

No. 222 SEP 30 1985

File No.: 166-2-15029

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

BETWEEN:

ANDREW W. PERRIN,

grievor,

- and -

TREASURY BOARD  
(Transport Canada),

employer.

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Act

Before: J. Galipeault, Board Member.

For the grievor: C. MacLean, Counsel.

For the employer: R. Lee, Counsel.

Heard at Gander, Newfoundland, June 19, 1985.

ART 8

DENIAL OF A FAN FLIGHT

100

100

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100

DECISION

The grievor, Andrew W. Perrin, is an air traffic controller, AI-4, for Transport Canada, at the Gander International Airport. Mr. Perrin submitted October 4, 1984 the following grievance and corrective action requested:

In late August 1984 I requested a familiarization flight to Fredericton Tower as per article 8.03 of the Collective Agreement. At that time I was given the impression there would be no difficulty and based on this I purchased a "seat sale" ticket. Subsequently on September 18, 1984 I was advised that my familiarization flight was not approved. At that time management dictated as to the facilities I would be permitted to visit.

Corrective Action Requested:

That I be permitted to carry out my familiarization flight on the dates requested to Fredericton tower as per article 8.03 of the Collective Agreement.

The employer's response at the first level of the grievance procedure is as follows:

The subject of your grievance has been reviewed and discussed with your Union representative.

As per Article 8.01 of the current Collective Agreement between the Treasury Board and the Canadian Air Traffic Control Association, "The Employer shall determine training requirements and the means and methods by which training shall be given and....".

The "Employer" has no "training requirement" to provide you with a Familiarization Flight to Fredericton.

Therefore your grievance is denied.

Articles 8.01 and 8.03 of the relevant collective agreement, code 402/82, ending December 31, 1982, read as follows:

8.01 The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction on equipment and procedures prior to their introduction and refresher training where appropriate.

8.03 The Employer shall provide familiarization flights as follows:

(a) IFR Controllers and Shift Supervisors

One (1) return flight each year involving not more than three (3) days' absence from his normal place of duty. These flights will be scheduled to include every five (5) years, a long range navigational flight or a visit to a U.S.A. high density unit.

(b) VFR Controllers and Shift Supervisors

One (1) return flight each year involving not more than two (2) days' absence from his normal place of duty. These flights will be scheduled to include:

(i) Within His Region

Towers at a classification level equal to or higher than that of the employee's Unit, and, to the Area Control Centre with IFR responsibility for his Airport;

or

(ii) To an Immediately Adjacent Canadian Air Services Region

Towers at a classification level higher than that of the employee's Unit, or, to an Area Control Centre.

(iii) U.S.A. High Density Control Towers

Controllers and Shift Supervisors at towers where the controllers are classified at the AI 3 level, and controllers and supervisors at St. Hubert, Victoria, Mirabel, Hamilton, and Quebec City Control Towers are authorized to visit a U.S.A. high density control tower every five years.

(c) Trainees at the Transport Canada Training Institute

As may be arranged in Department of Transport aircraft.

(d) Regional and TCTI Instructors

One (1) return flight every two (2) years involving not more than three (3) days'

absence from his normal place of duty. These flights will be scheduled to include every five (5) years, a long range navigational flight or a visit to a U.S.A. high density unit.

- (e) Employees located at Ottawa and Regional Headquarters

Effective January 1, 1978, one (1) long range navigational flight or a visit to a U.S.A. high density unit and one (1) return flight to a Canadian Area Control Centre or Tower every five (5) years, each involving not more than three (3) days' absence from their normal place of duty.

- (f) The Employer shall not be responsible for any failure to provide such flights wherever this occurs as a result of an airline declining to provide the necessary transportation.

#### EVIDENCE

The grievor testified for himself and called one witness, Mr. J.C. Butt. Messrs R. Billard, E. Dohaney and G. Pinsent testified for the employer. The grievor filed two exhibits against one for the employer.

