

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

BETWEEN

DENNIS D. DICK

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
Denied

DECISION

The grievance of the Grievor, Dennis D. Dick, is that he was denied special leave with pay on October 18 and 19, 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. That article entitled "Leave for Other Reasons" reads:

At the discretion of the Employer, special leave with pay may be granted when circumstances not directly attributable to the employee, including illness in the immediate family, as defined in clause 10.02, prevent his reporting for duty. Such leave shall not unreasonably be withheld.

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

The relevant evidence of Mr. Dick is as follows. He is a data systems coordinator employed at the Edmonton Area Control Centre at the Edmonton International Airport and was so employed in the fall of 1984. He lives at R.R.#2, Gwynne, which is 13 miles east of the City of Wetaskiwin. Gwynne also is one mile north of Highway 13 that runs east of Wetaskiwin (Exhibit G-2).

On October 18 he was scheduled to work on the day shift from 7:00 a.m. to 3:00 p.m. He had worked on the evening shift on October 17 from 3:00 p.m. to 11:00 p.m. When he left work that night, although it

was snowing, the roads were in good shape and the winds were not high. Accordingly, he drove to his home at Gwynne.

When he arose at 5:30 a.m. on the morning of October 18 his driveway was blocked by drifting snow. He cleared away the drift with his tractor which had a blade on it and was able to drive to the secondary road on which he had to travel one mile in order to reach Highway 13. He found that the secondary road was impassable. He therefore returned to his home and telephoned the Control Centre advising them that he could not make it to work for the day shift because of the conditions caused by the snowstorm. He had called the county counsellor to find out when they would be plowing the secondary road and was informed that it would not be cleared until the winds had abated as the snow would be blown back on the highway.

Mr. Dick already had secured approval to take special leave on October 19, 20 and 21 to take his wife to visit his seriously ill father-in-law who was in hospital in Lethbridge. Thus he got up early on October 19 and spent until the early afternoon clearing the snow with his tractor not only from his laneway but also for the one mile of secondary road leading to Highway 13. Upon doing so he made the assessment that it would be unwise to drive to Lethbridge that day as part of the driving would be in darkness. He thereupon telephoned the Centre and cancelled his special leave for October 19 and 20 and worked the night shift for October 20 from 11:00 p.m. October 19 to 7:00 a.m. on October 20. It would appear that he was originally scheduled to work the morning shift on October 19.

On only two other occasions in eight years while living at Gwynne had Mr. Dick been unable to get to work because of a snowstorm. He had asked for and was granted special leave in both instances. On other occasions when he felt it was untenable to get home at the end of a shift he had stayed elsewhere near the airport to be sure to be able to get to his shift on the following day. He did not elect to stay close by the airport on the evening of October 17 as he thought he would not have difficulty getting to work the following morning. Also the condition of his father-in-law motivated him to go home that night.

He applied for special leave with pay for October 18 and 19, 1984. He was told that it would not be granted by Mr. R.G. Harris, the Acting Data Systems Manager, who was his immediate superior. According to Mr. Dick he told Mr. Harris of the efforts he had made to get to work on the morning of October 18. He received a written memorandum from Mr. Harris denying his request for special leave dated October 31, 1984 (Exhibit G-3). He had a discussion with Mr. Harris between October 31 and November 16 when he filed his grievance and also with Mr. Hamilton, the Unit Chief at the Area Control Centre.

It was his understanding that Mr. Harris had made his decision in consultation with Mr. Hamilton on the basis that everyone else had got to work and that therefore it was Mr. Dick's place of residence and not the snowstorm that had prevented him from getting to work. No inquiry was made however as to circumstances relating to his place of residence. The only investigation that was

made was to confirm that the major roads from Edmonton to the airport were open and that Mr. Hamilton had got to work on the days in question from Edmonton as had employees from Leduc and Wetaskiwin.

In cross-examination Mr. Dick testified that when he drove home from the airport at 11:00 p.m. on October 17, the wind velocity was not as bad as on the morning of October 18. In Gwynne sometimes the secondary roads became blocked. However, main roads were not necessarily given a priority in snow removal as they were cleared by different jurisdictions. Everything depended on where the snow fell. If it was heavier on Highway 2 south of Edmonton at Ellerslie Road then the employees from Edmonton might not be able to get to work but those from Wetaskiwin could get to work. It was the impassability of the secondary road on October 18 that prevented him from getting to work. On October 18 he had only cleared the snow to the end of his laneway and had not tried to clear a path for the one mile on the secondary road. However, on October 19 when he was planning to go to Lethbridge he made the effort and did clear the secondary road.

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. Dick'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 returned by the same route at 4:30 p.m. on October 18 arriving home 40 minutes later.

Mr. Hamilton identified two employees who had come from Wetaskiwin for the 3:00 p.m. afternoon shift on October 19 (Exhibit E-1). The reason he denied special leave to Mr. Dick on October 18 and 19 was that in his assessment employees from Wetaskiwin could get to the airport by automobile notwithstanding the snowstorm. Further, living at Gwynne was the choice of Mr. Dick and as far as Mr. Hamilton was concerned the former had to accept any additional responsibility involved in getting to his job due to adverse weather conditions. That is, any difficulties that Mr. Dick encountered in getting to the airport following a snowstorm were attributable to him. It was the opinion of Mr. Hamilton that with a greater effort on his part Mr. Dick could have got to work as scheduled on October 18 and 19.

