

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

BETWEEN:

RONALD NEIL HILL

grievor,

AND:

TREASURY BOARD
(Transport Canada)

employer.

Before: C. Brian Williams, Board Member.

For the Grievor: Richard T. Smith, Western Regional Director,
Canadian Air Traffic Control Association.

For the Employer: David Pomerant, counsel.

Heard at Edmonton, Alberta on February 20, 1984.

31/4/84
COPY HILL, VILLEN SUVE SHOP
STEWART + YELLOW HEAD PLIK
+ B.O.D.

RAM 31/3/84

ART 17
CODE 402/82
DENIAL OF VACATION
LEAVE

DECISION

SUMMARY OF PROCEEDINGS

These references originated on January 28 and March 22, 1983. The respective originating grievances read in part as follows:

GRIEVANCE #1 (January 28, 1983 - Board file: 166-2-14426)

With respect to details of grievance:

I was refused vacation leave on March 5 1983 because overtime would have been created.

I was advised by the Unit Chief that vacation leave was denied because overtime would have to be paid to cover the shift.

This is in violation of Article 17 of the Collective Agreement.

With respect to action requested:

(1) A declaration that the employer was in breach of Article 17 of the Collective Agreement.

(2) I be awarded \$100.00 for this breach of the agreement.

GRIEVANCE #2 (March 22, 1983 - Board file: 166-2-14425)

With respect to details of grievance:

I was refused vacation leave on April 10 1983 because overtime would have been created.

I was advised by the Unit Chief that vacation leave was denied because

overtime would have to be paid to cover the shift.
This is in violation of Article 17 of the Collective Agreement.

With respect to action requested:

- (1) A declaration that the employer was in breach of Article 17 of the Collective Agreement.
- (2) I be awarded \$100.00 for this breach of the agreement.

Both grievances arose in response to the employer's denial of requested vacation leave. The January 28, 1983 grievance relates to the denial of a December 29, 1982 request for March 5, 1983. The March 22, 1983 grievance relates to the denial of a March 10, 1983 request for April 10, 1983. In both cases the reason given by the employer was that it was necessary to cover the grievor's scheduled shift and as such his absence would require the payment of overtime. The grievor was scheduled to work from 6:45 a.m. to 3:00 p.m. on March 5, 1983. As it turned out, grievor Hill was able to arrange a shift exchange with controller Weston and in fact did not work his March 5, 1983 shift. The grievor was scheduled to work from 6:45 a.m. to 3:00 p.m. on April 10, 1983. He in fact worked his scheduled shift.

The grievor alleges that the denial is a violation of article 17.06(b) of the collective agreement between Treasury Board and the Canadian Air Traffic Control Association (Code 402/82) covering all employees in the air traffic control group bargaining unit. It reads as follows:

- (b) Local representatives of the Association shall be given the opportunity to consult with representatives of the Employer

on vacation schedules. Consistent with efficient operating requirements the Employer shall make every reasonable effort to schedule vacations in a manner acceptable to employees.

The representative of the grievor and counsel for the employer agreed that this adjudicator was in all respects properly appointed and he was with authority and jurisdiction to hear and dispose of these references. It was also agreed that both grievances would proceed concurrently. The hearing was convened in the City of Edmonton on Monday, February 20, 1984 commencing at 9:30 a.m.

SUMMARY OF FINDINGS

Grievor Ronald Neil Hill is an air traffic controller with ten years experience and for the past seven years has served as a controller at the Villeneuve facility outside of Edmonton. His supervisor was unit chief Mr. W. S. Knight. There are currently nine controllers and one supervisor at the tower. At the time of the grievance, there were seven controllers, one unit chief, and two trainees. He claims that the staffing should have been nine controllers. He claimed that until recently the facility was always short staffed. He identified the shift schedules for March and April, 1983. (Exhibits U-2 and U-3). The facility works three shifts: days - 6:45 a.m. - 3:00 p.m.; swing - 9:45 a.m. to 6:00 p.m., and evening - 2:45 p.m. to 11:00 p.m.. He identified shift schedules for March, 1982 and March, 1981. (Exhibits U-4 and U-5). He identified a staff memo on the subject of "minimum staffing policy" as Exhibit U-6 and an office memo on the subject of "overtime policy and administration" as Exhibit U-7. He claims that prior to these denials, overtime was

used to cover shifts for personnel on annual leaves. He identified a staff memo on the subject of "tower leave policy" as Exhibit U-8. He claims that he was the only employee who had requested the days in question. He identified a memorandum dealing with the subject of "financial constraints" prepared by Assistant/Regional Manager, J. A. Hoover as Exhibit U-9. He says that Knight denied his request because overtime would have been required to cover his shifts.

