

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

BETWEEN

GERALD B. MUELLER

Grievor,

- and -

TREASURY BOARD  
(Transport Canada)

Employer.

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

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

For the Employer: Sheila Ray, counsel

Heard at Edmonton, November 5, 1985.

ART10  
CODE 402/82

SPECIAL LEAVE  
SNOW STORM



## DECISION

The grievance of the Grievor, Gerald B. Mueller, is that he was denied special leave with pay for half of the shift he was scheduled to work on October 18, 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 Group: Code 402/82. That 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 of special leave which was denied by the Employer throughout the grievance procedure.

The relevant evidence of Mr. Mueller is as follows. For twelve years he was employed at the Edmonton International Control Tower Centre as an air traffic controller and was so employed in October and November of 1984. On October 18, 1984 he was residing in the City of Wetaskiwin. On the evening of October 17 he attended a meeting of CATCA as a steward for the International Tower in Edmonton. He drove to a private home in Edmonton for this purpose arriving at 7:00 p.m. and leaving again at 12:30 p.m. or 1:00 a.m. on October 18. When he departed for home it was snowing heavily, the wind was high and the temperature was cold. He decided nonetheless to go home via Highway 2A south of Leduc. The trip which usually took 45 minutes, took some two hours and he arrived home at 3:00 a.m.

During the journey he could hardly see the road and other automobiles were going off the road.

His scheduled shift on October 18 was from 3:00 p.m. to 11:00 p.m. When he got up that morning he heard on the Wetaskiwin radio of the heavy snowfall and reduced visibility and that some schools would be closed and school buses would not be running. The radio report also stated that the RCMP had closed Highway 2 south of Ellerslie and travel was not recommended unless it was an emergency. At noon he left his home in Wetaskiwin for the airport. The driving was difficult but he did reach the intersection of Highway 2A. However, he considered that highway to be impassable and went home. At 1:00 p.m. he telephoned the Centre and said that he would not be able to make it to the airport due to the poor road conditions.

By a memorandum dated October 20, 1984 addressed to his immediate supervisor, Lawrence Price, he requested special leave in the following terms (Exhibit G-3):

On October 18/84 I was scheduled for an evening shift. Due to the inclement snow storm of that day all highways to work were officially closed, visibility severely reduced and the R.C.M.P. not allowing anyone to travel unless emergently necessary. In view of this I was unable and reluctant to venture out to come to work and therefore was absent. In view of the circumstances beyond my control I request SPECIAL LEAVE for the evening shift (1500-2300 local) for October 18/84.

The response signed by Mr. Price on the same form dated November 22, 1984 reads:

I'll approve ½ day special leave only.  
As discussed I'll approve ½ day of other  
leave as you wish.

Prior to receiving the November 22, 1984 reply Mr. Mueller had a discussion with Mr. Price who told him that he should have made more of an effort to get to work and for that reason he was only giving him a half day of special leave. In cross-examination Mr. Mueller stated that he did not recall telling Mr. Price that he had made no effort to get to work on October 18.

The testimony of Mr. Price is as follows. In October and November of 1984 he was Chief of the Edmonton International Control Tower and he was Mr. Mueller's unit chief. He received a request for special leave from Mr. Mueller (Exhibit G-3) on October 30 which he denied in writing on November 22. His delay in responding was that he wanted to speak to Mr. Mueller about the request before making his decision. Mr. Price did so on November 22 or a day or two earlier in his office. He asked Mr. Mueller to explain the reason for his request. His answer was that when he looked out the windows of his house and saw all the snow he knew that conditions were bad and therefore he did not attempt to go to work. Mr. Price told him that he had to at least make some effort to get to the airport as it was a day of work and, if need be, to continue to do so even while the shift was in progress. Mr. Mueller replied that he did not try to get to work

because the RCMP had closed the roads. He also stated that he did not leave his house.

In cross-examination Mr. Price reiterated that Mr. Mueller did not tell him that he had tried to get to Highway 2A - one mile from his home. Rather, Mr. Mueller relied totally on the radio reports and the perceptions given therefrom. Mr. Price expressed the opinion that an employee has an obligation at least to try to get to work. Although Mr. Mueller heard that the roads were closed, there was still the question as to how long this condition would last. According to Mr. Price Mr. Mueller seemed to have made a considerably greater effort to get home from the night shift on October 17 than he did to go to work for the afternoon shift on October 18.

Mr. Price decided to give him the benefit of the doubt and approved one-half day of special leave. In doing so he took into account a separate and quite unrelated matter, namely, that he knew Mr. Mueller was feeling down in his work and he felt some empathy toward him. However, he was not prepared to give him special leave for the whole day since he had made no effort to get to work.

#### Argument

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. It is clear from the evidence that it was the condition of the highways due to the

snowstorm commencing on the night of October 17 and continuing on October 18 that prevented Mr. Mueller from getting to work for the afternoon shift from 3:00 p.m. to 11:00 p.m. on the latter day. This was in no way directly attributable to him. Also his residence in the City of Wetaskiwin was not in a remote location or distant from the airport. Accordingly, having regard to the severity of the snowstorm, it cannot be said that the choice of his location of residence was a fact attributable to him which prevented his reporting for work.

