard at Halifax, Nova Scotia, September 27, 1983.

DECISION

The grievors, Daniel H. MacDonald, W. Sellick, P. Coolen and F. Stanislow are shift supervisors at the Halifax International Airport, and members of the Air Traffic Control Bargaining Unit, classified as AI-4. This dispute involves interpretation of article 31.01 of the collective agreement between the Treasury Board and the Canadian Air Traffic Control Association (CATCA), Code 402/82. That article provides:

31.01 Effective January 1, 1981 in addition to all other entitlements he may be eligible to receive, each operating employee employed in an Area Control Centre, the Airspace Reservation Unit, a Control Tower, or a Terminal Control Unit, shall be paid a premium for each calendar month in which the employee has earned at least ten (10) days' pay while subject to this clause, based on the formula

Annual Operational Facility
Premium as specified in Appendix
B to this agreement for the
facility in which the employee
is employed, divided by twelve (12).

Such premium shall not constitute a part of rates of pay for the purposes of this agreement and the Public Service Superannuation Act.

The grievors in a group grievance suggest that, since their position as supervisors requires them to be qualified and operational in both the Control Tower and the Terminal Control Unit (TCU) at the Halifax International Airport, they are eligible to receive the operational premium referred to in article 31.01 for both units.

There is no dispute as to the facts. The grievors called two witnesses, Mr. James Livingston and Mr. Daniel H. MacDonald; no witnesses were called for the employer. Mr. Livingston has been employed as an air traffic controller since 1959, and has been at Halifax since 1979. He became a shift supervisor in January 1983, and described the physical layout of the facility at Halifax, which

consists of two sub-units, the terminal control unit and the control tower. Responsibility for aircraft shifts between the two units when they come within a certain distance of the airport. Five supervisors administer the units; there is one supervisor on duty at a time, responsible for the supervision of both the Tower and the TCU. A normal shift is 8 hours and 15 minutes. The qualifications for the supervisor position are set out in the competition bulletin (Exhibit G-2) as possession of an Air Traffic Controller License, experience as an air traffic controller including experience as an IFR controller; successful "checkout at Halifax TCU" is also a condition of employment for the position. "Checkout" is required at both locations, because the supervisors are required to actually control the aircraft and to monitor the aircraft movement, and because they are required to do performance appraisals on both groups.

Mr. Livingston outlined the normal duties of a supervisor on day shift, which include spending time in both units on a regular basis, ensuring that all positions are manned, that people are taking their breaks and being relieved, arranging replacements when employees are ill, keeping administrative records for both units, and performing special duties. He is responsible as supervisor for two tower controllers and two terminal controllers. All supervisors oversee approximately the same number of people, and are also responsible for special duties which are assigned on a rotational basis. These include: Training, Equipment, Operations and Procedures, and Publications, all of which involve both units, according to Mr. Livingston. He did not know whether the fifth area - Special Projects - would involve both units.

Mr. Livingston, as Past-President of CATCA, had knowledge of the facilities at other Canadian airports, and testified that most airports do not operate as Halifax does, i.e. making supervisors responsible for both units. He was aware of two other units which operate like Halifax (Regina and Saskatoon) and possibly Thunder Bay; all others divide the responsibilities.

In cross-examination, Mr. Livingston added that a supervisor, when in one unit, can monitor what is happening in the other unit. The supervisors' office is located in the terminal unit, but it appears that the office is not used regularly. Supervisors are required to evaluate and do appraisals of employees in both units; Mr. Livingston felt that it would be difficult to do this if the supervisor didn't have the training himself. He read Exhibit G-3, a job description for TCU Shift Supervisor at the Halifax International Airport, and agreed that it reflects his duties, although he might quarrel with the percentage of time allocated to each task, and noted that on page 2 paragraph 2 they were required to do evaluations of all employees and not only VFR personnel as indicated. He testified that on a normal day shift, a supervisor would spend approximately 3 1/2 hours (in an 8 hour 15 minute shift) in the Tower; on the evening shift, he would spend about 3 hours there.

