

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

BETWEEN:

KENNETH D. YURICK,

grievor,

AND:

TREASURY BOARD
(Transport Canada),

employer.

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

For the grievor: Carl Fisher, Canadian Air Traffic Control
Association.

For the employer: Theodore K. Tax, counsel.

Heard in Winnipeg, Manitoba, on October 16, 1984.

CODIE 402/82

ART 17

DENIAL OF VACATION LEAVE

DECISION

This case concerns a grievance referred to adjudication on February 28, 1984 pursuant to section 91(1)(a) of the *Public Service Staff Relations Act*. In the grievance, grievor Kenneth Duane Yurick requests a declaration from the employer to the effect that it erred in refusing leave.

The specific wording of the grievance is as follows:

On the evening of November 14, 1983,
I requested leave for day shift (7 - 3)
on the following day. My request was
denied.

The grievor was at the time employed as an air traffic controller AI-3 at the Winnipeg Control Tower.

The relevant collective agreement, signed between the Treasury Board and the Canadian Air Traffic Control Association covers amongst other employees all controllers in control towers and bears code no. 402/82.

The employer's reply at the final level, dated February 17, 1984, reads as follows:

Your grievance of November 16, 1983 has been carefully reviewed and discussed with a representative of your Association.

I consider that management properly assessed the operational requirements of the Winnipeg Control Tower unit for the shift you requested as vacation leave and, as a result, denied your leave request. I can find no contravention of clause 17.04 of your collective agreement.

Consequently, the redress you requested is not granted.

EVIDENCE

Each party called one witness. The grievor testified on his behalf. J.H. Bradley testified for the employer.

Kenneth Duane Yurick declared that he has been an operational air traffic controller at the Winnipeg Control Tower for three years. According to staffing requirements, there had to be three air controllers on duty from 7:00 AM to 3:00 PM, one air controller from 8:00 AM to 4:00 PM plus one supervisor. The shift in question is called the day shift. For the evening shift from 3:00 PM to 11:00 PM there had to be three air controllers plus a supervisor. On the midnight shift from 11:00 PM to 7:00 AM there had to be one air controller with no supervisor. All the air controllers were AI-3. He referred to a copy of a memorandum of May 26, 1977 addressed to the Canadian air controllers in Winnipeg from the director of air traffic in Ottawa. The subject of this memorandum was the operational staffing multipliers. The memorandum is an outline of the procedure to provide a convenient method of determining the number of personnel necessary to ensure adequate position coverage, as established by operational requirements. He also referred to the unit chief's copy of the shift schedule for November 1983. Each letter represents the name of an air controller or a supervisor, as the case may be. The letter "M" represents the grievor himself. On November 15, 1983, the employees bearing the letters "N" and "E" had made a change between themselves so that "E" would work from 7:00 AM to 3:00 PM and "N" from 8:00 AM to 4:00 PM. The employee with the letters "KN" having obtained a leave, he was replaced by the employee with the letter "D". "KN" being the day supervisor, "D" became the acting day supervisor. The spare supervisor with the letters "SM" being also away on duty, it left only three air controllers AI-3 with the acting supervisor. If the air

controller with the letter "D" had not been made acting supervisor and if the day supervisor had been replaced by another supervisor, there would have been four air controllers on duty or one more than the minimum required.

Under cross-examination, Mr. Yurick admitted that in September 1983, a leave policy was formulated for the Winnipeg Tower. A copy of the leave policy dated September 23, 1983 was filed as exhibit E-1. The grievor admitted that all staff received a copy of this document which was also posted properly. He declared that he understood the effects of the policy. He was referred more particularly to paragraphs 1, 2, 1.10, 2.4.1 and 2.4.2. He stated that the shift schedule was always posted at least 15 days in advance. A copy of the shift schedule, as ultimately revised, was filed as exhibit E-2. This shift schedule was posted in the middle of October 1983. The air controllers AI-3 would therefore know in advance the day when they would work, the day when they were off and the shifts that they were on. The likelihood of moving an air controller at the last moment and on short notice is remote. There can always be a change between the employees. On November 14, he was on the day shift ending at 3:00 PM. He made his request for leave only after the shift or more precisely between 6:00 PM and 8:00 PM. His request was for leave on the next day. The employee with the letter "P" on the evening shift from 3:00 PM to 11:00 PM was on leave. He decided not to contact any other air controller, especially the ones who had a day off, to replace him. He did not know when the other employees applied for leave on November 15.

