

FEB 26 1985

Files: 166-2-14607 & 14608

No. 69

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

BETWEEN:

PETER J. MINCHIN
and GREGORY A. NEWELL,

grievors,

AND:

TREASURY BOARD
(Transport Canada),

employer.

Before: Guy D'Avignon, Deputy Chairman.

For the grievors: R.A. Marchand, Canadian Air Traffic
Control Association.

For the employer: Harvey Newman.

Heard in London, Ontario, September 13, 1984.

ART 16
CODE 402/82
ASSIGNMENT OF VACATION DAYS

DECISION

The two grievances referred to adjudication are similar and read as follows:

Contrary to article 16 of the collective agreement between Treasury Board and the Canadian Air Traffic Control Association, the employer has unilaterally assigned lieu days to me.

The corrective action requested by the two grievors is that these lieu days be returned to them.

Both grievances result from the application of a proposed LIEU DAY POLICY established by the employer on April 25, 1983.

The contentious part of the policy reads as follows:

POLICY GUIDELINES

Operating controllers should be formally requested by management, at the beginning of each fiscal year, to indicate when they would like to have their lieu days scheduled. These lieu days include days earned in the current fiscal year as well as lieu days carried over from previous fiscal years. Subject to operational requirements, every reasonable effort shall be made to accommodate the employees' requests.

Lieu days earned in the current fiscal year shall be utilized prior to lieu days carried over from previous fiscal years.

In the absence of specific requests by controllers for the scheduling of their lieu days, management may determine appropriate dates and advise the controllers.

If, as a result of operational requirements, management cannot accommodate the employees' preferred dates for the scheduling of lieu days, the employee should be requested to submit alternate dates. Management shall make every reasonable effort to accommodate the employees' alternate dates for lieu days. Should the situation arise whereby an employee fails to provide alternate dates or if operational requirements do not allow the scheduling of the employee's lieu days on days indicated as alternates, the Employer shall attempt to schedule unused lieu days on dates consistent with the operational requirement of the air traffic control service.

Peter J. Minchin, an air traffic controller, at the London Control Tower, testified that after reading the proposed policy and the office memos on Leave Policy and Annual Leave and Lieu Days he did not request specific days, but indicated in a memo to his supervisor that he would like to take his lieu days in February or March 1984. He was granted by the employer March 24, 25, 26, 30 and 31, 1984, and did take these lieu days leave. He had requested February or March and got his leave in the months that he had requested.

Gregory A. Newell also an air traffic controller at the same location came back from annual leave in

June 1983 and read the draft policy on lieu days. He thought that the policy would start in the next fiscal year. The past practice had been to take lieu days as desired or to carry over. Had he known of the new policy, he would have taken lieu days during the summer period. He requested an interpretation of the new policy in August 1983. When the lieu days were imposed by the employer, they were within the time frame requested by the grievor. He did not ask for a change and did not request a carry over.

Mr. Carl Chambers, the Unit Chief at the London Tower testified on behalf of the employer. He is the supervisor of both grievors. In June 1983, he attended a meeting of the Ontario Region unit chiefs in Toronto. At that meeting a policy on lieu days was introduced and became effective in the region that day. Until then lieu days were paid off or carried over. At London Tower, the custom was for payment with no carry over. He notified the staff of the new policy sometime in the last two weeks in June. Mr. Chambers does not recall speaking to Mr. Newell about the new policy in June, but remembers discussing it with him in August. Mr. Newell thought that the new policy should only be effective in the next fiscal year. Mr. Chambers told Mr. Newell that he would check into it and found out from Toronto that the policy was in place immediately. He scheduled lieu days for both grievors at the end of March because they had not specified any dates. The two grievors used the lieu days and did not request a change.

ARGUMENTS

Mr. Marchand, representing the grievors, argued that it was not reasonable for the employer to issue a new policy which would only allow four months for the controllers to use up their lieu days. The request to schedule lieu days came out in October and lieu days had to be liquidated by the end of March. The notice by the employer was not adequate. If Mr. Newell had known of the new policy, he would have taken lieu days in the summer of 1983 instead of annual leave. Lieu days are an annual affair and the employer failed to give sufficient notice for the employees to be able to plan their use in a reasonable manner. The lieu days credit should be reinstated. Mr. Marchand cited Derrien et al (Board files 166-2-13805 to 13807).

