

No. 26

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

BETWEEN:

R. CHOQUETTE & N.P. HODGSON,

Grievors,

AND:

TREASURY BOARD
(Department of Transport),

Employer.

DECISION

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

For the Grievors: John P. Nelligan, Q.C. and Denis Peloquin, counsel

For the Employer: Harvey Newman and Pierre Hamel, counsel

OPERATING IRREGULARITY
5-DAY SUSPENSION

Heard at Montreal, August 20 and 21, November 30, December 1 and 2,
1981 and at Ottawa, December 7, 1982.

Copy Choquette, Hodgson, Montreal Acc Br. Ch,
Quebec R.D., Nat. Exec., and file
Choquette, Hodgson Grievances. B25/3/83

DECISION

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

The grievor Robert Choquette is employed as an air traffic controller by Transport Canada at Dorval Airport, Montreal, Quebec. He is classified as an AI-4 and is a member of the air traffic control Group bargaining unit for which the Canadian Air Traffic Control Association is the bargaining agent. The grievor Norman Philip Hodgson is similarly employed.

The notice of discipline to each grievor is dated December 18, 1979 and it reads as follows:

Pursuant to an Administrative Inquiry on an Operating Irregularity that took place on September 22, 1979, while you were performing the duties of Terminal Coordinator in the Montreal Area Control Centre, you neglected to follow the appropriate air traffic control procedures, thus endangering the safety of aircraft operating within the airspace of the Dorval Positive Control Zone and contributing to a near-miss between Air Canada (DC-9), Flight 176 and two (2) A-4 fighters of the U.S. Navy.

As a result of your negligence, the life of all the passengers and crew members of the aircraft involved was jeopardized and your conduct has reflected discredit on Transport Canada.

Such a lack of concern for your duties and responsibilities as an Air traffic controller and as an employee of Transport Canada cannot be tolerated. For this reason, I have decided to suspend you from your duties for a period of five working days, which period will start at a date to be determined by your Unit Chief.

Be advised that a reoccurrence of such behaviour will lead to more severe

disciplinary action, which may include discharge.

If you do not agree with this disciplinary action, you may submit a grievance in accordance with the grievance procedure specified in your collective agreement.

It was agreed at the outset that the cases would be consolidated.

Counsel for the employer made the following opening statement summarizing the facts which he intended to establish through the evidence adduced:

Just before noon local time, an Air Traffic Controller discovered that two American Navy Aircraft were in Canadian airspace. Air Controller Stefani got on the radio with a Boston Air Controller and discussed the possibility of sending the aircraft to Dorval to have a look. The fighters were en route from one base to another base and they were to land at Plattsburg, New York. There was no quarrel then. Stefani was interested in seeing the aircraft. Stefani gave instructions to the fighters identified as Motly 04 and invited them to do a low pass over Dorval. The fighters were happy to oblige. The instructions were to proceed to Dorval and navigational instructions were given to fly in front of the tower on runway 28 coming in from the east. There are controllers in three different units. Stefani was in the Area Control Centre Unit also known as ACC. Both grievors were controllers in the Terminal Control Unit also known as TCU. Another controller by the name of Vigeant was in the Tower. Forty-five minutes later, a low sweep was made. At the same time

air traffic controllers were in contact with Air Canada flight 176 from Ottawa. Air Canada was vectored on the instrument flight rule traffic also known as IFR landing strip 06L. As the Air Canada flight was about to land, the American aircraft flew in front. The Air Canada pilot was quite distraught and filed a near-miss report. The Air Canada pilot had no idea that Motly 04 was about to make a low pass. The Department of Transport investigated and the investigation pointed to Choquette's and Hodgson's responsibility. The Department would not have quarrelled if proper separation had been maintained.

Counsel for the grievors replied that he did not intend to quarrel with the fact that a fighter had nearly missed the Air Canada aircraft. Counsel also added that one of the American aircraft had pulled up before the near-miss and only one was still in the area of danger at the relevant time. Counsel finally argued that the grievors were minor participants and that they had followed the appropriate rules and regulations.

Both counsel agreed that a complaint had been filed with the Department of Transport immediately after the incident over the radio by Captain D.T. Smith, the pilot of Air Canada Flight AC 176.

The notices of discipline were filed by consent as Exhibits E-1 and E-2 together with the blue print of the Dorval Airport as Exhibit E-3.

THE EVIDENCE

The employer adduced its evidence.

Gilbert Bégin was the first witness. He filed his curriculum vitae as Exhibit E-4. This curriculum vitae was prepared a few months ago for another purpose. Until a few months ago, he was employed by Transport Canada as Project Manager, Operational Staff Development, Training Division, Air Traffic Services Branch. His current position is that of Program Manager, Air Traffic Services, Cooperative Education Program. He has a military background and at one time he had a permit to fly solo. He joined Transport Canada in 1956 in Montreal as an assistant controller. He then went on visual flight rules or VFR training and instrument flight rules or IFR training. He re-wrote the manual of operations or MANOPS which is the "bible" for Air Traffic Controllers. All in all he spent 17 years in the Quebec region. He now reports directly to Walter McCleish who is the Administrator of Canadian Air Traffic Services. Mr. Bégin acted as an operational controller for 17 years. Air Traffic Services is a branch of the Air Administration of Transport Canada and it has responsibility for all air traffic control operations in Canada. Air Traffic Services or ATS is broken down into six regions, that is, the Atlantic region, the Quebec region, the Ontario region, the Central region, The Western region and the Pacific region. The Quebec region comprises more or less the airspace over the province of Quebec. One area control centre or ACC is located in Montreal.

