

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

BETWEEN

RICHARD T. SMITH

Grievor,

- and -

TREASURY BOARD  
(Transport Canada)

Employer.

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

For the Grievor: Richard T. Smith, Canadian Air  
Traffic Association

For the Employer: Sheila Ray, counsel

Heard at Edmonton, November 5, 1985.

ART 10

CODE 402/82

SPECIAL LEAVE

SNOW STORM



## DECISION

The grievance of the Grievor, Richard T. Smith, is that he was denied special leave with pay for the hours from 11:00 a.m. to 3:00 p.m. on October 10, 1984 contrary to the provisions of article 10.04 of the collective agreement in effect between the Treasury Board and the Canadian Air Traffic Control Association covering the Air Traffic Control Group: Code 402/82. At the hearing it was established that the date the Grievor intended to refer to was October 18 rather than October 10. The article entitled "Leave for Other Reasons" reads in part:

At the discretion of the Employer, special leave with pay may be granted when circumstances not directly attributable to the employee . . . . prevent his reporting for duty. Such leave shall not unreasonably be withheld.

The remedy that the Grievor is seeking is reimbursement for the requested half day leave which was denied by the Employer throughout the grievance procedure.

The relevant evidence of Mr. Smith is set out below. In the fall of 1984 he was employed by the Department of Transport as an air traffic controller and has been working as an en-route controller in the Edmonton Air Control Centre since 1976. On the night of October 17 he was staying in the Millwoods district in the south east part of Edmonton, approximately 20 miles from the airport. He was scheduled to work on the day shift on October 18 from 7:00 a.m. to 3:00 p.m.

In the morning he found that a substantial amount of snow had fallen during the night and realized it was going to take him some time to dig out his automobile from the parking space where it was located. Accordingly, he telephoned the Centre at approximately 6:30 a.m. and advised them that he would be taking the first part of his shift from 7:00 a.m. to 11:00 a.m. as annual leave and planned to report for work at 11:00 a.m. He got his car on the road at approximately 9:00 a.m. and proceeded by the most direct route to drive to the airport, i.e. to Highway 2 via the Ellerslie intersection just south of the city. Prior to endeavouring to get to the airport in his own automobile however, he telephoned the Yellow Cab at 7:30 a.m. and was advised that there would be a waiting period of two hours if a cab could reach him at all. Based on that prognostication he decided against trying to utilize a taxi to get to the airport.

It took Mr. Smith 45 minutes to get from his Millwoods location to Highway 2 a distance of four or five miles. The roads were very icy with drifting and blowing snow. It was some 15 miles from the intersection of Highway 2 and Ellerslie to the airport. Highway 2 is a four lane highway. Mr. Smith testified that his girlfriend told him that there had been a radio bulletin that the RCMP had closed Highway 2 south of Ellerslie. She also told him that she had confirmed the closure by a telephone call to the Leduc detachment of the RCMP. When he reached the intersection there was an RCMP car parked on the side of the highway at the traffic lights with its flashing

lights on. No automobiles were travelling south on Highway 2 and only a very few trailer units were doing so. He spoke to the RCMP officer in the car who verified the radio report. The RCMP did not actually close the road but advised all motorists to stay off the highway except in cases of real necessity or an emergency. He waited at that location for two hours for the situation to improve and the highway to be "opened".

At around 11:00 a.m. he telephoned the Centre and advised them that he could not get to the airport for the second half of his shift. The air traffic controller who answered his telephone call said that he had been able to get to the airport for the 7:00 a.m. shift and that Highway 2 had not been closed down at that time. Mr. Smith referred me to the Atmospheric Environment Service material (Exhibit G-4) which he asserted indicated that at the time he had reached the Ellerslie intersection near Highway 2 the visibility had deteriorated substantially from what it had been earlier in the morning.

Mr. Smith applied for special leave with pay under article 10.04 for the half day on October 18 from 11:00 a.m. to 3:00 p.m. The response he received from Mr. Hamish Hamilton, the Chief of the Edmonton Area Control Centre, was a memorandum dated December 20, 1984 (Exhibit G-3), which reads in part:

Reference is made to your application for one-half day's special leave on October 10, 1984.

As the majority of people did manage to report for work on that day, then to grant special leave to you under the circumstances would effectively be giving you a premium not available to all employees. Accordingly, I am unable to approve the half day special leave and you should advise me at your earliest convenience what other type of leave you may wish to use to substitute for the half day.

Notice was also taken of the fact that the first half of the shift was taken as annual leave, therefore additional time was available to you to prepare for reporting to work.

