

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

BETWEEN:

R.C. MAGNUS,

grievor,

AND:

TREASURY BOARD
(Transport Canada),

employer.

~~copy BOB~~
WAS CORRECTED
(TYPOGRAPHICAL AND
OTHER INADVERTENT
ERRORS ON P. 2, 4 + 7)
RAM
27/8/84

~~copy BOB~~ +
RETURN RAM
1/8/84

Before: J. Galipeault, Board Member.

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

For the employer: H. Newman, counsel.

ART 10
CODE 402/82

Heard at Calgary, Alberta, May 10, 1984.

Partial
SPECIAL LEAVE DUE
~~SEVERE~~ SNOW STORM +
UNABLE TO GET TO WORK

DECISION

The grievor, R.C. Magnus, an air traffic controller, AI-3, with Transport Canada, at Calgary TCU, filed on November 5, 1982, the following grievance:

On Oct. 17/82 I was scheduled to work the evening shift but due to the fact I was in Edmonton on my days off, I left Edmonton the morning of the scheduled shift with more than ample time to arrive in Calgary. Weather conditions deteriorated to the point, where driving became unsafe. (snow & ice.) After passing Red Deer, the weather deteriorated even more. (freezing rain.) Upon reaching Sundre, approx. 50 miles north of Calgary, after six hours of driving, a trip that normally takes approx. 2½hrs total time, I phoned the supervisor & advised him I would be "late" getting in for the shift. After a discussion about road conditions he told me not to kill myself driving in and that I was to take special leave as that was what special leave was for.

Corrective action requested: Request that the day be given to me as special leave rather than annual leave which I was forced to take.

The second paragraph of the employer's reply at the second level of the grievance procedure is as follows:

I am satisfied that given the fact that the highway between Sundre and Calgary was open to traffic and by your own admission, you were at Sundre at approximately 1500 hours, you could have, if you so desired, arrived at work and worked the majority of your shift on October 17, 1982.

THE EVIDENCE

Witnesses for the grievor were the grievor himself and Mr. S. Hall. Mr. G. Lowe testified for the employer. The grievor filed two exhibits against four for the employer.

Mr. R.C. Magnus first testified to the effect that on October 17, 1982, he was finishing a day off in Edmonton. He was to report to his unit in Calgary for the 15:00 to 23:00 hours shift. He left Edmonton at 10:00 AM and first drove to Leduc where there was a road block by the RCMP due to traffic problems from Leduc to Calgary. The grievor decided at his own risk to continue to Calgary. The weather was not so bad but he arrived at Sundre at 14:25. He stopped and went to phone Mr. Al Dubois, his supervisor, to tell him that he would be late because of the weather conditions. Mr. Dubois said to Mr. Magnus: "Don't take no chances Dick and forget about today and there's special leave for that so it won't cost you anything." According to the witness, the drive from Edmonton to Calgary usually takes two and one-half hours. Mr. Magnus said he left at 10:00 AM and he should have been in Calgary at half past twelve. The grievor said he was not aware of the weather forecast before he left Edmonton. If he had known a storm was coming his way, he would have left earlier. Mr. Magnus said that he stopped for 30 minutes at Sundre to phone his supervisor and have a coffee. He was tired and there was freezing rain. Sundre is 55 to 60 miles from Calgary. The grievor arrived in Calgary at 6:00 PM but did not go to work because his supervisor Dubois had told him not to come in.

The grievor was cross-examined by counsel for the employer. He said his unit chief was Gordon Lowe. Mr. Dubois was the shift supervisor and reported to Mr. Lowe. The witness thought Mr. Dubois had the authority to grant special leave. He admitted seeing on

March 5, 1981, the memo addressed to All Staff and signed by Mr. Lowe. Mr. Magnus explained that when Mr. Dubois suggested the special leave, he, Mr. Magnus, assumed Mr. Dubois knew what he was doing. When the grievor phoned Mr. Dubois, the latter knew about the weather conditions in Calgary while the former knew about the weather conditions in Sundre. Mr. Magnus did not know that Mr. Dubois did not have the authority to grant him special leave. The witness did not remember, at that time, the content of the above memo, filed as exhibit E-1. Mr. Magnus admitted that he could have worked from 6:00 to 11:00 PM at the Calgary TCU. He lives five minutes from the airport. Mr. Dubois, knowing the grievor was tired, had told him not to come in. Mr. Magnus declared he was up early on the morning of October 17, a Sunday, and thought he should get out of town as soon as possible. It was a nice day and snow was not expected. The radio was on that morning. The grievor did not check the weather reports on the previous Saturday afternoon. It was at Sundre that the weather conditions got very bad.

Mr. S. Hall has been a controller at Calgary Control for ten years. On October 17, 1982, he was required to report to work at Edmonton. He left Calgary at 2:00 PM and arrived at Red Deer at 8:00 PM. The RCMP had said that the road to Edmonton was not closed but was treacherous. Mr. Hall did not check the weather before he left.