Under cross-examination it was established that the fiscal year for leave was April 1 to March 31 of the following year. He is entitled to fifteen days of annual leave. He identified his original request for leave filed December 29, 1982 and March 10, 1983. The former request was within the fiscal year 1982/83. The latter request covered the fiscal year 1983/84. In fact he requested March 4 and 5, 1983. In fact he requested April 9 and 10, 1983. The March 4 request was approved. Hill claims he was never denied leave before these requests. He agreed that a shift exchange was an alternative. He was able to arrange for a shift exchange for his March 5, 1983 shift. He believed that the Villeneuve tower was short staffed because of management comments and some knowledge of the staffing formula used. He agreed that the minimum staffing policy was one controller on each shift. The shift schedule is prepared by the unit chief and is prepared in consultation with the employees affected or their representative. He was quite aware of the schedule before it was put out. The shift cycle at the tower had been changed in the Fall of 1982. He admits that on March 5 and April 10 only one controller was scheduled for the shift in question. He acknowledges that he would have to be replaced on the shifts in question. He attempted to obtain a shift exchange for the April 10 shift but was not successful. He claims that in prior years the employer had made

greater use of overtime to cover off annual leave absences. The March 5 request was part of a pre-arranged vacation but April 10 was not. It was just a single vacation day.

Mr. W.S. Knight is the unit chief at the Villeneuve facility and has been in that position since the facility opened seven and one-half years ago. He is the immediate supervisor of Mr. Hill. It was Knight who denied the March 5 and April 10 requests for leave. He had not denied Hill leave before these two requests. He has no objection to shift exchanges. In both cases and upon receiving the request, he checked the shift schedule to determine the controllers scheduled. In both cases the shift had to be covered as Hill was the only controller scheduled. The only solution was a shift exchange. In both cases he would have been below the minimum manpower scheduling and would have to call someone in to work the shift. He was not prepared to use overtime. Overtime was used only to cover off absences due to illness. He claims that financial constraints prohibited the use of overtime for annual leave purposes. This position went into effect in January, 1983 as part of the minimum staffing policy at the tower. (Exhibit U-6).

The shift schedule is posted two weeks in advance as provided by the collective agreement. He identified Exhibit U-6 as his January 19, 1983 minimum staffing policy. To grant Hill his days, he would be below minimum and have to call someone in. He identified Exhibit U-7 as his August 11, 1982 policy on overtime. At that time he used overtime to meet operational requirements which at that time was two people on two shifts. His overtime policy changed to covering illnesses only in January, 1983. (Exhibit U-8). It is possible that he told Hill that he was not prepared to pay overtime for his shifts.

He recalls that due to traffic dropoff his shift scheduling went from two and two to one, one, and one in November of 1982. He believed that there is a staffing formula used to set staff at the facility. He did not know the details as it is worked out "downtown." At the relevant times he believed the minimum staffing was seven. The complement was increased to nine in early 1983 in anticipation of the loss of one or two controllers. The current complement is nine controllers. He does not recall receiving any direction stating that overtime would not be paid for covering off annual leave shifts. He believed that he "would be in trouble" if he paid overtime for all annual leave requests resulting in the tower being below minimum staffing requirements.

Mr. Huston has been with Transport Canada for twelve years. He is currently an operations specialist and responsible for staffing the eleven units in the region. He started this function in April, 1983. He did not staff Villeneuve in 1982 but is familiar with the situation at that time. He identified Exhibit E-4 as a document setting out the formula or method for determining the number of controllers needed in a facility. He explained its use. In November of 1982 the Villeneuve tower assumed a category B status and controller staff fell from nine to seven due to a drop in traffic during the previous seven months. It resulted in three shifts per day and a controllers staff of seven. The number of controllers on staff could be higher due to people qualifying and anticipated staff losses. From December, 1982 to April, 1983 the tower required a staff of seven controllers. It is still at that figure. The total staff included seven controllers, one unit chief, one specialist, and .4 clerical. The staffing complement at the Villeneuve tower is currently under review.

CENTRAL ARGUMENTS

ON BEHALF OF THE GRIEVOR:

1. The employer violated article 17.06(b) of the collective agreement when it reads: "Consistent with efficient operating requirements the Employer shall make every reasonable effort to schedule vacations in a manner acceptable to employees."
2. Management has not lived up to its own policies with respect to the Villeneuve operation.
3. The Villeneuve tower is short staffed. It is one thing to reduce staffing due to traffic levels but quite another to reduce staffing to the point that obligations under the collective agreement cannot be met. The obligations are there and you cannot reduce staff to the point that these obligations cannot be met.
4. The evidence is that overtime was used to cover off annual leave shifts in 1981 and 1982. Overtime was used to cover off obligations under the agreement.
5. In late 1982 or early 1983 staffing was increased by two controllers. This should have negated the need for overtime and accommodated annual leave requests.
6. The staffing standard introduced was not supported by statistics to demonstrate to us that the staffing was proper.
7. The overtime policy statement of August 11, 1982 provides

for overtime to meet operational requirements. (Exhibit U-7).

8. The leave policy provides that one controller can be on leave on any given shift. The evidence is that no one was on leave on the shifts in question nor was any overtime paid for the shifts.

9. If we accept the staffing of seven controllers at the time and nine to keep down overtime requirements, the financial constraints letter (Exhibit U-9) contemplates the use of overtime to maintain minimum staffing levels. Given the short staff condition at Villeneuve, in order to maintain the contractual obligation the employer should rely on overtime and not the denial of request for annual leave. If overtime is available to maintain operational requirements, it should also be available to maintain the employer's collective agreement obligations.