Mr. Newman, counsel for the employer, claimed that the grievors did not prove that the employer violated the collective agreement. Article 16.05 of the collective agreement is clear and unambiguous. Article 16.05(d) is the important clause. The employer shall make reasonable effort to grant lieu days at time desired by the employee, consistent with operational requirements of the service and subject to adequate notice. The two grievors asked for time in general and were granted lieu days in the time frame requested. They did not request specific days from the employee. They both knew that if they did not ask for specific dates, their lieu days would be scheduled by the employer. The grievors did not want to use lieu days, they wanted to cash them in. Article 16.05(g) specifies that only if lieu

days cannot be liquidated by the end of the year, in which they have been earned, can they be paid off. This is not the case. The lieu days could be liquidated and the employer made a reasonable effort to schedule them according to the demand of the grievors. Counsel cited Federal Court of Appeal No. A-157-81, Anderson et al.

REASONS FOR DECISION

The relevant collective agreement covers the Air Traffic Controllers and is coded: 402/82, expiring December 31, 1982 and extended to December 31, 1984. Section 16.05 of the agreement reads as follows:

For operating employees,

- (a) The designated holidays in a fiscal year shall be anticipated to the end of the year and "lieu day" credits established.
- (b) For the purpose of paragraph (a) above only, in those years wherein Good Friday and/or Easter Monday fall in the month of March they shall be deemed to fall in the month of April, except in any case where the application of this paragraph would cause an employee to lose credit for the holiday(s).
- (c) Lieu days may be granted as an extension to vacation leave or as occasional days and shall be charged against the lieu day credits on the basis of one shift for one day.

- (d) Consistent with operational requirements of the service and subject to adequate notice, the Employer shall make every reasonable effort to grant lieu days at times desired by the employee.
- (e) Where in any fiscal year an employee has not been granted all of the lieu days credited to him, he may elect to carry forward into the next fiscal year the unused portion of his lieu days.
- (f) Lieu days earned in the fiscal year will be utilized before lieu days carried forward from the previous fiscal year.
- (g) At the employee's option, any lieu days which cannot be liquidated by the end of the fiscal year in which they are earned will be paid off at the employee's daily rate of pay in effect at that time.
- (h) In cases where lieu days from the previous fiscal year have not been fully utilized by the end of the current fiscal year, any outstanding carry-over lieu day credits will be paid off at the employee's daily rate of pay in effect at that time. This provision does not apply to lieu days accumulated prior to June 1, 1982.

In the instant case, the employer called on each employee to indicate a choice of dates to liquidate lieu days. The two grievors elected not to do so, but instead

indicated that they wanted their lieu days in a general time frame. The employer did schedule the lieu days in that period.

The grievors claimed that the new policy was imposed too suddenly and did not allow them sufficient time to plan the liquidation of their lieu days. They felt that the new policy should only apply in the next fiscal year.

The grievor's representative cited Derrien et al (supra). I find that this case is different in that the two grievors knew in June that they would have to liquidate their lieu days before the end of the fiscal year. In Derrien (supra) the grievors were only made aware of the "change in policy" on November 5th 1981 and had only four months to liquidate their lieu days. Mr. Minchin and Mr. Newell in the instant case had four additional months to plan the use of their lieu days.

In reading the document entitled "Scheduling of lieu days policy - Operating Air Traffic Controllers", I come to the conclusion that it is in fact not a new policy but a clarification of clause 16.05 of the collective agreement. The guidelines do not contravene the meaning of the collective agreement but support it.

The Federal Court of Appeal decision in Anderson et al (supra) is helpful in providing an answer in the instant case. In his decision, Pratte J. states:

The only applicable provision is article 16.05. Paragraphs (a), (b) and (e) of that article make clear, in my view, that the computation and liquidation of lieu days is an annual affair and that, normally, lieu days are used in the year when they have been earned. The sole limitation that article 16.05 places upon the right of the employer to determine when lieu days will be used is contained in paragraph (d) which obliges the employer to make every reasonable effort to grant lieu days "at times desired by the employee". Does that paragraph impose on the employer the duty to make every reasonable effort to accede to an employee's request that his lieu days be carried over to a subsequent year? In my view, it does not because it merely refers to the granting of lieu days on precise dates requested by employees within the current fiscal year. I would add that insofar as article 16.05 gives employees the right to exchange lieu days for cash, this right is clearly limited to lieu days "which cannot be liquidated by the end of the fiscal year". It would be an abuse of language, in my view, to say that lieu days cannot be liquidated for the sole reason that the employee would prefer not to use them.

In the result, I find that the employer has a right to determine when lieu days will be used as long as said employer makes every reasonable effort to grant lieu days at times desired by the employee. The employer did grant

lieu days during the time frame requested by the two grievors and did not violate article 16 of the collective agreement.

The grievances are dismissed.

Guy D'Avignon,
Deputy Chairman.

OTTAWA, February 12, 1985