In the province of Quebec, the area control centre is located in the Terminal building at Dorval airport, 4th floor. It is the only ACC in the Quebec region and its chief was Réal Bérubé. The Terminal Control Unit or TCU and Control Towers are also responsible for controlling traffic. There are in Quebec three terminal control units or the Montreal TCU, the Quebec TCU and the Bagotville TCU. A TCU looks after flights in and out of major airports. The area control centre is responsible for air traffic control above an

altitude of 14,000 feet. Air traffic controllers are also located in the towers. For example, on a flight from Halifax to Dorval, the area control centre or ACC would pick up the flight and then TCU would later take responsibility to transfer control to the appropriate control tower. The area around the airport is called the Positive Control Zone or PCZ. The Montreal TCU head was also Réal Bérubé or the Chief of the Area Control Centre. TCU has a certain number of controllers. The TCU and ACC are located in the same room on the 4th floor of the Terminal building. Various radar screens, communications equipment and telephones are located in this room. The data board is used to keep data concerning flights. This is called the flight data strip. There are 15 to 20 persons working in this large room. The tower is physically on top of the building, two floors above. An elevator or a stairway can be used to reach the tower in three or four minutes. There is a possibility for a controller on the 4th floor to communicate with the tower either by direct telephone line or by microphones also called the hot line. The letters UL refer to Montreal. The Montreal ACC is responsible for the vast airspace over Quebec. The Montreal ACC is broken into the East Sector and the West Sector. The East Sector includes Sherbrooke, Quebec City and James Bay. The West Sector includes Ottawa and Toronto. The area between Montreal and Boston is called the Sherbrooke Sector.

Shortly before noon on September 22, 1979, Stefani was the controller in charge and he was relieved by Guy Leblanc. There were about 15 employees working in the Montreal ACC. There were four positions to be looked after at the Montreal TCU covering arrival, departure, data and terminal coordination. Two employees could have handled all four positions at one time. A controller who looks after the arrival sits in front of a radar screen. He will pick up an aircraft and get it to the airport. For example on a flight from

Halifax to Montreal, there is at one point a separation from ACC. The aircraft then becomes the responsibility of TCU. The information is passed along from the ACC ahead of time to TCU by telephone and by written message. A flight data strip is then prepared. TCU is alerted. A data strip can also be prepared in advance. A data strip can be passed from one controller to another. Normally the ACC controller will call the TCU controller and will tell him about a flight coming in. An aircraft is always under someone's responsibility. A plane will be handed over from one controller to the other. The arrival controller will provide the separation and service to an aircraft and then the control will be passed over to the Control Tower. A departure controller does the reverse job. The controller who works data maintains an information form for the controllers on strips of paper. The data controller does not talk to the aircraft. The data man is a licensed air traffic controller. A terminal coordinator also records data. All these operations were in the Terminal building. At the time of the incident, Serge Cormier was the Unit Chief of the Montreal Tower and he reported to the Regional Superintendent of Operations, Murray Daigle. There are various controllers in the tower, namely the airport controller, the ground controller, the data position, the supervisor, the clearance delivery and the coordinator.

A flight can be subject either to VFR or IFR depending on weather conditions. The difference is a 1,000 feet ceiling and 3 miles forward visibility. The tower can adjust to either flight. The pilot will decide if he flies VFR or IFR. A commercial jet usually goes IFR. Major airports have automatic transmission of information required for operation of aircraft. The tower updates regularly the messages on a certain radio frequency. The letters ATIS mean Automatic Terminal Information System. The runway to be used is determined by the airport controller depending on the velocity and direction of the wind.

The runway can be changed from time to time. TCU will realign traffic for the new runway. When the flight is under IFR conditions, the role of the tower in bringing in the plane is limited to the authorization to land. The terminal controller is in a dark room. The tower is still involved. A military aircraft has a UHF radio or is on a UHF frequency. A commercial aircraft carries VHF radio. ATIS is transmitted on VHF. A military aircraft has to get information from the tower. The airport controller gives clearance to the aircraft. The runway in use is called the live runway. The ground control man takes over at one stage. When the weather conditions are perfect, the tower will take control of the aircraft as soon as it is in sight. The aircraft could then cancel IFR to proceed on VFR. The positive control zone has a radius of ten miles. At some point, the aircraft becomes the responsibility of the tower. When the Tower takes control, it informs TCU. Both could agree in advance in writing as to the point at which the Tower takes over control. There could be a letter of understanding in this regard. He made a study of the incident in question. The grievances went up to the third level and Peter Proulx appointed him to make a review of the inquiry, facts, transcripts etc. He also examined the manual of operations, the letter of understanding and the air navigation orders. He reviewed certain tape recordings. He became concerned with the tower operation. He also reviewed the flight data strip. He had a transcript prepared of the various recordings which included a time device. He looked at all the pertinent data between noon time and about one o'clock on September 22, 1979.

