

MAY 21 1985

File Nos: 166-2-14873  
to 14876

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

BETWEEN:

John G. Breen, Kenneth R. Denis,  
Ronald N. Hill and Garner R. Peters,

Grievors,

- and -

TREASURY BOARD  
(Transport Canada),

Employer.

Before: J. Harold Brown Q.C., Chairman

For the Grievors: Robert A. Marchand

For the Employer: Ian M. Donahue

Heard at Edmonton, Alberta, April 11, 1985.

ART 13  
CODE 402/82

NO OVERTIME FOR SHIFTS  
CHANGED WITH EFFECT FROM 15 JAN.

DECISION

1. On the agreement of the parties, having regard to the similar nature of the grievances and the issues raised therein, the four references to adjudication were consolidated.

2. At the outset of the hearing the parties submitted an Agreed Statement of Facts which reads:

1. All four grievors are AI-2 Air Traffic Controllers at Villeneuve Airport.

2. On May 14, 1984, the June Shift Schedule for Villeneuve Tower was posted.

3. In order to accommodate an annual leave request from another AI-2 on June 4, 1984, the following change was made by W.S. Knight, Unit Chief:

Denis, K.R. - change on June 4th  
for June 20th from 7 - 3 to 10 - 6.

W.S. Knight telephoned Denis at home on June 4th but was unable to reach him and entered the change in the log book as of that date.

4. In order to accommodate another annual leave request from the same AI-2 referred to in the preceding paragraph on June 12th the following changes were made by W.S. Knight, Unit Chief:

Hill, R.N. - changed on June 12th  
for June 30th from 3 - 11 to 10 - 6.

Peters, G.R. - changed on June 12th  
for June 28th from 7 - 3 to 10 - 6.

Breen, J.G. - changed on June 12th  
for June 29th from 7 - 3 to 10 - 6.

W.S. Knight telephoned Hill, Peters and Breen at home on June 12th but was unable to reach them and entered the changes in the log book as of that date. W.S. Knight spoke to Hill on two occasions on June 14th but neglected to notify him of the shift change affecting him.

5. When the grievors returned to work (Denis - June 9th; Hill - June 20th; Peters - June 15th; Breen - June 16th) they noted the changes in their shift schedules in the log. They subsequently all filed grievances on July 31, 1984.

6. All grievances were disallowed on the first level on August 8, 1984, at the second level on August 29, 1984, and at the final level on November 15, 1984.

7. Attached hereto as exhibit "A" is a true copy of the shift schedule as posted on May 14, 1984, and as exhibit "B" is a true copy of the Tower shift schedule.

3. The attached exhibit "A" and exhibit "B" referred to in paragraph 7 of the Agreed Statement of Facts are not necessary to be produced for purposes of this decision.

4. The only other evidence before the Board are extracts from the controllers' log book for Villeneuve Airport for June 4 and 12 (exhibit #2) and the testimony of William S. Knight. His evidence is set out in paragraph 5 below.

5. Mr. Knight, who has been the unit chief at Villeneuve Airport for the past eight and a half years, was the immediate supervisor of the four Grievors and posted their shift schedules for the month of June on May 14. The shift schedule posted on May 14 was amended on May 21 when a

controller, P. Weston, made a request to change his scheduled cycle of leave. This meant a change in the shift of another controller and resulted in the change for Denis. On June 4 Weston made a further request for a change in his scheduled cycle of leave which resulted in the changes in shift for Hill, Peters and Breen. Knight confirmed that he made a single telephone call to Denis on June 4 and to the other three Grievors on June 12, but was unable to communicate with them. Nonetheless he made the change in their shifts in the log book for the days in question without further efforts to reach them. He did so because he was aware of their obligation to check the log book for any changes during the period of their absence upon their return. As far as his not mentioning to Hill the change in his shift on June 14, this was because of the fact that Knight was preoccupied by a telephone call from Hill asking Knight to pick up Hill's cheque for him and Knight forgot about the shift change at the time Hill came to his home to collect it that day.

6. In their grievances all of the Grievors alleged that they had not received 15 days' notice of the change of shift in contravention of article 13.03 of the collective agreement then in force. Article 13.03 reads:

Shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee with reasonable notice as to the shift he will be covering. The shift as indicated in this schedule shall be the employee's scheduled hours of work. If it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him of

the change at the earliest possible opportunity. If the employee has serious objections to the amendment, the Employer shall make every reasonable effort to accommodate the employee provided that it will not result in any additional overtime payments that would have otherwise been the case if the employee had not been so accommodated.