He was a representative of CATCA at the time. The leave policy had been discussed with him prior to its implementation. He knew that casual leave such as that he was requesting was on a first come, first served basis. He admits that it was the fairest way to deal with the matter. On a weekend, the number of air controllers is reduced. It is true

that there is almost always somebody on leave. The letters "SNSC" on the shift schedule mean "short notice snift change". It means also that the employee was being paid a premium to work. A supervisor will at times perform an air controller's duties. It was beneficial for an air controller to be able to work as an acting supervisor when a supervisor was not available. This was favored by the majority of the air controllers. His attendance and leave record was filed as exhibit E-3. It shows that on November 15, 1983, he had one day left of his annual leave for 1983/84. The reasons given to him when his request for vacation leave was refused was the short notice that had been given and also the lack of an available spare.

J.H. Bradley testified for the employer. He has been the acting chief unit at the Winnipeg Tower since April 13, 1982. He has the general responsibility of staffing the tower. He also looks after disciplinary matters and he acts as a liaison with other agencies. Roughly speaking, he is the manager of the unit. He identifies the staffing requirements. On November 15, 1983, the staffing requirements were, from 11:00 PM to 7:00 AM, one air controller AI-3, from 7:00 AM to 3:00 PM, three AI-3, from 8:00 AM to 4:00 PM, one AI-3 and from 3:00 PM to 11:00 PM, three AI-3. The staffing also had to be supplemented by one supervisor on the day shift from 7:00 AM to 3:00 PM and one supervisor on the evening shift from 3:00 PM to 11:00 PM. These were the staffing requirements from Monday to Friday. It was therefore necessary to have a total of 17 air controllers AI-3 from Monday to Friday, taking into consideration the days off. The staffing was reduced to 15 air controllers on the weekend. He had to have traffic personnel able to deal with the traffic at all times. The staffing was based on an estimated 25 aircraft movements per hour. The minimum was eight traffic controllers per day. What is known as a spare is a controller who is surplus to the operational requirements of the unit.

A spare is usually not moved. A supervisor may decide not to replace an air controller who is sick if the staffing requirements are sufficiently met. A supervisor may also decide to grant leave to an air controller at the last minute at the latter's request if he finds that he has sufficient personnel on hand.

The shift schedule exhibit E-2 was posted on October 14, 1983 or more than 15 days in advance. Concerning November 15, the employee bearing the letters "KN" had requested leave on October 11. Such leave had been approved. The employee bearing the letter "P" had also requested leave in advance as his wife was to give birth on that day. The employee bearing the letters "SM" was also away on duty. Bradley was therefore left with the minimum number of controllers required for the day shift. There were a number of air controllers who were to attend an adjudication case including the employees bearing the letters "KM", "B", "K", "A", "J" and "Q". The employee bearing the letter "O" was also in attendance at the adjudication. There were no resources on that day for overtime and no staff to call upon to replace the grievor. The supervisor on duty had no alternative but to deny the request for leave. The leave policy described in exhibit E-1 had been in place, with the exception of paragraphs 1.8 and 6, since June 1981. The employee bearing the letters "SM" had asked to be away on authorized duty on or about November 7. The grievor's request for leave was the last one to be received. Right now, staffing accomodates the system very well. The grievor had the option to attempt a shift change himself with any one of the controllers listed as having a day off. On November 15, the grievor had one day left for leave from his days of leave for 1983/84 and one day left from his days of leave of the previous year.

ARGUMENTS

The grievor's representative argued that on November 15, 1983, there was a staff shortage in supervisors. He referred to articles 17.04 and 17.06(b) of the collective agreement. He also referred to paragraph 1.2(a) of exhibits E-1 and E-2. The employer had no reason to refuse to grant the grievor's request for leave. The employer could have easily called the air controller bearing the letters "CA" who was on his second day off or "GB" who was on his third day off. Reference was made to the decisions in Savage (Board file: 166-2-9734) and Jodozi et al (Board file: 166-2-1584). There was on November 15 a shortage of supervisors. The representative asked that besides the corrective action already requested, the grievor be granted a day of leave on any day at his request in the future.