The transcript is filed as Exhibit E-5. The time appearing on Exhibit E-5 as being 1554:25 is Greenwich time and equals 1154:25 our time. The letters DOS mean Boston and UL Montreal. At that time, the air controller in Boston was talking to the air controller in Montreal. A copy of the Air Navigation Chart from Stirling to Presque Isle is filed as Exhibit E-6. There is a reference in the transcript

at 1554:30 to level 200 which means 20,000 feet altitude. When Stefani in Montreal refers to "Him", he refers to Motly 04 and he means that he sees Motly 04 on his screen. When Stefani directs the controller in Boston to terminate Motly 04, he means to change the frequency of the aircraft so that the operator of the aircraft can talk to him. The word "High" means high altitude traffic. The letters TG mentioned at 1554:47 are the Boston controllers identification. The word "Milly" at 1556:43 is for Millinocket which is a point in Maine. There is a reference at 1556:49 to a low pass which means flying low or a low approach. At 1557:20, Motly 04 #2 states that "Two is up" meaning that Motly 04 number 2 is listening. Motly 04 was the leader. At 1557:35, Stefani is using the word "squawk" which is an identification by activating a piece of equipment. At 1558:30, V300 means an airway and the letters JM are for St-Jean. At 1559, the words "click-click" mean that the message is acknowledged. At 1601:15, the word "overshoot" means that there will be no touchdown. Leblanc said at 1601:46 that the speed was to be at the discretion of Motly 04. The witness never saw these words in MANOPS. He does not believe that they appear in the manual.

At 1606:22, there is a reference to the tower data which means the control tower. Jean-Paul Tremblay was an air traffic controller assistant. There was at that time a conversation between the tower and TCU. This conversation was presumably by telephone. Hodgson is one of the grievors. When Hodgson declares that "I got a writer for you", he means that "you don't have this written in advance - write what I say". Tremblay then wrote a strip. This operation is described in MANOPS. The information which has to be passed along is the type of aircraft, the point of departure, the time of estimated arrival and the approach. The strip written by Tremblay appears below the word "Tower" on Exhibit E-7. The word "Motly 04" refers to identification of the aircraft, the number 2 surrounded by a circle means

that there are two aircraft and A4 is the type of the aircraft. 1625 is the estimated arrival time and the X indicates that this is a landing aircraft. There are two empty boxes and then the identification of the runway is changed from runway 6 left to runway 28. Runway 6 left is the runway for IFR types of flights as opposed to VFR. LIZ stands for Loring and UL means that the flight is coming over Montreal. PBG stands for Plattsburg which is the final destination. Tremblay hesitated in writing the letters PBG. Hodgson also hesitated as evidenced by the conversation. The word "Motly 04" on the left of the strip means that the aircraft is westbound. If the word "Motly 04" had been on the right hand side of the strip, it would have meant that the aircraft was eastbound. The tail number of the aircraft is the aircraft number for identification purposes.

At 1607 of the transcript, the letters JT mean J. Tremblay and they are his operating initials. The conversation recorded at 1615 is on a hot line. At that time Leblanc had replaced Stefani. Choquette is in the same room. When Leblanc says "45 à l'est", he means on the screen. The number 400 appearing in the second strip under the letters TCU on Exhibit E-7 indicates the speed of the aircraft. The meaning of the letter P is unknown. 1627 is the estimated time of arrival. The strip indicates that at one time the altitude of 6,000 feet was vacated and the aircraft flew at an altitude of 4,000 and then 3,000 and then 2,500 feet. The letters and number AllPLB means that the aircraft is approaching Montreal and then will be going on to Plattsburg. Choquette should have been aware at that time of the Air Canada flight but apparently he was not. Choquette did not see the strip from ACC. At 1616:42, code 0400 is now being used. At 1617:16, the word "go" means "give me the information". At 1617:23, "your traffic" means traffic zone. Choquette is talking. At 1617:40, the pilot on AC 176 is saying that he is now changing altitude from 6,000 feet to 3,000 feet. The word "Roger" means that the message has been received. At 1618:30,

the letters ILS mean instrument landing system. The Montreal Terminal area chart is filed as Exhibit E-8. At 1619:08, 119.9 is the VHF frequency Montreal Tower. At 1619:47, the altimeter stands for the barometric pressure. The pilot of Motly 04 is saying that he is descending from 6,000 feet altitude to 4,000 feet. At 1620:30, Vigeant is saying that the wind has a velocity of ten knots. At 1622:01, a conversation is recorded in French between the Montreal Airport position and the control tower on a hot line. The words "10 en sud-est" mean that the aircraft are ten miles southeast of the airport. At that time, Vigeant was wondering if there were two aircraft or only one. Vigeant should have known that there were two aircraft. At 1622:12, the previous heading was 330. It was changed by 10 degrees to 340. Later on at 1622:49, it was changed to 300. The number 119.9 is on the UHF frequency. At 1623:23, Choquette refers to an altitude of up to 5,000 feet. At 1624:08, Vigeant says "Not below the minimum" meaning $\frac{1}{2}$ or $\frac{1}{2}$ a mile at the most. At 1624:15, Vigeant declares "could expedite the climb there?" meaning "would you quickly go up?" Separation is the safe distance between two aircraft. IFR standards are set up in MANOPS. A safe distance would be ten minutes or three miles. The threshold is the end of the runway. The word "BUTTON" is similar to threshold. At 1625:27, the pilot of AC 176 files a formal complaint and asks that the tapes be retained. At 1626:06, "I have him tally" mean "I have him in sight". At 1627, the reference to George is George Nadon. Frank Levesque was the supervisor in TCU. When the flight is on IFR, the responsibility is with TCU and not the Tower. Nadon is referring to the letter of understanding. Levesque with his VFR background is trying to make his point. Nadon and Levesque are both supervisors.