Mr. Daniel MacDonald is a shift supervisor at the Halifax airport, who started his training in 1961. He agreed that Mr. Livingston's evidence represented the situation at the Halifax airport when the grievance was filed, Mr. Livingston having been appointed to the position after the date of the grievance. However, he added that supervisors were sometimes responsible for replacing both Tower and Terminal staff when they were unavailable for overtime. Exhibit G-6 represents the relevant provisions of the unit policy document, s. 13.2.6 of which states that where airport or terminal controllers have been offered overtime and are unavailable, the overtime shall be offered to supervisors to fill positions in the Tower or TCU. He noted that this situation in fact rarely arises. He read the job description (Exhibit G-3) and agreed that it was accurate subject to the same qualifications as made by Mr. Livingston.

Counsel for the grievors did not call the other grievors. It was agreed between counsel that each of the shift supervisors

earned the 10 days referred to in article 31.01, and were qualified to work in both units.

Argument of Counsel

a) for the grievors

Counsel for the grievors argued that since the grievors had satisfied the requirements of article 31.01 for both units, they were entitled to an operational facility premium covering both the Tower (\$400) and the Terminal (\$900). The supervisors are "operating employees" as defined in the agreement for the purposes of 31.01, employed in both units. The article states that they are eligible for the premium for the facility "in which the employee is employed". Counsel for the grievors referred to the comments of Kelly, J.A. in R. v. Gowers [1980] 2 F.C. 503, wherein he used the dictionary definition of the word "employed" in the absence of a definition in the agreement, i.e. "employ" means "to use the services of for some special business" and "occupy" "to hold (a position or office)". Counsel argued that, because of the unusual circumstance where only one supervisor was responsible for both units on each shift, and was required to perform the duties of both units, the employer was using the supervisors for special business, according to the definition, in both units. Because the supervisors were employed in two of the areas specified in the article, they were eligible for the premium in both units, suggesting that the requirement that supervisors be competent in both units doubles their qualifications and their workload. Counsel for the grievors felt that the use of the word "or" in the article implied that you would get the premium if you were employed in only one of the units referred to, but that it did not prevent certain employees from getting two premiums where applicable.

b) for the employer

Counsel for the employer argued that the article clearly provides for payment of one premium only, as seen by looking at the article itself and the context. Reference to "a premium", and the use of the word "or" in that part of the article listing the areas for which the premium was payable, when read together, both imply that the article was intended to provide that only one operational facility premium should be received. If it were intended that more than one premium could be received, it would be clearly stated in the article. Counsel contended that interpretation of the article in any other way would lead to absurd results, i.e. in terms of eligibility for benefits in both units, and by virtue of the fact that a supervisor would get the same premium for working approximately half-time in a unit as someone who was employed in that unit full-time. Counsel referred to the presumption against pyramiding benefits, a presumption which can be rebutted, i.e. where a grievor seeks two benefits for the same work, the onus is upon that person to advance some valid reason why both should be paid. The onus is on the grievors to prove two premiums should be paid; counsel suggested that it was not sufficient to find that the agreement could possibly be interpreted as suggested by the grievors; it must be found that the employer misapplied the article. Here the employer has been fair and reasonable to the employees, giving them the higher of the two premiums. She suggested that words in the collective agreement should be interpreted in the context of the agreement itself and the workplace, and that Gowers was not helpful.

In reply, counsel for the grievors noted that use of the words "a premium" in the article did not mean that one premium could not be calculated for two units; likewise, she suggested that the pyramiding benefits cases were not helpful since here the premium would be made up of a composite from the two units. In any case, the presumption is rebutted by the fact that the supervisors have to work

in and be current in the procedures of both units.