7. The remedy that each of them is seeking is four hours additional pay at straight-time rates. However, at the hearing the representative of the Grievors sought by way of a remedy payment at the overtime rate for the hours worked outside those originally posted. Article 15.01 under the heading "Overtime" reads:

Time worked by an employee in excess or outside of his scheduled hours of work shall be considered as overtime.

#### Argument for the Grievors

8. The representative of the Grievors made the following submission. All four Grievors employed at Villeneuve Airport were confronted with a change in their respective shift schedule by the Employer. The determination of the grievances turns on (1) what constitutes the controllers' scheduled hours of work and (2) did the Employer make every reasonable effort to advise them of the changes. In the decision of Adjudicator E. Moalli in Boyce and Bizzano Board Files No. 166-2-9797 and 9820 he interpreted the identical provisions in issue in the instant case,

namely, articles 13.03 and 15.01. Admittedly, the facts of the earlier case are different from those in the instant case. There two grievors were designated to take courses on automation in Cornwall from May 27 to June 19, 1980. In posting the shift schedule on May 15 for the month of June, the employer took into account the fact that both employees would be on course. On May 27th (the day on which the course was to begin) upon finding that it would be given only in English, they cancelled their attendance and returned to Dorval Airport the same day.

9. The issue in the Boyce and Bizzano case (supra) as described by Adjudicator Moalli at page 5 of his decision, reads:

The problem before the Adjudicator can be summarized as follows: at the request of the grievors, who did not feel that the course in Cornwall would be useful to them, the employer decided to bring them back to their work place at Dorval. This decision obliged the employer to change the shift schedule prepared for June 1980. Does the fact that the grievors worked hours during June 1980 that were different from those posted in the shift schedule on the previous May 15, without being given fifteen days' advance notice, give them the right to payment at the overtime rate for these hours of work?

10. Adjudicator Moalli stated that the wording of article 13.03 indicates its purpose quite clearly, namely to give employees reasonable advance notice of the shifts

that they will be required to work. In this connection the employer's obligations are to post the shift schedule which determines employees' work hours at least 15 calendar days in advance. Further, if the employer decides to change this shift schedule it must "make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity". Moreover, "if the employee has serious objections to the amendments", the employer is obliged to "make every reasonable effort to accommodate the employee". Nevertheless, the employer will not be required to accommodate him if doing so would result in additional overtime payments.

11. Adjudicator Moalli went on to say that the "additional overtime payments" implies that a change in the shift may result in the payment of overtime but that any change in the shift schedule would not entail payment at the overtime rate. For example, if a schedule is posted twenty days before it comes into effect and is changed three days after it was posted, the work performed in the changed shift would not result in payment at the overtime rate because the employees would have received reasonable advance notice of more than fifteen days. However, when advance notice concerning a shift change is less than fifteen days Adjudicator Moalli stated that reasonable advance notice did not necessarily consist of fifteen days. It would depend on the circumstances.

12. Article 13.03 stipulates that "If it is necessary to amend the posted schedule, the Employer will make every

reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity". According to Adjudicator Moalli, it is this obligation that the employer must observe. Moreover, it was only if this obligation was not observed and if the employee had to work a shift different from that which had originally been scheduled that he could claim to have worked "outside his scheduled hours of work" and require that he be paid at the overtime rate pursuant to article 15.01 of the collective agreement. In the case before him, Adjudicator Moalli found that the employer failed to comply with that obligation.

13. The representative of the Grievors acknowledged that the evidence in the instant case was quite different the key elements being as follows. When he changed Kenneth Denis' shift for June 20 on June 4, William Knight made only one unsuccessful telephone call to Denis before entering the change in the log book. Similarly, in respect of Ronald Hill, Garner Peters and John Breen, Mr. Knight made only one unsuccessful telephone call to each of them on June 12 before entering the change in their shifts on that date in the log book respectively for June 30, June 28 and June 29. Further, in the case of Hill, Mr. Knight both spoke with him by telephone and personally on June 14, yet failed to mention the change in Hill's shift schedule for June 28. Based on the foregoing evidence, it cannot be said that "the Employer made every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest opportunity".



This being the case, the provision of article 15.01 is applicable.

14. In the cases of Denis, Peters and Breen their shifts, respectively on June 20, June 28 and June 29 were changed from 7:00 a.m. to 3:00 p.m. to 10:00 a.m. to 6:00 p.m. That is, in those three instances they each worked three hours outside their scheduled hours of work. In the case of Hill, his shift on June 30 was changed from 3:00 p.m. to 11:00 p.m. to 10:00 a.m. to 6:00 p.m., or five hours outside his scheduled hours of work. Accordingly, pursuant to article 15.02 they should have been paid one and one-half (1½) time their straight-time hourly rate for the hours they worked outside their scheduled hours of work.