Mr. Begin's testimony was suspended at this point and it was agreed by counsel that it would be continued after the testimony of the other witnesses.

Timothy Smith was the next witness. He stated that he is a captain employed by Air Canada. He has been a pilot since 1966 and a captain since 1973. On most airplanes, there is a captain as well as a first and a second officer. A pilot is authorized to fly one type of aircraft at a time because of the complexity of the work. In 1979, he was flying a DC-9. Previously he flew DC-8's and Viscounts. A DC-9 carries about 106 passengers. On September 22, 1979, he was captain on Air Canada flight 176 en route to Montreal. He had another pilot with him, a first officer by the name of Beauchemin. He recalled that he approached Montreal at approximately midday. The time was 1625 Greenwich time. Approximately 85% of the seats were occupied. An incident then occurred and he wrote two reports in this regard. Both reports are filed as Exhibit E-10. The weather at the time was perfect and it was clear and sunny with very little wind. He approached the Montreal Airport on IFR. He was over Hudson, Quebec, when he was cleared by the arrival approach controller for runway 06 left. Another aircraft was ahead at a distance of about five miles away. The approach was normal. His clearance was for visual approach. He saw the preceding aircraft land. He continued normally. He was at about 300 feet above the ground when he observed something in his right windscreen. His aircraft might have been at this time about one half mile from the end of the runway. He thought at first that it was a bird. His first intention was to put on extra ignition override. His speed was then 142 - 150 miles per hour. At that time, the aircraft was about 100 feet above the ground. He said to the other pilot that the runway was in sight, to which the other pilot said "landing" meaning that he has seen it. Everything happened very quickly.

He saw that there were two single engine fighting aircraft and they passed directly in front of AC 176. They were Skyhawk aircraft used by the United States Navy and painted in blue. He saw

first one aircraft and then a second. Both these aircraft seemed to be using runway 28 in a westerly direction. They seemed to take a steep climb from about 300 feet from the ground or maybe less. The climb was almost vertical. They were probably proceeding at 300 or 400 miles per hour. At that time, the Air Canada aircraft was at a maximum of $\frac{1}{2}$ mile from the end of the runway. Both US fighting aircraft were going very fast and at the same speed. He had assumed that the runway was clear. What happened was unusual. A pilot may have to climb back up for various reasons including mechanical defects, weather, etc. and this is called a missed approach. In the present instance, he did not have a clear way for a missed approach. He was frightened, surprised and upset. Nothing like this had ever happened to him before. He was able to land normally but he decided to file a complaint, which he did immediately. He filed an ATC irregularity report. He contacted the flight dispatch manager in Toronto and asked him to send a telegram to the authorities in Ottawa. He also talked to the air traffic controllers and he asked that the tape be put aside. He completed a written report two days later.

Under cross-examination, Mr. Smith stated that he had not been advised of the presence of the Skyhawks. He added that runway 06 left should have been cleared with no conflicting traffic. He at least should have been advised of the presence of the Skyhawks. There was a complete violation of his airspace.

Richard Vigeant was the next witness to testify. He stated that he has been an air traffic controller for the last ten years. He is a member of Canadian Air Traffic Control Association. He was on duty at the Dorval tower on September 22, 1979. His shift was from noon to 8:00 PM. He was acting as radar coordinator. At 1:00 PM, the recorded IFR runway was 06 left for the arrivals and 06 right for the departures. The VFR runway was number 28. He stated that he had

not been advised that two military aircraft would be using runway 28. Referring to Exhibit E-5, he stated that he only heard at 1623:22 that military aircraft would be using runway 28. He should have been advised previously and he was surprised. He at first did not feel that there would be a possibility of major conflict. The Air Canada aircraft was still about three miles from the runway when it was cleared. He realized that there was a possibility of conflict immediately after clearing the Air Canada flight. He felt then that he should ask the leader of the military aircraft to climb up immediately and he did so. In conclusion, he stated that there had been a lack of coordination, that he had not been advised at the proper time that aircraft would be using runway 28 and that there had been an error also on the part of the pilots of the military aircraft as they did not react at the same time when they received their instructions to climb up immediately. He added that he did not receive sufficient information from Robert Choquette who was also on duty as an air traffic controller.

Under cross-examination, the witness stated that at the time he was acting as coordinator and air traffic controller. He repeated that he had not been advised that military aircraft would be using runway 28. He stated that he had not noticed the presence of several persons in the tower. He cannot say if at 1622:01 he looked at his radar screen. There is an automatic transfer of jurisdiction from the TCU to the Tower from the airport between five and seven miles. He could see the military aircraft when they were about three miles from runway 28. At this moment, the Air Canada flight could be seen at about one mile or one-and-a-half miles before reaching runway 06 left. He had not seen the military aircraft before he authorized the Air Canada flight to land. At 1623:31, he could see the military aircraft on his radar. He never authorized the military aircraft to land. At 1623:31, he advised the pilots of the military aircraft that

they were number 1 for runway 28 but they were not authorized to land. He could see the military aircraft only at 1624:15. There is no doubt that one of the military aircraft crossed the path of the Air Canada flight. There was probably less than $\frac{1}{4}$ of a mile when the two aircraft crossed each other. In his mind, there was no danger of an accident.