In response to a question from Mr. Newman, Mr. Hall stated that the time he was supposed to report for duty in Edmonton on October 18 was 8:00 AM. He did not make it since he left Red Deer at 11:00 AM and got to Edmonton at 1:00 PM.

The witness told me that he went to work at 1:00 PM and worked till 4:00 PM. He got paid for the period between 8:00 AM and 1:00 PM.

Mr. G. Lowe, the Unit chief at the Calgary Control Unit, testified for the employer. The grievor was, on October 17, 1982, one of his employees. The witness said he held, at that time, the authority to grant special leave. He did not delegate it to anyone at anytime. Mr. Dubois only had the authority to recommend special leave. Mr. Lowe did not receive a recommendation from Mr. Dubois to grant special leave to the grievor for October 17, 1982. As he said in his memo to Mr. Magnus, filed as exhibit E-3, Mr. Lowe denied his special leave application because information available indicated Highway number 2 between Red Deer and Edmonton was not closed to traffic by Alberta Transportation on October 17, 1982. When Mr. Lowe saw Mr. Dubois after October 18, the latter did not make a recommendation with respect to Mr. Magnus' special leave application nor was one asked for. Before his October 20 memo to Mr. Magnus, Mr. Lowe had a discussion with him; Mr. Magnus told him what Mr. Dubois had said and asked for a written denial of his request for special leave. Mr. Lowe offered Mr. Magnus annual leave or lieu day for October 17, 1982. The witness revealed that, had Mr. Magnus reported to work when he arrived in Calgary, he would have paid him for the three hours he did not work on his scheduled shift.

When cross-examined, Mr. Lowe said again that he denied the request for special leave because Highway number 2 between Red Deer and Edmonton was not closed on October 17, 1982. Mr. Peloquin, an employee who lives north of Calgary, requested special leave for the same day but his request was also denied for the same reason. If Mr. Magnus could not have reported to work because of fatigue, he would have had to remit to the employer a medical certificate to accompany his request for sick leave.

In response to a question from counsel for the employer, Mr. Lowe stated that Mr. T. Fudkowski was his second in command at the time and that he could grant special leave during his absence.

THE ARGUMENTS

The grievor's representative argued that it was unreasonable for the employer to deny Mr. Magnus' special leave application for October 17, 1982. The circumstances that prevented the grievor's reporting for duty were not directly attributable to him. It is in evidence that, on October 17, the employee left Edmonton earlier than usual; then the weather became worse and he could not get to his work on time because of very bad weather conditions. After Mr. Magnus had talked to his supervisor Dubois, he was right to assume that his special leave was already approved. Mr. Dubois told him to forget about today (October 17) and not to take any chances. Mr. Magnus cannot be blamed if he did not, on October 17, 1982, more than a year and one half after, remember the content of Mr. Lowe's memo of March 5, 1981. Mr. Dubois should have told him that he did not have the authority to grant special leave. The following decisions were cited: Tevendale (Board file: 166-2-9629) and Brown (Board file: 166-2-13523).

Mr. Smith said that Mr. Dubois should have asked Mr. Magnus to work the rest of his shift but did not do it. Mr. Lowe declared that he would have granted him three hours pay if Mr. Magnus had shown up for work late but he did not offer it after his denial of the request for special leave. The grievor's trip from Edmonton to Calgary took eight hours and caused him a lot of fatigue. Mr. Magnus could not report to work in that condition. Mr. Lowe, when he denied the request for special leave, did not give enough attention to Mr. Magnus' condition when he arrived in Calgary. His denial is only based on the non-closure of Highway number 2 on October 17, 1982. The Benson et al (Board file: 166-2-1557 to 1565) decision was also mentioned.

Counsel for the employer first argued that the grievor should have known, on October 17, that the weather in the region where he was located could deteriorate very rapidly at that time of year. He should have prepared himself accordingly. He should have left Edmonton earlier than 10:00 AM. He waited, before he left, until almost the last moment. He did not even check the weather reports before he went to bed the night before. The grievor is paid to report to work on time. In light of the fact that the roads were open, he did not do so on October 17, 1982 because of his negligence. Moreover, Mr. Magnus got to Calgary at 6:00 PM but did not report although his shift was not scheduled to end until five hours later. The least he could have done was to complete his shift. Mr. Newman referred to the McCaw et al (Board file: 166-2-9366) and Justason (Board file: 166-2-10376) decisions. Mr. Lowe did not act unreasonably when he denied his request for special leave. He only did it after he got all the information and after he talked to the grievor and Mr. Dubois. Exhibit E-4 shows that the other employees, who were scheduled to do so, attended work on October 17.