Counsel for the employer referred to the decisions in Hill (Board files: 166-2-14425 and 14426) and Tremblay (Board file: 166-2-9742). According to counsel, by having a group of 17 controllers at his disposal, it was able to cover the operational requirements of the Winnipeg Control Tower and it could accommodate three or four requests for leave per day. The operational requirements during the day were such that there was a need for one supervisor and one spare supervisor. The leave policy had been formulated as a result of discussion with CATCA. The policy had been posted, read and understood. The policy was in place to set up a fair system. The grievor himself agreed that the system was fair. The schedule was posted much in advance. Prior to the grievor's request for leave, three other employees had requested leave and their requests had been granted. The grievor requested his leave only 12 hours before the beginning of his shift. The supervisor had only one alternative and he had to deny the request. The grievor had the same amount of time to make his own

arrangement with another air controller to replace him. There is absolutely no evidence that there was a staff shortage. The decision in Savage (supra) does not apply as there was no staff shortage. The evidence shows that on almost every day one employee at least was off. Leave was granted very freely. If the grievor had requested his leave sooner, it is possible that it would have been granted and that leave would not have been granted to others. It was necessary to maintain three air controllers on the day shift plus another one on the shift from 8:00 AM to 4:00 PM.

Did the employer contravene article 17.04 of the collective agreement? In both articles 17.04 and 17.06 of the agreement, there is a reference to operational requirements and efficient operation requirements. The terms are similar. Once the operational requirements are met, there has to be a reasonable effort on the part of the employer. The operational requirements are first. The matter is one of facts. The operational requirements for staff on November 15 were the minimum number of employees to provide safety of traffic. The operational requirements would have been placed in jeopardy if fewer than the five employees who were on duty had been allowed to work. Article 3.01(a) of the collective agreement provides that management has the exclusive right to manage. There is no doubt that the operational requirements have to be set by the employer.

Schedules are prepared to accommodate the employees' leaves. There were so many employees off that it was not possible to accommodate the grievor. If one of the two employees who was not attending the adjudication case on November 15 had agreed to replace the grievor, the employer would have had to pay overtime. The decision in Tremblay (supra) was upheld in appeal and it gives to such a decision much more weight. There was absolutely no capacity left to grant the request for

leave. The employer did make every reasonable effort. As decided in Hill (supra), there was no obligation on the part of the employer to pay overtime in a case such as this one and it is not within the ambit of making every reasonable effort. It would be logical for the employee to also make a reasonable effort to give sufficient notice to the employer. The grievor is more or less saying that the employer must inconvenience other employees to grant his request. It would be unjust to penalize the employer and it would also penalize other employees. The grievor was simply the author of his own misfortune.

REASONS FOR DECISION

This grievance should be dismissed.

Clause 17.04 of the relevant collective agreement reads in part as follows:

Subject to operational requirements the Employer shall make every reasonable effort to grant an employee his vacation leave during the fiscal year it is earned...

I am satisfied that on November 15, 1983, operational requirements existed. I am also satisfied that they were such that the employer was entirely justified in refusing to grant the requested leave. There is in this regard a preponderance of evidence. The operational requirements did not permit the granting of leave.

It was established that the grievor filed his request at the last minute, that is about twelve hours before his scheduled shift. At the time, other employees had already requested and obtained leave. I can only repeat here what I have said in the above-mentioned case

of Tremblay which was confirmed by the Federal Court of Appeal (A-404-81):

It seems logical and normal to me that if the employer has the obligation and the responsibility, as regards the schedule, to abide by certain time limits, the employee who wants this schedule changed must likewise make every effort to give the employer sufficient and reasonable notice. The employee must understand, moreover, that the employer is always limited in its decision, as the agreement stipulates, by the operational requirements of the service.

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The present case differs from the above-cited case of Savage as there is no evidence of a persistent staff shortage. On the contrary, there was no staff shortage and the staffing at the Winnipeg Control Tower was appropriate and sufficient.

It is not necessary for me under the circumstances to determine whether the employer made "every reasonable effort" to grant the leave by trying to find a replacement for the grievor. The employer did not have to make this effort. In any event, asking the employer to offer overtime to another employees, as suggested by the grievor, was not reasonable. I refer in this regard to the above case of Hill at page 12.

This grievance is dismissed.

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

OTTAWA, October 30, 1984