When cross-examined further, the witness declared that when he first noticed the two American aircraft he did not believe that there would be a problem as they were heading for runway 06 left. He only saw at 1623:22 that they were heading for runway 28. He never approved the use of runway 28. All that he could do was to live with the situation. At 1622:49, he wondered why the American aircraft were flying at such a low altitude. The altitude of 540 feet was the minimum for a low and over approach. The pilots of the American aircraft should have known this. The American aircraft should not have flown at an altitude of only 50 or 75 feet as they did. The American aircraft should have waited until they were authorized to fly below the minimum. If the American aircraft had followed the regulations concerning the altitude and the speed, there would have been no possibility of an incident.

The fourth witness was Frank Levesque. He stated that he is a controller at Dorval and a member of CATCA. He has worked in the Dorval tower for 13 years and he is now a shift supervisor. He sees to it that there is adequate personnel for the normal tower duty and that the personnel is qualified. The purpose of the control tower is to prevent collision between aircraft. At one point, control is transferred from the terminal control to the tower control. This transfer can be automatic or not depending on weather conditions. On a typical shift such as the one on September 22, 1979, there are various positions in the Tower such as the airport control position

man, the coordinator position, the ground control position, the clearance delivery position, the assistant position and the supervisor position. Mr. Tremblay was holding the assistant position and amongst his duties, he performed the clerical work in the tower such as keeping records, answering telephone, etc. Mr. Levesque stated that he was on duty on September 22, 1979, from 6:45 AM to 3:00 PM. At about noon, he was at the clearance delivery position. Mr. Vigeant was acting as the airport and ground controller. He was responsible for the issuance of landing and departure clearance and he also had to coordinate VFR aircraft. The traffic at the time was light and they were working with a minimum staff. He overheard a conversation between Vigeant and the arrival controller, Robert Choquette, over a loud speaker. He heard in particular a conversation concerning the possibility of military jets doing a simulated approach at Dorval. The runway in use at the time was 06 L. He heard Vigeant talking about runway 28. This was not unusual but there had to be coordination.

The airport controller seemed surprised that he had been handed off two jets on approach for runway 28 when the IFR landing runway was 06 L. Nothing up to this point required his intervention. At one time, he looked east towards runway 28 and he could see two fast moving jets heading west. Their altitude was normal for a low approach. A low approach is with a minimum published altitude. A pilot however can be given a restriction on altitude. When he first saw the jets, they were about two miles away at an altitude of 500 feet and descending to the threshold of the runway. Subsequently, they were very low. As they approached, their speed was about 300 to 400 knots per hour. The equivalent of 100 knots is 115 miles per hour. The normal approach speed is about 120 knots. There are in MANOPS restrictions on speed and the jets were definitely exceeding the speed that was permissible. When the airplanes were in the vicinity of the threshold of the runway, Vigeant instructed them to commence a climb over the airport.

The purpose was to provide a separation with a DC-9 landing on 06 L. After the instructions, one of the jets seemed to commence its climb but the other did not and continued along the runway. By doing so, the jet went into the intersection of runways 28 and 06 L. The second jet and the Air Canada aircraft had an horizontal separation of at least 5,000 feet. This was not a proper separation. The witness stated that he immediately heard the pilot of AC 176 complaining loudly about not being informed of the presence of the military jets. He immediately contacted the terminal supervisor Georges Nadon as well as the tower chief at Dorval, Serge Cormier. He was reluctant at the time to remove Vigeant pending further investigation. He looked for some advise. He believes that Vigeant was eventually removed by Cormier pending further investigation.

Under cross-examination, the witness added that at Dorval a similar show occurs about once a month and that it was not unusual. A simulated approach was usually done on runway 28 in front of the tower. The visibility there was at its maximum. At times simulated approaches were not on runways or were on other runways. At one time, he overheard the airport controller saying: "Confirmed on runway 28." If a runway is already indicated on a strip, there is no need for the arrival controller to indicate it again unless there is a change. The information on the strip can come either from the computer, from a telephone conversation or the data man downstairs. It would seem that there was a sudden acceleration at one time because of the black smoke that could be seen. The dangerous situation was generated by two planes being too close to one another. It is possible that at 1623:31, Vigeant was not concerned with the American aircraft in view of the position of AC 176. Until 1624:15, Vigeant had not anticipated problems in spite of the lack of information from the coordinator or anybody else. The separation was to have been built in by the arrival controller. The American pilots had to follow regulations.

When re-examined by counsel for the employer, the witness stated that strips can be obtained either from a computer or from a writer. The strip will be obtained from a computer if a regular flight is involved. Normally the computer does not print the runway. On arrival, the runway is put on by the tower when the information is given by the arrival controller. In the present instance, there is no mention of the runway. Mr. Tremblay would know the runway in use but he may not have been requested to write the number as the controllers were in the middle of a change. Providing the necessary separation between successive IFR aircraft was the responsibility of the arrival controller. Vigeant was never given any indication as to the speed of the American aircraft and he was not told that they would be using runway 28. Mr. Vigeant was relieved of his duties two hours later.