Mr. Hamilton did not dispute the fact that prior to denying the request he had no discussion with Mr. Smith as to the particular circumstances that prevented him from getting to work.

On December 21, 1984 Mr. Smith grieved the denial of his request for special leave with pay for the half day. His grievance reads in part:

On October 10(sic) I was scheduled on a 7-3 shift. I requested a ½ day annual leave from 7-11 and was approved before leaving for work (from the city). I listened to the radio for possible road conditions. The announcement was that Hwy 2 south of Ellerslie was closed by the RCMP. I also phoned the RCMP and they confirmed the radio report. I set out anyway to attempt to reach work but at Ellerslie the hwy was in fact closed and I called work to request special leave for ½ day. On December 21 I was advised, not approved.

The reply of the shift manager at the first level of the grievance procedure reads in part (Exhibit G-5):

I have carefully reviewed your grievance filed on December 21, 1984 with reference to Special Leave for October 10, 1984. Your grievance refers to a scheduled shift on October 10, however, our records indicate that October 18 was more likely the day in question, so I will answer on the basis of October 18.

I have been unable to substantiate information with respect to road closure on Highway 2 between Edmonton and the International Airport which you had provided in the details of your grievance.

I have established the following:

1. The Chief of the Centre drove to the Airport from the City prior to 8:00 A.M. on the 18th, and returned at approximately 4:30 P.M. The road was open.
2. The RCMP (Leduc based free-way patrol) cannot substantiate a highway closure during the time period you stated, although they may have discouraged unnecessary travel.
3. The Grey Goose Bus Line (Airport Limousine) continued to run that day although possibly somewhat off schedule. This was established by personal observation of the Chief and discussion with Grey Goose.
- 5.(sic) The evening shift staff reported to work and some travelled from the city.

As you had the first one-half of your shift as annual leave, I must conclude the additional time to make alternate travel arrangements via a functioning mode of transportation was available to you, but apparently not pursued.

Accordingly, your grievance for one-half day Special Leave on October 18 is denied.

Mr. Smith testified that he did not see a Grey Goose Bus during the two hours he stayed at the intersection of Highway 2 and Ellerslie. Further, he did not think of going to the airport by bus as his location in Millwood was south of the Riviera Hotel, the last place in the city where the bus stopped to pick up passengers. He thought that he was better off to try to reach the airport in his own automobile by the Ellerslie route.

The testimony of Mr. Hamilton is as follows. He was Chief of the Edmonton Air Control Centre in October and November of 1984 and was Mr. Smith's unit chief. He had come to work at the airport from Edmonton along Highway 2 at 8:00 a.m. on October 18. The roads were somewhat icy and travelling was slower than normal, but he encountered no real difficulties. He generally intercepts Highway 2 at 23rd Avenue, some four miles north of the Ellerslie intersection. He encountered no problems at that intersection and traffic moved along Highway 2 past the intersection. He returned home by the same route at 4:30 p.m. on October 18 arriving home 40 minutes later. He had seen a number of Grey Goose buses from his office enter the airport from Highway 2. Mr. Hamilton had inquired about road conditions from the local RCMP, the Freeway Patrol and the Department of Transport and an employee of Grey Goose Bus Lines. They confirmed his own experience.

In Mr. Hamilton's opinion Mr. Smith had not availed himself of possible alternative measures of getting to the airport, including picking up the bus at the Riviera



Motel, or travelling on Highway 2 notwithstanding possible warnings of the RCMP. Further his information as to the closing of the road by the RCMP did not coincide with that of Mr. Smith. Mr. Hamilton felt that he had made sufficient inquiries on his own to make the decision to deny Mr. Smith special leave for the afternoon of October 18. This was particularly so since Mr. Smith had taken all of the morning as annual leave and over that period should have been able to come up with an alternative means of getting to the airport.

The evidence of Mr. Edward Archer is that he has been employed as a bus driver for Grey Goose Bus Company for the past 16 years. According to the Dispatch Sheet for October 18, 1984 (Exhibit E-2) he made four return trips from the centre of Edmonton to the airport. On each trip to the airport he stopped at all of the major hotels to pick up passengers. The last one is the Riviera Hotel in the southern part of the city. The bus route brings him on to Highway 2 at 23rd Avenue, a number of miles north of the Ellerslie intersection. His outgoing excursions on October 18 commenced at 5:30 a.m., 7:45 a.m., 10:00 a.m. and 12:15 a.m. He picked up his last passengers at the Riviera Hotel about 15 minutes after the start of each trip. His return trip from the airport to the city commenced an hour later. Mr. Archer also identified his Driver's Daily Report for October 18 which showed the number of passengers at each hotel that got on the bus (Exhibit E-3). The record shows that six persons got on the bus at the Riviera Hotel at what would have been approximately 10:15 a.m.