Further, the evidence of Mr. Mueller is that he did try to get to the airport but was prevented from doing so by the driving conditions on Highway 2A. There is a conflict here between the evidence of Mr. Mueller and that of Mr. Price who testified that Mr. Mueller told him that he did not leave his home at all on October 18 because of the radio reports of road conditions. In the circumstances, Mr. Smith argued that the evidence of Mr. Mueller was more credible. Finally, Mr. Smith referred to Mr. Price's evidence that he granted Mr. Mueller a half day of special leave for October 18, not because of the driving conditions caused by the snowstorm but rather because of Mr. Price's perception of Mr. Mueller's low state of mind over his job. That being the case, there is no valid reason why the special leave was not extended to cover the whole shift. In the result the denial by Mr. Price of Mr. Mueller's request for special leave was unreasonable. Therefore, Mr. Mueller is entitled to the additional half day of special leave which he is seeking in his grievance.

In support of his position Mr. Smith cited the following adjudication decisions: Townsend (Board file 166-2-3460), Richmond (Board file 166-2-6909), McDougal (Board file 166-2-6157), Hunter (Board file 166-2-5387), Ratzlaff (Board file 166-2-6392), Charbonneau et al (Board file 166-2-4825 and 4826) and Colmer (Board file 1662-5027).

Ms. Ray first addressed the conflict between the evidence of Mr. Mueller and Mr. Price as to the explanation given by the former for not reporting for the afternoon shift on October 18. According to Mr. Mueller he told Mr. Price of his efforts to drive to the airport whereas Mr. Price's evidence is that Mr. Mueller stated that he had relied on radio reports on the road conditions and never left his house. Ms. Ray argued that the evidence of Mr. Price is more credible and should be accepted over that of Mr. Mueller.

Ms. Ray submitted that it was the failure of Mr. Mueller to make any real effort to get to work that prompted Mr. Price to allow only a half day of special leave on October 18. In doing so Mr. Price was being generous and was taking into account other quite separate considerations. Mr. Mueller in no way established his entitlement to special leave for the whole shift. It was Mr. Mueller's state of mind and not the weather conditions that prevented him from getting to work. It is not sufficient for him to believe there might be risks involved in trying to get to work. He had an obligation to make an effort to do so in order to establish that



any perceived risks were real. This Mr. Mueller did not do. Accordingly he was not entitled to special leave for the entire shift which he is seeking. In support of her position Ms. Ray cited Black (Board file 166-2-13735), Lang and Paige (Board file 166-2-4794 and 4795), Sinclair (Board file 166-2-14295) and Strickland (Board file 166-2-14697).

#### Determination

I have taken into account the decisions of the Board cited to me and have applied them to the extent that they are relevant to the evidence in the instant case.

There is a conflict between the evidence of Mr. Mueller and that of his immediate supervisor Mr. Price. The former testified that he left his home in Wetaskiwin in his automobile at noon on October 18 in an attempt to get to the airport for his scheduled shift from 3:00 p.m. to 11:00 p.m. that day. However, upon reaching the intersection of Highway 2A, he considered the road to be impassable and went home. According to Mr. Price, no mention of this effort to get to work was made to him by Mr. Mueller during their conversation before Mr. Price denied his request for special leave for half of that shift. Indeed the evidence of Mr. Price is that upon asking Mr. Mueller to explain the reason for his request his explanation was that when he looked out the windows of his house and saw all the snow he knew conditions were so bad that he did not attempt to get to work. Mr. Mueller, for his part, stated that he did not recall saying to Mr. Price that he had made no effort to get to work on October 18.

As between the evidence of Mr. Mueller and that of Mr. Price I prefer that of the latter. In this regard I note Mr. Mueller's memorandum of October 20, 1984 addressed to Mr. Price requesting special leave for his scheduled shift on October 18 reads in part:

Due to the inclement snowstorm of that day all highways to work were officially closed, visibility severely reduced and the R.C.M.P. not allowing anyone to travel unless urgently necessary. In view of this I was unable and reluctant to venture out to come to work and therefore was absent.

(Underlining added for emphasis.)

This language suggests that he never left home on October 18 and is consistent with Mr. Price's account of their conversation. In any event, whether or not Mr. Mueller actually did "venture out" and try to get to work on October 18, on the basis of all the evidence, I find that he left Mr. Price with the distinct impression that he had made no effort to get to work on October 18 and had relied entirely on radio reports in deciding to remain at home.

The evidence suggests that Mr. Price was of the opinion that Mr. Mueller had no real entitlement to special leave due to the fact that he had made no effort at all to get to work and to ascertain whether that reality of the road and driving conditions coincided with the perception he formed of them from radio reports. Nevertheless, Mr. Price was prepared to grant Mr. Mueller a half day of special leave for the extraneous and unrelated reason that

according to him, Mr. Mueller was not happy in his job. Mr. Price regarded this as a generous act of compassion but not an act that he was prepared to extend to cover the entire shift that Mr. Mueller was scheduled to work on October 18.

Be the foregoing as it may, and notwithstanding the motivation of Mr. Price for granting Mr. Mueller a half day of special leave, I am of the opinion that Mr. Mueller is not entitled to special leave for the additional four hours that would cover the entire shift. Stated another way, I find that, at least in part, the failure of Mr. Mueller to get to work for his scheduled shift on the afternoon of October 18 was directly attributable to him and that Mr. Price's refusal to grant special leave for the whole shift was not unreasonable in the circumstances.

In the result the grievance is denied.

J. Harold Brown, Q.C.  
Chairman

OTTAWA, December 12, 1985.