The fifth witness was Rolf Stefani. He is an air traffic controller at Dorval Airport and a member of CATCA. He has been doing this job since 1977. He has been a licenced IFR controller since the beginning of 1979. He is now a Data System coordinator. On September 22, 1979, he was on duty at the Montreal Area Control Centre. He was on the day shift. He was the radar controller on the East Sherbrooke sector. He knew both grievors and he saw them around at about noon. At one time, he invited two US aircraft to come to Dorval. He had never done this previously. He was asked by other controllers to do it. The traffic on the Sherbrooke sector was light. He had never seen that type of aircraft before. He left his position shortly after inviting the aircraft and Leblanc relieved him. He declared that he gave him a history of the traffic. He then proceeded to the terminal unit. He had been told by Norman Hodgson that there was no problem in using runway 28. He advised Leblanc accordingly. All he had to do afterwards was to wait in the tower for the aircraft.

Under cross-examination, the witness stated that Leblanc did not advise the aircraft of any restriction concerning the speed. Leblanc also confirmed to the American pilots that runway 28 was the runway in use. The witness admitted that he did not himself tell any other controller about this. He could not recall the exact words that he had with Norman Hodgson.

Réal Bérubé was the next witness. He has been with Transport Canada for 25 years. He is regional superintendent of procedures. He is responsible for the rules and procedures of MANOPS. He has worked as an IFR controller for 14 years. In 1979, he was the unit chief at the Montreal Area Control Centre. He is familiar with automatic transfer control operating procedures. He filed four operation bulletins or directives as Exhibits E-12 to E-15. The purpose of these bulletins is to complement MANOPS and to deal with local procedures as each unit has its own operating procedures. The Montreal tower was aware of this. The purpose of automatic transfer control also referred to as ATC is to transfer the responsibilities for an arriving IFR aircraft from an IFR control unit to a control tower. In his opinion, the automatic transfer was only applicable to runway 06 L as it was the IFR landing runway. He was not on duty on September 22, 1979. He was the unit chief of the Montreal Area Control Centre and both grievors were under his jurisdiction. He heard all the evidence given so far and he also reviewed the various transcripts. In his opinion, the aircraft had to be transferred to the landing tower at one time. The tower also had to be agreeable to a change of runway as there was other traffic. Certain speeds are governed by law and a controller cannot be asked to violate Air and Navigation Orders unless there is an emergency. The air traffic controllers are supposed to coordinate their efforts and anything unusual has to be reported and passed along. Referring to the invitation by Leblanc to Motly 04 at 1601:46, the

word "overshoot" is in his view synonymous of a missed approach or low and pull up. There is a low approach when the aircraft overflies the runway at an altitude below the IFR minimum for that runway. The regulations should also be followed by a pilot. In the present instance, the approach was not properly coordinated. There is no evidence that the necessary information was passed along to the tower. The information concerning the runway to be used by Motly 04 had to be passed along by the terminal data controller to the tower and later on to the arrival controller. Grievor Hodgson passed the information to Tremblay. Grievor Choquette was the arrival controller. Both of them should have received permission to use another runway. It is up to the control tower to approve the runway to be used. This is an air traffic control procedure.

Under cross-examination, the witness stated that he was part of an investigating board which proceeded with an administrative inquiry into the incident. There is no doubt that the failure to communicate the fact that military aircraft were to come down on runway 28 was an error. Grievor Choquette who was the arrival controller knew that the American aircraft were very fast and he should have ascertained that the tower knew about their speed. It is difficult to understand why nobody said that the aircraft were going too fast when they circled. Concerning the rules governing the transfer controls and more precisely the rules mentioned in Exhibits E-12 to E-15, it is true that four amendments were made in a matter of a few weeks as a result of this incident. It is true that it was thought that the procedures were not clear enough. The first amendment was cancelled within a period of three hours. The text of the rules was not clear but it is not enough to conclude that the incident would not have occurred if the text had been clearer. It is true that the Fact Finding Board ignored one of the major factors which caused the hazardous condition namely the widespread mininterpretation of the Automatic Transfer of Control Procedures.

Concerning the report of the Fact Finding Board, the witness stated that he agreed with some of the conclusions mentioned on page 8, namely conclusions number 1, 3, 4 and 5. He does not agree with conclusion number 2 necessarily as he is not convinced that there was a sudden acceleration.

Under further cross-examination, the witness stated that grievor Hodgson should have advised the tower and should have asked if runway 28 could be used. It has to be remembered that the tower had already decided that the runway in use would be 06 left.

At this point, witness Richard Vigeant was re-examined shortly. He stated that when he spoke to Motly 04 at 1623:22, he wanted to confirm that the runway that would be used was runway 28. He said that honestly he had no idea before that time that the military aircraft would be coming on runway 28. He also had no idea of the speed of the aircraft until he saw them. It was not normal procedure to use runway 28 as the published runway was 06 L.