Mr. Archer testified that while the travelling was "rough" in spots, at no time that morning was Highway 2 closed and that both buses and automobiles were using the highway to go to and from the airport on the morning of October 18. The Airport Dispatcher's Report (Exhibit E-4) which he identified indicates that the Grey Goose Bus Company maintained its regular schedule during all of the day on October 18. According to Mr. Archer, notwithstanding the unfavourable weather conditions, he was able to keep up with the scheduled time of departure and arrival in the four round trips he made that morning.

Should there be any problems as a result of weather conditions he would be so advised while in transit by the dispatcher. He was not advised on October 18 by the dispatcher of any road closing by the RCMP on October 18 or of any travel cautions. He was not at any time stopped by the RCMP at the Ellerslie intersection on the morning of October 18 including when he passed by that location on the way to the airport at approximately 10:30 a.m. and 12:40 p.m.

#### Arguments

Mr. Smith submitted that the two questions in issue are what circumstances are directly attributable to the employee and when is the employer acting unreasonably in denying special leave. In respect of his own grievance Mr. Smith argued that Mr. Hamilton denied his request for special leave for the second half of the day shift from 11:00 a.m. to 3:00 p.m. on October 18 without making a proper investigation into the circumstances

that caused Mr. Smith not to be able to report to work during the period in question. Mr. Smith pointed out that he had voluntarily taken a half day of vacation leave that day in order to allow himself time to get to the airport. The fact that he did not try to secure a taxi rather than use his own automobile or the fact that he did not try to reach the Riviera Hotel and take a bus from that point to the airport are irrelevant considerations. Based on the information available to him at the time he decided that he was most likely to reach the airport by the course of action he took. His failure to reach his destination was due to the fact that the RCMP had discouraged, if not completely prevented, travel on Highway 2 to the airport at the Ellerslie intersection. This development was not directly attributable to him. Moreover, the failure of Mr. Hamilton to inquire into the circumstances and in applying only his own experience in getting to the airport that day was unreasonable. Accordingly, Mr. Smith submitted that he should be granted the special leave that he is seeking. Mr. Smith relied on the adjudication decisions in Townsend (Board file 166-2-3460), Colmer (Board file 166-2-5027), McDougal (Board file 166-2-6157).

Ms. Ray submitted that on October 18 Mr. Smith could have exercised a number of different options to get to work at 11:00 a.m. This was particularly the case since he had taken the first half of the shift off as annual leave and had the time to work out a method of getting to work. The evidence of Mr. Archer is that the Grey Goose buses were running on that day. Also

he had telephoned for a taxi at 7:30 a.m. and was told they could provide a car by 9:30 a.m. It would not have been far for him to go to the Riviera Hotel in the south end of the city and catch the bus there at 10:15 a.m. Instead he opted to take his own car. Further, his evidence that the RCMP had closed down Highway 2 south of the Ellerslie intersection is in conflict with the evidence of Mr. Archer that automobiles as well as buses and taxis were using the highway. At best the RCMP were issuing a caution and notwithstanding that, other vehicles were using the highway. Mr. Smith elected not to do so. Thus, his failure to get to work by 11:00 a.m. on October 18 was directly attributable to him. Moreover, Mr. Hamilton was warranted in denying his request for special leave on the basis of his own knowledge and the inquiries he made without consultation with Mr. Smith. The fact is that Mr. Smith did not make a sufficient effort to reach the airport. In support of her position Ms. Ray cited Ryan (Board file 166-2-11431), Lang and Paige (Board file 166-2-4794 and 4795), Hassard (Board file 166-2-13871), Laughlin (Board file 166-2-14294), Sanderson (Board file 166-2-13521), Brault (Board file 166-2-10578) and Black (Board file 166-2-13735).

Mr. Smith in reply argued that Ms. Ray's scenario that he could have reached the airport by 11:00 a.m. had he taken a taxi to the Riviera Hotel is theoretical and after the fact. At the time he was unaware of any such option and even if it had occurred to him the choice he made in taking his own automobile was the most logical at the time. As far as he is concerned he made every

reasonable effort to get to the airport and it would have been imprudent and possibly dangerous for him to have ignored the RCMP warning. The fact that Mr. Hamilton encountered no difficulty in getting to and from work on October 18 on Highway 2 was because the range of visibility was considerably better than when Mr. Smith was attempting to get to the airport later in the morning. The basis of Mr. Hamilton's decision was his own experience without any inquiry as to the actual conditions which Mr. Smith had encountered.