10. According to Mr. Knight, he did not have a directive not to use overtime to cover off annual leave shifts. He chose not to do so himself and for his reasons. We do not believe he made a reasonable effort. It is reasonable to expect him to use overtime, if necessary, to meet his obligations to Mr. Hill.

11. The case of Savage (Board file: 166-2-9734), a decision of Board Member S.J. Frankel, was relied upon in support of the above arguments at pages 12 and 13.

ON BEHALF OF THE EMPLOYER:

1. The grievor's argument seems to be that if you are not able to grant leave requests without using overtime you must be under

staffed. The emphasis seems to be on the use of overtime to meet annual leave requests. As such, to meet agreement obligations you are required to use overtime. We simply do not agree with this view.

2. The terms of the collective agreement are clear. article 17.06(b) says "Consistent with efficient operating requirements...." It does not call for the employer to call people in to work overtime. Article 15.03 says that management is to keep overtime to a minimum. They cannot have it both ways.

3. The Villeneuve control tower had the staff assigned to it. The system was explained. The granting of annual leave is not a factor in determining staff of the tower. At the material times, it had its proper staff complement of seven controllers. The reduction from nine to seven was based solely on operational requirements.

4. The case of Savage (supra) is on point. However, in this case the Villeneuve tower was fully and properly staffed. The authority says that the employer cannot deliberately understaff and use it as a reason for denying annual leave requests. In this case the tower was fully staffed.

5. If the staffing is proper then there is no obligation to use overtime to permit annual leave requests. In addition, overtime is to be kept to a minimum. Knight took all of this into account in denying the requests.

6. The grievor seeks a declaration and damages of \$100.00.

You cannot deal with the latter. You can award specific damages but not punitive damages. Grievor Hill acknowledges that no damage was suffered. There is nothing before you to support an award of damages.

7. The employer did not stand in the way of Hill's attempts to make a shift change. The employer actively encouraged this alternative. The employer is not required to find a shift change for him.

CONCLUSIONS

1. I am asked to decide if Knight's denial of the leave requests constitutes a breach of article 17.06(b) of the collective agreement. It reads in part: "Consistent with efficient operating requirements the Employer shall make every reasonable effort to schedule vacations in a manner acceptable to employees." It is clear to me that the intent of the provision is to schedule vacations at times acceptable to employees. It is equally clear that such scheduling is subject to two considerations. They are: efficient operating requirements and a reasonable effort on the part of the employer.

2. As I read the arguments advanced and the character of the evidence adduced, it seems to me that the approaches taken by the grievor and the employer in this matter are from quite different directions. To the grievor, the question is whether the employer made every reasonable effort. It is his view that the failure to use overtime removes the employer's denial beyond the protection of every reasonable effort. That is, the payment of overtime, if

necessary, falls within the ambit of the employer's obligation to make every reasonable effort. On the other hand, the employer approaches the matter from within the perceived protection of efficient operating requirements. That is, the payment of overtime, if necessary, falls outside the ambit of the employer's obligation to make every reasonable effort where such payment is not consistent with efficient operating requirements. I prefer the latter view over the former.

3. Counsel for the grievor relies upon the decision of adjudicator Frankel in Savage (supra) and the authorities cited therein. In that case the adjudicator quite properly found for the grievor "...because of the persistent staff shortage." I have reviewed the evidence in this case at length and conclude that the staffing at the Villeneuve tower was appropriate at all material times. There was no staff shortage. Accordingly, the argument that the employer did not make every reasonable effort in the face of a demonstrated staff shortage must fail.

4. There remains the argument that the employer fails to make every reasonable effort if it does not use overtime to facilitate these requests. I do not accept this contention. The obligation of the employer is to make reasonable effort. In order to make a reasonable effort the employer is not required to make every effort. On the facts of this case, as grievor Hill was the only employee scheduled for the shift in question, the request could be granted only if (1) the tower was shut down, (2) another controller was prepared to exchange shifts, or (3) a controller was brought in on overtime. ~~While~~ these alternatives may well make up the scope of a

duty to make every effort, I do not believe that alternatives (1) and (3) fall within the scope of the duty to make every reasonable effort because of the second condition that scheduling be consistent with operating requirements. In the case of Savage (supra) adjudicator Frankel noted but did not rely on the following at pages 11 and 12 of his decision:

The question, then, is whether in refusing to allow the grievor vacation leave on September 26 and 27 on the grounds of its general policy not to cover such leave with overtime, the employer failed to discharge its obligation. I would not rule out the appropriateness, under normal conditions, of a general policy not to cover vacation leave with overtime. This could be a legitimate consideration of efficient operating requirements by the employer.

While I do not wish to express it as broadly as adjudicator Frankel, I accept the view, in the light of the facts of this case, that the refusal to pay overtime is appropriate in the light of the words "Consistent with efficient operating requirements....". Further, I do not conclude that, on the facts of this case, a refusal by the employer to pay overtime is a breach of its duty to make every reasonable effort.

5. Accordingly, and for the reasons noted above, these grievances are dismissed.

C. Brian Williams,
Board Member.

EDMONTON, March 28, 1984.