Mr. J.C. Butt is an air traffic controller. He worked at the Gander Tower between 1971-72 and 1980. In 1981, he started to work full-time with CATCA. He was president of CATCA in 1983. The witness said that he

participated, as an air traffic controller, in one domestic familiarization flight each year plus a long range one every five years. Mr. Butt explained that these familiarization flights and the visit to another tower permit the air traffic controller who does them to broaden his horizons as he can better understand after the problems of flights' crews and observe and learn different techniques. Mr. Butt recalled that after 1980-81, passes were no longer available from the different airlines for the familiarization flights and a request had to be made from the air traffic controller who wished to go on one, as permitted by article 8.03 of the relevant collective agreement. The air traffic controller concerned had to obtain his own airline ticket, which ticket would be reimbursed, with other expenses, after the employer had given its approval.

TICKET  
NOT  
REIMBURSED  
ACP

Mr. A.W. Perrin testified to the effect that in July 1981, he followed a five-week course at the Gander tower and a three-week course at the Fredericton tower. The grievor graduated from Cornwall in December 1981. He came back to Gander for a five-month course and then qualified in December 1982 as an IFR Controller. Mr. Perrin declared that he is qualified in high domestic flights and oceanic center. The witness affirmed that, prior to his request made August 31, 1984, he had never been on a familiarization flight. He approached Mr. Billard, the unit training officer at Gander, discussed it with him and put in an application, which application was filed as G-1. Mr. Perrin said that Mr. Billard had declared to him that there would be no problem. The grievor added that before he bought his ticket for Fredericton on a "seat sale", he told Mr. Billard

about it and the latter said that the familiarization flight had been approved. Mr. Perrin affirmed that he had two conversations with Mr. Billard with respect to his request. The witness explained that he wanted to go to Fredericton because he had only been there before on training and now he wanted to go as a qualified air traffic controller so as to learn more. Mr. Perrin said that after he had bought his ticket to go to Fredericton, he went on vacation. On September 18, after he came back, he received a call from Mr. Billard and he was told that he could not go to Fredericton. He could, however, go to Halifax and Moncton. He thought he could not go to Fredericton because the Fredericton tower is for VFR and he was an IFR. The grievor added that management had never told him before that he should visit towers other than Fredericton. Mr. Perrin did not go to Halifax or Moncton because he had purchased a ticket to go to Fredericton. He added that he could not afford to purchase another one. The grievor explained that, if he wanted, he could only get a small reimbursement for the ticket which he had bought on a "seat sale".

During his cross-examination, Mr. Perrin recalled that his first conversation with Mr. Billard occurred one week before he submitted his request. The grievor told Mr. Billard he wanted to take a familiarization flight to Fredericton and the latter answered that he felt there would not be any problem. Mr. Billard told Mr. Perrin to submit his application, which he did August 31. The witness went, around September 6, on a vacation outside the country and came back to work around September 15, 16 or 17, just before the September 18 call he received from Mr. Billard. A trip to Halifax or Moncton was offered instead of the one to



Fredericton. Mr. Perrin said that he used his airline ticket and went to Fredericton on changed shifts and leave. Mr. Perrin declared that he bought his ticket to go to Fredericton a few days after he had submitted his August 31 application. Mr. Billard had previously assured him that his familiarization flight to Fredericton had been approved.

Mr. Perrin declared, in re-examination, that when Mr. Billard told him that his request to go to Fredericton had been refused and a trip to Halifax or Moncton offered instead, he did not give any reason why.

Mr. R. Billard is the unit training officer in Gander. Familiarization flights are one of his responsibilities. Between January 1983 and December 1984, out of eight requests for familiarization flights made, two were refused. The witness said that Mr. Perrin is an IFR controller while the Fredericton tower is VFR. Mr. Perrin did not need the VFR tower experience to be able to do his job as an IFR controller. Mr. Billard declared that when Mr. Perrin came to see him the first time about his familiarization flight to Fredericton, he told him there would be no problem and to fill out the request form. The witness said that after Mr. Perrin's request was refused, since the familiarization flight to Fredericton was not in the unit's operational interest, and other places offered instead, Mr. Perrin said that he was going to Fredericton anyway. Mr. Billard declared that he never assured Mr. Perrin that he could go on his familiarization flight to Fredericton. The witness added that he could not say the request had been approved before the travel authorization had been

signed by his chief. Mr. E. Snow was the acting unit chief at that time. Mr. Billard revealed that he could not himself approve a familiarization flight.