Decision:

Counsel are in agreement on the facts; their dispute relates to the interpretation of article 31.01 of the collective agreement, which is set out earlier. The supervisors at the Halifax airport are required to have skills pertaining to both the Terminal and the Tower. This situation is an unusual one, but is not unique. The evidence suggested that approximately 3 1/2 hours of each regular shift is spent in the other unit. On the plain meaning of the article, it would appear that only one operational facility premium is payable. I say this because of the use of singular rather than plural ("a premium", "the facility in which the employee is employed", "such premium"). Also, the use of the word "or" in the phrase "in an Area Control Centre, the Airspace Reservation Unit, a Control Tower, or a Terminal Control Unit" implies that a premium is to be paid for work in only one of these unit, "or" being used in the normal disjunctive sense.

There is no dispute that the grievors in this case, all supervisors, have met the requirements for receiving the premiums and have in fact been receiving the premium for the Terminal, which is the higher of the two. It is the grievors' contention that, because they have exceeded the minimum requirement and are employed in two units, they are eligible for two premiums. It is clear that the grievors spend part of their shifts in each unit. Does this mean that they are "employed in" each unit for the purposes of the article? A distinction can be made between being employed to work in both facilities as part of the functions of one job, and being employed in two facilities at the same time. The former suggests one employer, and an employee who has functions in more than one unit. One job is at issue, and the employee is hired to fulfill a multiplicity of functions. The

interpretation suggested by the grievors is that since the employees were "employed in" more than one facility, they are eligible for the premium for more than one facility.

This interpretation does not seem supportable by common sense or by the wording of the article. If it were intended that two premiums were payable, the wording of the article would reflect this possibility. If an employee were to be paid more than one premium for work in more than one unit, it is arguable that the agreement should provide for determination of the amount of premium paid for work in the secondary unit, i.e. would one hour per day spent in the secondary unit make the employee eligible for the full premium for that unit or for only a proportional amount of the premium, assuming that he possessed the additional qualifications for eligibility?

The cases dealing with pyramiding of benefits deal mainly with overtime, although there are similarities with this case. In any case, clear language in the collective agreement will rebut the rule against pyramiding. In my opinion, the language in the article is sufficiently clear that to interpret it in the way suggested by the grievors would amount to an alteration of the agreement. Arbitration boards, in general, have followed the practice of avoiding an interpretation of the agreement which would provide for pyramiding, except where the agreement contains specific wording allowing such compensation.

The general rule that clear words of a collective agreement are to be given their ordinary and plain meaning is expressed in Re Massey-Harris, (1953) 4 L.A.C. 1579 at 1580:

...(We) must ascertain the meaning of what is written into (a) clause and to give effect to the intention of the signatories to the Agreement as so expressed. If, on its face, the clause is logical and is unambiguous, we are required to apply its language in the apparent sense in which it is used, notwithstanding that the result may be obnoxious to one side or

the other. In those circumstances it would be wrong for us to guess that some effect other than that indicated by the language therein contained was contemplated or to add words to accomplish a different result.

To give this article the interpretation put forward by the grievors would fly in the face of the wording of the provision. Assuming that all words used have a specific meaning, use of singular words and the word "or" in the provision clearly indicate that the payment of only one premium is intended. It is payable to employees who fulfil the requirements in any of the units listed, but not in more than one. To give more than one premium would imply that the employees have more than one job. They do not. They have one job which requires that they perform certain functions in each unit as part of their job description. This situation, from the evidence, is fairly anomalous in Canadian airports. However, to interpret the provision in a way that was not intended, in order to deal with a small number of employees in an unusual situation, would not be appropriate. It is for the union and the employer to deal with this problem in negotiating the agreement. The employer has acted fairly towards the grievors in this situation, giving them the higher of the two premiums for which they might be eligible.

Because of the plain wording of article 31.01, and for the other reasons stated, I find that the grievance is not justified and is therefore dismissed.

Susan M. Ashley,
Board Member and Adjudicator.

HALIFAX, November 21, 1983.