Gilbert Bégin again testified. He stated that he had reviewed some of the Fact Finding Board reports. He also heard all the textimony rendered so far. He finally examined the exhibits which were filed by the various witnesses. Based on his knowledge and his experience, he arrived at a conclusion as to whether or not the grievors had failed in their duties. There is no doubt in his mind that both grievors exceeded their authority. Low and over approach is not in the Manual of Operations and it should not have been used. The only people that could tell an aircraft to do a low approach and overshoot are the tower people. The runway change by the IFR controllers exceeded their authority. There are four reasons to conclude that both grievors are to blame. The advice first to Motly 04 was that there would be no restriction and grievor Hodgson approved this. This is a breach of

Air Navigation Order 5-18CRCC29. This is also a breach of Air Navigation Order 2-21CRCC27. Secondly it will be recalled that the terminal control people said that runway 28 could be used rather than number 06 L. In fact, IFR controllers approved another runway and this is contrary of the MANOPS. An IFR controller must get approval from tower unit. Reference is made to Exhibit E-17. Thirdly, grievor Hodgson is to blame for having misinformed the military aircraft by issuing no prior warning as to the use of runway 28. Grievor Hodgson knew about runway 28. Grievor Hodgson had a lot of coordination to do and he should have asked Tremblay for runway 28. Fourthly, grievor Choquette gave an approach clearance without advising Air Canada of a possible conflict. He should never have cleared an aircraft for low and over. Reference is made to Exhibit E-19. The only person authorized to approve a low approach is the tower control.

Under cross-examination, the witness agreed with the Operations Directive, Exhibit E-12, and he said that there was no reason to change it. He also agreed that a pilot should follow the Air Regulations despite the instructions that he received. The pilot is the person who decides if it is safe to proceed or not. The expression "low and over" is not an approved language as mentioned in MANOPS and it carries no meaning. There was definitely no coordination between the data coordinator and the radar man. Grievor Choquette had to make himself familiar with the working position. Grievor Choquette failed to coordinate. The witness stated that he had prepared documents in connection with this incident showing fault on the part of other persons in addition to the grievors. Grievor Choquette was no doubt lacking some of the information. This information should have been obtained from the terminal data position, the coordinator position and the arrival position. Grievor Choquette could have gone to Leblanc to get information but it was better to go to the data man first. The strip itself was incomplete as it showed no runway change. Grievor Hodgson definitely had no right to give permission to land on runway 28. Only the tower could. When

Bérubé said: "Speed at your discretion", he probably meant that the aircraft could not fly at a speed lower than the maximum authorized speed. The separation was not adequate. It is true that some people thought that the text in E-14 as amended was clearer than the text in E-12.

The hearing at this point was adjourned and the parties tried to negotiate a settlement. The negotiation lasted several months after which I was advised that the hearing was to continue. When the case resumed, counsel for the grievors stated that for various reasons, no further evidence would be presented. I was asked to render a decision based on the evidence rendered so far and following the arguments of both parties.

ARGUMENTS

Counsel for the employer argued that evidence had been adduced in part through highly skilled experts and that their opinion had to be relied upon. Reference was made in this regard to the decision in Liske (Board file: 166-2-2898). Counsel further argued that the evidence showed that the grievors did not perform their duties as expected of them and that there was an obvious lack of coordination when they failed to pass along the pertinent information concerning the approach of Motly 04 and the runway to be used. It is not necessary in a case such as this one to find a direct breach of MANOPS or of the directives. The evidence also showed that there was no proper coordination of Air Canada flight 176 and the two Motly 04. The Air Canada pilot had reason to complain and this can be linked to the grievors' failure. In Gartner (Board file: 166-2-42), it was decided that the employer was entitled to expect from an employee the highest standard of conduct. The grievors should at least have performed their duties in a proper manner. The employer is not suggesting that the grievors deliberately

set up this situation or incident but they doubtless let down their guard. The type of performance requested by Stefani was not in itself prohibited but it had to be performed in safety. Stefani did his best by passing the information along to grievor Hodgson. Hodgson is the one who said to Motly 04 that runway 28 should be used when in fact it was not the one in use. Hodgson is also the one who said to Motly 04 that the speed was at their discretion. It will be recalled that Leblanc took over from Stefani. Hodgson failed to advise the tower that runway 28 would be used and he also failed to coordinate with grievor Choquette. The most important exhibit setting out the events and their timing is Exhibit E-5. The evidence is to the effect that the Air Canada pilot had no idea whatsoever of the presence of Motly 04. Vigeant apparently learned at the last moment that Motly 04 was proceeding on runway 28 but he then was busy with other aircraft. Meanwhile, grievor Choquette knew that there would be or that there could be a problem and he did not do anything other than put Air Canada on a "dog leg". Perhaps the directives were not clear enough but the fact remains that two aircraft were coming on intersecting airways. When Vigeant learned that Motly 04 was coming, he assumed that it would be using the runway in use. It is only at 1624:415 that Vigeant realized that there would be a problem. It could be that Vigeant from a technical point of view had the last chance to avoid the incident but the incident itself was due to a lack of coordination on the part of the grievors. Perhaps Vigeant should have realized what was to happen. On the other hand, grievors Hodgson and Choquette should not have relied on Vigeant to pick up the problem. There was a relaxed and cavalier attitude on the part of the two grievors. Reference was made to Exhibits E-16 to E-19. The disciplinary penalty is appropriate as the grievors should have known the possible consequences and should have been extra careful. It cannot be said that the grievors were singled out even if there was some failure on the part of other air controllers. It is true that Stefani was the initiator of the matter but he cannot be faulted. Even if the directives concerning

air traffic control were not clear, the grievors should not have relied on them as they knew or should have known that there was a danger of collision. There was no unequal treatment in the present case. It cannot be said that the employer was more lenient concerning the other air traffic controllers as their misconduct was of a different nature. Stefani and Vigeant were counselled and it was sufficient. Leblanc and Tremblay did nothing wrong.