When cross-examined, Mr. Billard said that as soon as he received Mr. Perrin's request, he gave it to Brian Bowers, acting for the acting chief Snow. It was the acting chief who was to say if it was approved or not. Referring to the telex, filed as G-2, sent to Mr. Bowers, the witness said that it did not have to be done in the particular instance but it was. It had to do with Mr. Perrin's request and his advance of \$300 for his trip. Mr. Billard said that the next thing he heard was to the effect that Mr. Snow had refused Mr. Perrin's request. On September 18, Mr. Billard called Mr. Perrin and told him about it. Mr. Snow did not tell Mr. Billard why he was refusing the familiarization flight to Fredericton. Other places to go were to be offered to Mr. Perrin. Mr. Snow declared that there would be no benefit for Mr. Perrin and his unit if he went to Fredericton. Mr. Billard said that he must have given Mr. Perrin the reasons why he could not go to Fredericton. He wrote down the alternatives offered to Mr. Perrin. The witness affirmed that he knew that Mr. Perrin had bought his ticket to go to Fredericton and that it would be difficult to tell him that his application had been refused.

Mr. E. Dohaney was, between September and December 1984, acting regional supervisor in Moncton. He was, with respect to familiarization flights, part of the decision-making process. When Mr. Perrin's request reached Mr. Snow, Mr. Dohaney learned about it and he had some concern as to

the gain to be had by Mr. Perrin and his unit if the grievor should take his familiarization flight to Fredericton. It would be of more benefit for Mr. Perrin to go to a IFR tower than a VFR tower, which Fredericton was.

Mr. Dohaney said, during his cross-examination, that he did not offer options that could be taken by Mr. Perrin. The final decision, with respect to Mr. Perrin's request, was to be made by Mr. Snow, the acting unit chief.

Mr. G. Pinsent said that, as CATCA's branch chairman, he had discussions with Mr. Billard with respect to the reasons why Mr. Perrin's request was denied. This was prior to Mr. Perrin's grievance. Mr. Billard told the witness that the problem came from the front office. Mr. Billard did not understand why Mr. Perrin's request was denied. Mr. Pinsent added that he went to see Mr. Bowers afterwards and had a discussion with him.

#### ARGUMENTS

Counsel for the grievor argued that the facts in the present matter were simple. Mr. Perrin wanted to go on a familiarization flight to Fredericton and his superior, Mr. Billard, told him that he could go. Since Mr. Billard saw no problem, the grievor then bought his ticket. Mr. Perrin's written request was made August 31 and Mr. Billard sent his telex to Mr. Bowers on September 4. Ms. MacLean said that the grievor could not accept the alternatives that were offered to him after his request was denied by the front office because he had already bought

his ticket to go to Fredericton, this after Mr. Billard had told him that there would be no problem. Counsel for the grievor contended that the reasons for the employer's denial are not very clear. It is to be noted that Mr. Snow was not called as a witness. When he testified, Mr. Billard could not recall that he had given to the grievor the reason why his request was denied. The reason later given by the employer to the effect that Mr. Perrin could not go to Fredericton because the tower there is for VFR controllers while the grievor is an IFR controller and also that Mr. Perrin's unit could not benefit from it is in breach of article 8.03 of the collective agreement. It is uncontradicted evidence that the cost factor was not an element in the employer's decision. Mr. Perrin was lead to believe by his superior that he could buy his ticket to Fredericton and the employer should have stuck to its words.

Ms. MacLean advanced that the wording of article 8.03(a) is to the effect that the choice of destination with respect to a familiarization flight is with the employee who intends to take it. There are no restrictions for visits to VFR towers. IFR controllers can visit any tower they wish to visit. Counsel for the grievor said that if I were to come to the conclusion that the employer has a discretion with respect to the destination of an employee on a familiarization flight, I should decide that said employer cannot act arbitrarily and cannot be capricious. It should have real good reasons if it were to deny an employee's request for a certain destination. The employer's reasons should be supportable and should be able

to stand up to scrutiny. The employer failed on that score in the present matter. It was put in evidence that Mr. Perrin would have benefitted from his familiarization flight to Fredericton. He had been there before on training. He would have learned more if he had been able to go back. The employer never asked the grievor why it was so important for him to go to Fredericton. The alternatives which were offered to Mr. Perrin by the employer, like Halifax and St. Johns, the latter a twenty minute ride from Gander, showed that its reasons were not supportable.