#### Argument for the Employer

15. Counsel for the Employer made the following submissions. It is undisputed that the Employer posted the shift schedule for the air traffic controllers' at Villeneuve Airport on May 14, 1984. With respect to Mr. Marchand's argument, even assuming for purposes of argument that Mr. Knight did not make every reasonable effort to contact the four Grievors to advise them of the change in their shift at the earliest opportunity, which is not admitted, the Grievors have no remedy under 15.01. At best a declaration could be made that Mr. Knight had failed to comply with the foregoing provision of article 13.03.

16. Citing the obiter at page 13 of the decision of Adjudicator J. Galipeault in Smith, Board File 166-2-14247, counsel argued that whether or not the Grievors suffered any prejudice by reason of the change in their shift schedule is a relevant consideration in determining whether there has been any violation of 13.03 in terms of notification to them of that change. The evidence of Mr. Knight as to his efforts to notify the Grievors of the change in their shift was sufficient to meet the requirements of 13.03. Further, in any event, according to the evidence they had an obligation upon their return to work to check the log book covering the period of their absence to see if there had been any change in their posted shift schedule. The evidence shows that, in fact, Denis learned of the change on June 9, Peters on June 15, Breen on June 16 and Hill on June 20. In summary then, Denis, Peters, Breen and Hill respectively had 11, 13, 13 and 10 days' advance notice of the change in their shift. With such lengthy periods of notice they hardly could claim to be prejudiced and this is particularly so having regard to the fact that the change in their shift schedule was minimal, only one shift. Finally, none of the Grievors made any objection to the change. This fact only serves to confirm the latter point. It should be emphasized, as well, that the 15 day notice refers only to changes in shift schedules and not amendments thereto. Accordingly, in all the circumstances the grievances should be dismissed.

Determination

17. The position of the Grievors is that their grievances should be upheld because the Employer failed to give them 15 days' notice of the amendments to their work schedule and because the Employer failed to make every reasonable effort to contact and advise them of the amendments to the shift schedule.

18. First of all there is no dispute that the shift schedule for June was posted at least 15 days in advance of its coming into force at the beginning of June. According to the evidence, Knight attempted to contact each of the Grievors on the day that he decided to change one of their shifts in order to accommodate requests made by another controller to change his scheduled cycle of leave. More particularly, Knight changed the shift and attempted to advise Denis on June 4 and did the same in respect of Hill, Peters and Breen on June 12. Knight knew that the Grievors were obliged upon their return to work from days off to check in the log book to see if there was any change in their shift schedule. In the case of Denis this would be on June 9, for Hill on June 20, for Peters on June 15 and Breen on June 16. Stated another way, Denis learned of the change of shift five days, Hill learned eight days, Peters three days and Breen four days after it was made.

19. In light of the evidence that Knight made only one unsuccessful attempt by telephone to reach each of the Grievors over a period ranging from three to eight days, I find that he cannot be said to have made every

reasonable effort to contact and advise them of the change he had made in one of their respective shifts at the earliest possible opportunity. I make this finding notwithstanding that Knight knew the Grievors were obliged upon their return to work to determine for themselves from the log book whether there had been any change in their shift schedule. Nonetheless, it does not follow that the Grievors are entitled to the payment of overtime pursuant to article 15.01.

20. Article 13.03 provides that the shift schedule is to be posted at least 15 days in advance. As indicated above, there is no dispute that the Employer complied with this insofar as the June schedule is concerned. The article also contemplates that from time to time it may be necessary to amend the posted schedule. However, from the language of the article I am satisfied that the 15 day advance period does not apply to such amendments. Accordingly, I reject the position of the Grievors that they were entitled to be notified 15 days in advance of the amendment.

21. The article provides that where an amendment is made to the shift schedule two obligations are imposed on the Employer subsequent to the making of the amendment. First, the Employer is to make every reasonable effort to contact the employee affected and advise him of the change. Second, if the employee concerned has serious objections to the amendment, the Employer is obligated to make every reasonable effort to accommodate the employee, provided no overtime payment is involved. However, in

the absence of specific language so providing, it cannot be said that a failure on the part of the Employer to comply with either obligation automatically entitles the employee concerned to overtime for the hours worked outside of the original schedule. Such a result simply does not flow from the provisions of article 13.03.

22. This is not to say that the Employer can act with impunity insofar as its obligations under the article are concerned. The obligations are clear and a failure to comply with them could result in an award by an adjudicator of compensation in circumstances where it is shown that such failure has caused serious inconvenience to the employee concerned. There is no evidence of such circumstances, however, in the instant cases.

23. Accordingly, for all of the above reasons, the grievances are hereby dismissed.

Dated at Ottawa, this 16th day of May, 1985.

"J. Harold Brown, Q.C."

Chairman