Mr. Newman was of the opinion that the grievor can only blame himself for what happened October 17, 1982. He was too negligent. He took his chances and he lost. He should have reported for work, even late, and it would have been appreciated. Mr. Magnus did not report and he does not deserve the three hours Mr. Lowe would have been prepared to grant him had he done so. Exhibit G-1 does not show that Mr. Dubois said that the grievor's special leave would be granted to him. Mr. Dubois thought Mr. Magnus had to stay put but he did not stay put. The grievor came to the wrong conclusion from his conversation with Mr. Dubois. Mr. Lowe, who was the one who had the authority to grant the special leave, was not at all bound by Mr. Dubois' words to Mr. Magnus.

In reply Mr. Smith argued that the evidence showed that October 16 was a nice day. Nevertheless, the grievor decided to leave

earlier than usual on October 17. The weather conditions worsened very quickly and the grievor could not be blamed for that. Mr. Magnus took his supervisor's word and there was nothing wrong with that. Mr. Dubois did not say to Mr. Magnus to come to work any way, at any hour before the end of his shift on October 17, 1982.

REASONS FOR DECISION

Article 10.04 of the relevant collective agreement Code 402/82 provides as follows:

At the discretion of the Employer, special leave with pay may be granted when circumstances not directly attributable to the employee, including illness in the immediate family, as defined in clause 10.02, prevent his reporting for duty. Such leave shall not be unreasonably withheld.

When he testified, the grievor said that he did not go to work when he arrived in Calgary, at 6:00 PM, on October 17, 1982, because his supervisor Dubois had told him earlier not to come in. When cross-examined, Mr. Magnus admitted seeing the memo, dated March 5, 1981, addressed to All Staff and signed by the Unit Chief G. Lowe, in which memo, filed as exhibit E-1, it is said that, with respect to special leave, the authority to grant it belongs to said Mr. Lowe. The grievor explained that when he talked to his supervisor Dubois, from Sundre, he did not remember, at that time, that Mr. Lowe was the one who had the authority to grant special leave and not Mr. Dubois. This is no excuse. Mr. Magnus should have remembered.

When he testified before me, the grievor also admitted that he could have worked from 6:00 to 11:00 PM at the Calgary TCU on October 17, 1982. I think and decide that when Mr. Magnus arrived in

Calgary at 6:00 PM, he should have gone directly to his work place even though he may have been fatigued from his trip. Once the grievor had reported to work, his supervisor could have sent him home if he found that he was too tired to work. It is in evidence that Mr. Magnus lived only five minutes from his work place at the Calgary airport.

The last point that I have to resolve is if the grievor should get special leave from 3:00 PM, the time he was scheduled to report to his work, to 6:00 PM, because I have already decided that Mr. Magnus should have reported at 6:00 PM. It is in evidence that the Edmonton to Calgary trip takes, on a good day, by car, about two and one half hours. Mr. Magnus left Edmonton at 10:00 AM and, if it had been a perfect weather day, he should have been in Calgary at 12:30 PM, two and one half hours before the beginning of his shift. Was it good enough for him to leave at 10:00 AM? If October 17, 1982 had been a perfect day, I would be inclined to think so. However, October 17, 1982, in the Edmonton-Calgary region, was not a very nice day weatherwise.

We can see, when we read exhibit G-1, which exhibit reports the conversation held between the grievor and his supervisor Dubois from Sundre, on October 17, 1982, that Mr. Magnus said that "he left real early because I knew it was snowing". We have here an admission from Mr. Magnus that the weather in Edmonton was not that good on the morning of October 17, 1982.

I have to decide now if the grievor, when he left Edmonton, at 10:00 AM, left early enough under the circumstances. It is in evidence that Mr. Magnus left Edmonton at 10:00 AM and got to Calgary at 6:00 PM. It took him eight hours, including a 30 minute stop at Sundre, to make a trip which normally took him five hours and one half less. The grievor

arrived in Calgary at 6:00 PM and thus, if he had reported right away at his work place, he would have been three hours late. I do not know at what time the grievor got up on the morning of October 17, 1982 but when he testified, he said that he was up "early" and thought he should "get out of town as soon as possible". It is my opinion that he should have, at least, left one hour earlier than 10:00 AM, that is 9:00 AM.

If the grievor had left Edmonton at 9:00 AM would he have been able to report in time for his 3:00 PM scheduled shift? I do not know. All I know is that when he left at 10:00 AM, he arrived in Calgary at 6:00 PM, including a thirty minutes necessary stop at Sundre. I imagine that Mr. Magnus, because the weather conditions might not have been as bad around Calgary as they were later, could have reported to work at 4:00 PM. I thus now conclude that the grievor is entitled to one hour of special leave for October 17, 1982. I believe that the circumstances which prevented the grievor from reporting to duty between 4:00 PM and 11:00 PM on October 17, 1982 were directly attributable to him.

CONSEQUENTLY, for all the above reasons, the grievance is allowed in part and I order the employer to permit the grievor to work on one day, at a time convenient to both parties but as soon as possible, one hour less than usual.

Jean Galipeault,
Board Member

OTTAWA, July 23, 1984