Ms. MacLean submitted that, with respect to the document which was filed as E-2, there is in it nothing which shows that when an employee takes a familiarization flight, his unit has to benefit from it. When the employer decides that benefit also has to go to the unit, it contravenes the relevant collective agreement. It is uncontradicted evidence that if the employer had permitted Mr. Perrin to go to Fredericton, the latter would have come back as a better air traffic controller and said employer would have also benefitted from it. Counsel for the grievor, with respect to the corrective action requested, said that I should declare that the employer has breached the relevant articles of the collective agreement, that Mr. Perrin should be reimbursed for the ticket which he bought to go to Fredericton, that he should be given back the leave which he spent when he did go to Fredericton and that he be permitted to go to Fredericton on a familiarization flight.

Counsel for the employer argued that Mr. Perrin was not right when he thought that his familiarization flight to

Fredericton had already been approved when he made his request August 31 and bought his ticket right afterwards. The telex sent to Mr. Bowers with respect to Mr. Perrin's request is dated September 4 and it concerns the dates from October 19 to October 24 for the familiarization flight to be taken. Mr. Perrin was on annual leave from September 6 to September 16 and he was told September 18 that his request had been denied by the proper authority. The telex filed as G-2 is clear and it shows that the grievor had made a request for a familiarization flight to Fredericton. Mr. Billard could not have approved Mr. Perrin's request before the telex was sent. The grievor knew that the telex was sent out to Mr. Bowers, the acting chief for the relevant day, but Mr. Perrin nevertheless decided, at his own risk, to buy his ticket to go to Fredericton. It did not mean because the telex was sent that the request had been approved. The grievor's thinking was erroneous.

Mr. Lee recalled that when alternatives were offered to the grievor, the latter declined, saying that he did not care, he was going to Fredericton anyway. Why should the employer reimburse Mr. Perrin for the ticket he bought if he was to go to Fredericton anyway? Counsel for the employer advanced that the most consistent version in the present matter is that at the time Mr. Billard sent his telex to Mr. Bowers, he could not have told Mr. Perrin that his request had been approved. The balance of probabilities falls with the employer's version of the facts which really happened. Mr. Billard did not have the authority to approve the familiarization flight and Mr. Perrin knew it. Mr. Lee referred to article 8.01 of the relevant collective agreement

and submitted that it showed the discretion of the employer with respect to the training of an employee. Reference was also made to Palmer's Collective Agreement Arbitration in Canada, 1st edition, page 100 and following. Mr. Lee declared that when one reads article 8.03 of the relevant collective agreement, he should read it in connection with article 8.01. Counsel for the employer affirmed that it was well put in evidence that it was not meaningful for a Gander air traffic controller to go on a familiarization flight to Fredericton. The employer pays the expenses for the familiarization flights taken by an employee and it should therefore decide where a concerned employee should go. Halifax is an IFR tower and since Mr. Perrin is an IFR controller, it was more meaningful for him to go there instead of Fredericton.

Counsel for the grievor replied that the reason why Mr. Perrin went to Fredericton anyway was because he could not get a reimbursement for his ticket. The grievor never said to the employer that he did not want to go on other familiarization flights. Ms. MacLean reiterated that Mr. Billard really said to Mr. Perrin, prior to the sending of the telex, that there would be no problem with respect to his request to go to Fredericton. Counsel for the grievor compared article 8.01 of the collective agreement with previous article 3.01 which recognizes and acknowledges the employer's exclusive right and responsibility to manage and operate the Air Traffic Control Service. The article in the relevant collective agreement which deals with familiarization flights is article 8.03 and nowhere it is said that an IFR controller cannot go on a familiarization flight to a VFR tower. There are restrictions in article

8.03(b), which concerns VFR controllers and shift supervisors, but none in 8.03(a), which concerns IFR controllers and shift supervisors. When it received Mr. Perrin's request, the employer could not exercise discretion and he had to approve it.

#### REASONS FOR DECISION

The grievor, Andrew W. Perrin, said, in his grievance, that in late August 1984 he requested a familiarization flight to Fredericton Tower as per article 8.03 of the collective agreement and that at that time he was given the impression there would be no difficulty and based on this he purchased a "seat sale" ticket. Subsequently on September 18, 1984 he was advised that his familiarization was not approved. At that time management dictated as to the facilities he would be permitted to visit.