Determination

I have examined the decisions of the Board cited to me and have taken them into account to the extent that they are applicable to the circumstances of the instant case.

I would first say that I reject the argument of Ms. Ray that Mr. Smith could and should have adopted the alternative option of getting to the airport on the morning of October 18, namely, of driving or taking a taxi to the Riviera Hotel where he could have boarded a Grey Goose bus which would have got him to his work location by 11:00 a.m. At the time Mr. Smith left his Millwood location in the city I am satisfied that the decision he made to try to drive to the airport in his own automobile was reasonable in the circumstances. At that point in time it was understandable that he would not think in terms of trying to catch a bus at the Riviera Hotel.

On the other hand, I reject the argument of Mr. Smith that Mr. Hamilton was not justified in denying his request for special leave due to the fact that Mr. Hamilton had not spoken to Mr. Smith and inquired into the particular circumstances he encountered which prevented him from getting to work. Mr. Hamilton's own experience, his observation of the continued operation of the Grey Goose buses and inquiries which he personally made of the local RCMP, the Freeway Patrol, the Department of Transport and an employee of Grey Goose Bus Lines, provided a sufficient basis for his decision.

Further, after his request was denied and he filed his grievance, Mr. Smith received a very complete explanation for the denial of the half day of special leave which he sought in the first level reply of the grievance procedure. The basis of the refusal in large measure was that automobiles and other vehicles including the Grey Goose buses were utilizing Highway 2 south of Ellerslie intersection during all of the morning of October 18 to reach the airport and that Mr. Hamilton had done so. The intimation in the reply is that the use of that four lane highway on the morning of October 18 to drive to the airport did not entail undue risk or danger.

There is clearly a discrepancy between the evidence of Mr. Smith on the one hand and that of Mr. Hamilton on the other as to driving conditions on Highway 2 on the morning of October 18. It was the contention of Mr. Smith that these conditions, and more particularly visibility due to winds and blowing snow, varied from hour to hour

and that the Atmospheric Environment Service material which he filed (Exhibit G-4) substantiated his claim. A study of these documents does indicate some variation in the factors to which Mr. Smith alluded. However, I am not satisfied that the conditions which he encountered when he reached the Ellerslie intersection at about 9:45 a.m. and during the hour thereafter were so different from those faced by Mr. Hamilton some two hours earlier that the highway was unsafe for use. In this regard the evidence of Mr. Archer flatly contradicts that of Mr. Smith. That is to say Mr. Archer's evidence is that he drove a Grey Goose bus from the city of Edmonton to the airport and back three times during the morning and encountered no particular difficulties in doing so.

There also are discrepancies between the evidence of Mr. Smith, on the one hand, and that of Mr. Hamilton, the shift manager, who replied to Mr. Smith's grievance at the first level, and Mr. Archer as to the role of the local RCMP. Mr. Smith's evidence is that during the hour or more that he remained at the Ellerslie intersection on the morning of October 18, the RCMP had essentially "closed the highway". His evidence in this regard was somewhat equivocal in that he seemed to concede that the RCMP were letting vehicles proceed south on Highway 2 but were issuing a caution to stay off the road except for cases of real necessity or an emergency. However, the evidence of Mr. Hamilton as to his experience and the inquiries which he made, as well as the statements contained in the first level reply as to the inquiries made by the shift manager, indicate that Highway 2 was not closed down on

the morning of October 18 and that at the most the RCMP was discouraging unnecessary travel. Finally, the evidence of Mr. Archer is that he was not advised by the bus dispatcher of a closing of Highway 2 on October 18 or of any travel caution. Further, he did not at any time during the three round trips he made on the morning of October 18 from the city to the airport find the road to be closed nor did he receive a warning from the RCMP concerning driving conditions.

In summary, the preponderance of evidence supports the conclusion that Highway 2 was not closed to automobile and other vehicular traffic at any time by the RCMP during the morning of October 18. I further find based on all of the evidence before me that Mr. Smith could have proceeded in his automobile to the airport on Highway 2 when he reached the Ellerslie intersection and in doing so would not have subjected himself to an unwarranted exposure to the possibility of an accident or physical harm to himself. Moreover, had he done so he would have been able to work the second half of his scheduled shift from 11:00 a.m. to 3:00 p.m. on October 18. Accordingly, for all of these reasons I find that Mr. Hamilton did not act unreasonably when he denied the Grievor's request for a half day of special leave with pay.

In the result, his grievance must be and is hereby denied.

J. Harold Brown, Q.C.  
Chairman

OTTAWA, December 12, 1985.