Counsel for the grievors replied that the employer is no doubt embarrassed by the whole matter. It had to do something and it picked up two of the air traffic controllers concerned. Neither of the grievors invited the aircraft to fly over. Stefani is the one who originally requested Motly 04 to do so. The evidence is to the effect that runway 28 was the only one that could be used under the circumstances which the air traffic controllers could see and the tower had to know this. Surely Vigeant cannot say that he did not know because all the controllers knew. There was proper coordination. Stefani thought that there would be no special restriction and he got a clearance from grievor Hodgson. He passed the message on to Leblanc but unfortunately the message was communicated in a way that Motly 04 could not understand. The evidence is to the effect that grievor Choquette was not informed of any conversation concerning the speed and altitude or a lack of communication with the tower. MANOPS required him to inform an aircraft of traffic ahead. Grievor Choquette did try to have the two Motly 04 travel on runway 28 after the Air Canada aircraft had passed. How could grievor Choquette anticipate a lack of knowledge on the part of Vigeant? Surely grievor Choquette did not have to tell Vigeant what to do. How could grievor Choquette guess an improper altitude or an improper speed? Choquette's vectoring was not wrong or inadequate. The Air Regulations were amended three times by the employer after the incident and it certainly shows that they were far from being clear. There was a hand over by the tower. Vigeant cannot pretend that he did not know that

the two Motly 04 were to use runway 28. No controller should be too busy to give a clearance when there is danger. The fact is that none of the controllers had anticipated the acceleration that occurred at the last minute. Grievor Choquette could not do anything to avoid the incident. The evidence shows that the second Motly 04 failed to pull up. If it had pulled up, there would have been no problem. Reference is made to the report of the Fact Finding Board more particularly to pages 6 to 12, 16 and 17 of the report. Reference is made also to the conclusions 1 to 5. The members of the Fact Finding Board are experienced and professionals and their opinion should not be set aside. Expert Bégin solely referred in his testimony to the confusion of the regulations which were however interpreted correctly by the controllers. The only clear authority was in Vigeant. If anyone must be blamed, it is Vigeant. It is obvious that the employer picked up two employees in the middle of the process. These employees did not start or instigate the process and they did not terminate it. It is obvious that someone in the tower did not tell Vigeant or confused him. The air collision course was brought about by Vigeant and solely Vigeant. If Vigeant and Stefani needed no discipline, why was it that grievors Choquette and Hodgson needed to be disciplined? Choquette was not negligent in any way and he should not be penalized. The principles set out in Gauthier, Batchelor and Reasin (Board file: 166-2-12727 to 12729) should be applied in the present instance.

Counsel for the employer replied briefly that the grievors could have testified but that they decided on their own to do otherwise. If they had testified they would have said what they had in mind. The report of the Fact Finding Board was brought about by Bégin's testimony and although the document is authentic, the evidence contained therein is hearsay and it was put in for a limited purpose. The Fact Finding Board in itself is not an expert. No weight should be placed on the findings of the board. There is no evidence of a sudden acceleration.

The fact remains that grievor Choquette did not tell the Air Canada pilot about Motly 04 and this came as a shock to Captain Smith.

REASONS FOR DECISION

These cases refer to the suspension for a period of five days of two Montreal air traffic controllers for endangering the safety of an aircraft on September 22, 1979.

As I mentioned previously, the hearing was adjourned at one time to allow the parties to try to negotiate a settlement and it was only in December 1982 that it resumed. It was agreed then that this decision would be rendered in English even if one of the grievors was francophone and that a portion of the evidence had been rendered in French. As usual, however, a version of the decision in the other official language will be issued shortly.

In the letter of discipline addressed to each of the grievors, the employer stated that the appropriate air traffic control procedures had not been followed by them, that this failure was tantamount to negligence, that safety of an aircraft had been involved and that their conduct reflected discredit on Transport Canada.

The evidence is to the effect that as Air Canada flight 176 was on its final visual approach to runway 06 left at Dorval Airport, two U.S. military aircraft proceeded at high speed across such runway. The pilot of AC 176 immediately filed a complaint together with an incident report (Exhibit E-10). There is no doubt that we are dealing here with a dangerous situation as the aircraft could have collided, had the pilot of AC 176 been required to execute a missed approach.

I agree with counsel for the employer that there was an obvious lack of coordination on the part of the grievors and that they should not have relied on the information which they had and which was incomplete. Also the use of runway 28 should not have been allowed.

Gilbert Bégin who testified on behalf of the employer admitted under cross-examination to having prepared documents indicating that there was fault on the part of the grievors and also of other persons. This is one conclusion that I also draw from the evidence adduced before me.

I also find that the operation bulletins were not clear enough and that they were rather confusing.

Concluding, it seems to me that the dangerous situation was the result not only of the misconduct of the grievors but also to different degrees of other persons and other factors.

For the above reasons, it is my opinion that the suspension imposed on both grievors is too severe and I would reduce the penalty in each case to a suspension of 1½ day only.

These grievances are therefore maintained in part.

For the Board,

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

OTTAWA, March 21, 1983