It is to be noted right away that the grievor did not say, in his grievance, that his request for a familiarization flight to Fredericton had been approved by the appropriate authority but only said that he was given the impression that there would be no difficulty. Being given the impression of something surely does not amount to having been told that it was approved. Mr. Perrin later affirmed, in his testimony before me, that Mr. Billard had previously assured him that his familiarization flight had been approved while, at the same time, he also said that Mr. Billard had told him there would be no problem. Mr. Billard, when his turn to testify came, declared that he never assured Mr. Perrin that he could go on his familiarization flight to Fredericton



but that there would be no problem and told the grievor to fill the request form. It seems to me, at the outset, that Mr. Billard did not, on August 31, 1984 forecast any problem for Mr. Perrin with respect to his getting the necessary approval for his trip to Fredericton and that therefore that is why he told the grievor that there would be no problem.

Counsel for the employer argued before me that Mr. Perrin was not right when he thought that his familiarization flight to Fredericton had already been approved when he made his request August 31 and bought his ticket right afterwards. The telex sent to Mr. Bowers with respect to Mr. Perrin's request is dated September 4 and it concerns the dates from October 19 to October 24 for the familiarization flight to be taken. The telex, filed as G-2, is clear and it shows that the grievor had made a request for a familiarization flight to Fredericton. Mr. Billard could not have approved Mr. Perrin's request before the telex was sent. The grievor knew that the telex was sent out to Mr. Bowers, the acting chief for the relevant day, but Mr. Perrin nevertheless decided, at his own risk, to buy his ticket to go to Fredericton. It did not mean because the telex was sent that the request had been approved. The grievor's thinking was erroneous.

I must say that I agree with Mr. Lee's argument and what the counsel argued was clearly reflected by the evidence which was adduced before me. A copy of the telex, sent by Mr. Billard to acting chief for the relevant day B. Bowers, was filed by the grievor. It clearly shows, as Mr. Lee pointed out, that a "familiarization flight to

Fredericton Tower is requested on behalf of Andrew W. Perrin". When he was cross-examined, Mr. Perrin said that he bought his ticket to go to Fredericton a few days after he had submitted his August 31 application. We know that the grievor wanted to take the opportunity of a "seat sale" but it seems to me, as the dates for his trip to Fredericton were to be from October 19 to October 23 included, that he should have waited to be sure that he had gotten the proper authorization from his employer before he bought his ticket. When Mr. Perrin left his work, September 6, to go on vacation, which vacation lasted until September 17, he could not have been completely sure that his familiarization flight to Fredericton had been approved. As we know, Mr. Perrin, in his grievance, contrary to the testimony which he gave before me when he said that Mr. Billard had assured him that his said familiarization flight had been approved, only said that he was "given the impression" that there would be no difficulty.

Counsel for the employer submitted that in the present matter, the balance of probabilities falls with the employer's version of the facts which really happened. Mr. Billard did not have the authority to approve the familiarization flight to Fredericton and Mr. Perrin knew it. I must agree with Mr. Lee's above submission and therefore, for all the reasons given above, Mr. Perrin's grievance is dismissed.

After having made the above conclusion, I must add the following. It was argued, inter alia, before me, by learned counsel MacLean, that the wording of article 8.03(a) of the relevant collective agreement is to the effect that

the choice of destination with respect to a familiarization flight is with the employee who intends to take it. Counsel for the grievor added that nowhere in article 8.03 it is said that an IFR controller, as Mr. Perrin is, cannot go on a familiarization flight to a VFR tower, as Fredericton is. There are restrictions in article 8.03(b) but none in article 8.03(a). When, in the present decision, I dismiss Mr. Perrin's grievance, it is for the only reasons already given above and it does not mean that I am saying that an IFR controller cannot go on a familiarization flight to a VFR tower, as could perhaps be permitted under the provisions of article 8.03(a) of the relevant collective agreement. Because I concluded, in the present decision, that Mr. Perrin had made a mistake when he purchased a ticket to go to Fredericton before being completely sure that his request for his familiarization flight to Fredericton had been approved by the proper authority, I did not feel it was necessary for me to address the above issue argued before me by Mrs. McLean.

For all the above reasons, I hereby dismiss Mr. Perrin's grievance.

Jean Galipeault,  
Board Member.

OTTAWA, September 25, 1985