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. On the evidence, it is clear that it was the conditions of the highways due to the snowstorm on October 18 that prevented Mr. Dick from getting to work and this was not attributable to him. Also his place of residence is not remote and cannot be regarded as a factor attributable to him which resulted in his inability to get to work on that day. In fact, Mr. Dick's home was within a reasonable distance from the airport and was only one mile from a paved road. Although the Grievor had some discussion with Mr. Hamilton and Mr. Harris prior to the latter refusing his request

for special leave, the evidence makes it clear that Mr. Harris' only concern and consideration was Mr. Dick's place of residence. In all the circumstances the denial of his request for special leave with pay for October 18 and 19 was unreasonable. Accordingly, Mr. Dick is entitled to and should be granted the special leave with pay which he is seeking in his grievance. In support of the grievance Mr. Smith cited the following 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 166-2-5027).

Ms. Ray submitted that Mr. Dick's inability to get to work for his scheduled shifts on October 18 and 19 was directly attributable to his choice of residence. That is to say his property bordered on a secondary road, which in the event of a snowstorm would not be plowed as soon as a main road. In other words, it was the remote location in which he has chosen to live which was the principal factor in his not getting to work. Having accepted that risk, his failure to reach the airport is directly attributable to him. In support of her position Ms. Ray cited Sanderson (Board file 166-2-13521), Steele (Board file 166-2-633), Lang and Paige (Board file 166-2-4794 and 4795) and Cantin (Board file 166-2-10291).

Determination

I have considered the decisions of the Board cited to me and have taken them into account to the extent that

they seem applicable to the circumstances of the instant case.

I do not find that Mr. Dick's residence was unreasonably far from the airport nor do I find that the location of his home can be described as isolated, notwithstanding that he has to travel one mile on a secondary road before he reaches a major highway. In this regard I note his evidence that on only two other occasions in eight years had he been unable to get to work from his home at Gwynne as a result of a snowstorm. Further, according to the evidence of Mr. Dick, the secondary road on which he had to drive for one mile was regularly plowed. The explanation provided to him as to why it was not plowed on the morning of October 18 was that it would be an ineffectual effort due to the high winds and blowing snow.

Having regard to his description of the weather conditions when he left the airport at the end of his shift at 11:00 p.m. on the night of October 17, and taking into account also his concern over the condition of his hospitalized father-in-law, I can appreciate Mr. Dick's decision to drive home that night notwithstanding that he was scheduled to report for work again at 7:00 a.m. on the morning of October 18. Further, he rose early the next morning so as to make allowance for the additional time it would take to get to work because of the snowstorm. Moreover, he did make an effort to get to work in that he cleared the snow drifts on his own premises and did drive to the intersection of the secondary road. It was upon seeing that the road was unplowed and that there

were high winds and drifting snow that Mr. Dick decided that it would be impossible for him to get to the airport that day.

In the situation in which he found himself it was a reasonable conclusion. The only qualifying factor is that on the following day when he was planning to go to Lethbridge, Mr. Dick did clear a path for the one mile on the secondary road to Highway 13. In this regard, however, it must be noted that he spent a number of hours in doing so and only reached the main highway in the early afternoon. In other words, assuming he had attempted to do the same thing on October 18, presumably he still would not have been able to get to work that day until at least near the end of his shift at 3:00 p.m. I would add that there is no evidence as to the weather conditions on October 19 as compared with October 18. That is to say I do not know whether or not it was still snowing on October 19 or whether there was a high wind that would cause drifting and affect visibility. Based on Mr. Dick's evidence, however, it does not appear that the county had as yet plowed the secondary road. Be all of that as it may, I am satisfied that his failure to get to work on October 18 was due to circumstances not directly attributable to him and the decision of the Employer not to grant him the leave was unreasonable.

I am not able to reach the same conclusion in respect of October 19. First of all he already had secured approval for special leave on October 19 to take his wife to visit his father-in-law in Lethbridge. As already has been noted he

spent all of the morning of October 19 plowing his way along the one mile of secondary road from his home to Highway 13 in order to drive to Lethbridge. His decision not to drive on to Lethbridge was because it would involve driving part of the way in the darkness which he considered to be unwise. It was only then that he telephoned the Centre and cancelled his special leave for that day and the following day, October 20, which already had been granted to visit his father-in-law although it seems that he originally was scheduled to work on the 7:00 a.m. to 3:00 p.m. shift on those days. In these circumstances it cannot be said that Mr. Dick had any intention or made any effort to get to work for the morning shift on October 19.

In the result I find that Mr. Dick was entitled to special leave with pay for his scheduled shift from 7:00 a.m. to 3:00 p.m. on October 18, 1984 pursuant to article 10.04 of the collective agreement and the Employer is directed to pay him the appropriate amount for that shift. However, Mr. Dick's grievance as it relates to his request for special leave on October 19 is denied.

J. Harold Brown, Q.C.
Chairman

OTTAWA, December 12, 1985.