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PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

TERRY LEPOUTRE,

grievor,

AND:

TREASURY BOARD  
(Department of Transport),

employer.

Before: David Kwavnick, Board Member.

For the Grievor: Catherine H. MacLean, counsel.

For the Employer: Sheila Ray, counsel.

ARTICLE 14  
CODE 402/82

Heard at Ottawa, January 9, 1986.

RATES OF PAY WHEN STATUS IS  
CHANGED TO NON-OPERATIONAL.

## DECISION

1. The present reference to adjudication concerns a grievance by Mr. Terry LePoutre, an air traffic controller (AI-3) employed by the Department of Transport at the Ottawa air terminal. Mr. LePoutre is a member of the AI bargaining group and, at the relevant time, was covered by a collective agreement between the Treasury Board of Canada and the Canadian Air Traffic Control Association (code 402/82).

2. Mr. LePoutre grieves that during a four month period beginning 1 October 1984, the employer compensated him in accordance with the pay scales applicable to operating employees whereas, he alleges, he ought to have been compensated in accordance with the pay scales applicable to non-operating employees.

3. At the start of proceedings, the parties submitted an agreed statement of facts to which were affixed three annexes. The statement and annexes read as follows:

### AGREED STATEMENT OF FACTS

1. The Grievor was at all material times an air traffic controller (AI-3). His terms and conditions of employment were at all material times governed inter alia by Collective Agreement 402/82 between the Treasury Board and the Canadian Air Traffic Control Association.

2. By letter dated May 30th, 1983, attached hereto as Annex "A", the Grievor was offered appointment to an AI-3 position as an Airport/ Ground Controller at Ottawa, which offer he subsequently accepted.

Ottawa Control Tower is to be arranged between yourself and the two Unit Chiefs.

You will remain at your current AI-1 level during on-the-job-training at Ottawa Tower. You will be promoted to the full level of the position (AI-03) on successful completion of training and meeting the check-out requirements of the unit, i.e. the Tower Licence Endorsement.

In accordance with the Public Service Employment Regulations and AI Collective Agreement you will be on probation for the duration of on-the-job-training.

This probation period is exclusive of any period of leave without pay, full time Language training or leave with pay exceeding 30 consecutive days.

Upon receiving a Licence Endorsement for Ottawa Tower you will be appointed to the above-noted position. The probation period attached to the appointment will be waived by the Regional Administrator.

Your salary on appointment will be calculated in accordance with the Public Service Terms and Conditions of Employment Regulations and AI Collective Agreement.

Most Collective Agreements now in effect require the employer to deduct the amount of membership dues levied by the bargaining agent from the monthly pay of employees in the bargaining unit concerned. Most agreements contain a provision

3. By memorandum dated September 14th, 1984, from his Unit Chief which is attached hereto as Annex "B", the Grievor was advised that effective October 1st, 1984, he would commence French language training.

4. The Grievor attended language training from October 1st, 1984, to January 28th, 1985, during which period the conditions of his employment were as set out in Annex "B".

5. From October 1, 1984, to January 1, 1985, the Grievor was paid at the rate of \$32,867.00. Commencing January 2, 1985, he was paid at the rate of \$34,182.00. The Grievor was reimbursed by the employer pursuant to the employer's interpretation of the collective agreement and the employer's guidelines, attached as Annex C.

6. This agreement is without prejudice to the right of either party to introduce additional evidence at the hearing of the grievance.

Annex A

RE: APPOINTMENT FROM WITHIN THE PUBLIC SERVICE -  
INDETERMINATE

COMPETITION NUMBER	:	82-TC-0-AIR-CC-31
POSITION TITLE	:	Airport/Ground Controller
POSITION CLASSIFICATION:	:	AI-03
POSITION LOCATION	:	Ottawa, Ontario
LINGUISTIC PROFILE	:	English Essential
BRANCH	:	Air Traffic Services

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Dear Mr. Lepoutre:

I am pleased to offer you an indeterminate appointment to the above-noted position. Your reporting date to

French language Training effective  
Oct. 1, 1984.

- I) You will remain in your substantive position and your rate of pay in the operating employee salary range will not be affected.
- II) For the purposes of the "Special ATC Pension Benefits" (Early Retirement), the period of language training is designated as "Operational Service".
- III) Your status will change to non-operating in accordance with Clause 13.08 of the TB/AI Collective Agreement, and your normal work week will consist of 37½ hours, Monday to Friday.
- IV) Your Operational Facility Premium will be discontinued for the duration of Language Training and will be reinstated on your return to the Unit, in the first month in which you earn ten (10) days pay in an operating status. (Art. 31)

ANNEX C(English version only)

August 27, 1984.

PAY ADMINISTRATION - AI GROUP

In light of the Federal Court decision which nullified TB Minute 784715, we are providing an explanation of the procedures to be followed in determining the pay entitlements applicable to Air Traffic Controllers in the following circumstances:

exempting an employee from check-off on grounds of conscience, i.e. where an employee is a member of a religious organization whose doctrine prevents him, as a matter of conscience, from making financial contributions to an employee organization.

I would like to bring to your attention that employees of the Public Service of Canada are required to observe the "Public Service Conflict of Interest Guidelines." Under Section 6 of these guidelines, employees are expected to disclose to their superiors any business, commercial or financial interests which might be construed as being in actual or potential conflict with their official duties. A copy of the Guidelines on Conflict of Interest is attached. Appendix 1 must be completed and returned to this office as soon as possible.

As a confirmation of your decision is required, please complete the attached statement and return it to the undersigned. If this confirmation is not received within five days, from receipt of this letter, it will be assumed you are not interested in this position.

I wish you continued success in your career and trust you will find your new position challenging and rewarding.

ANNEX B

September 14, 1984

FRENCH LANGUAGE TRAINING

This is to confirm the conditions that apply for the duration of your Continuous

employee salary range at the rate of pay he would have been receiving had he not undertaken the acting assignment. If the acting assignment is for a period of less than thirty consecutive calendar days, no change shall be made to the employee's status in accordance with clause 13.08 of the AI collective agreement. An employee's entitlement to the Operational Facility Premium shall cease when his/her status is changed to non-operational. However, an exception to this would be where an employee has completed ten working days in a calendar month as an operational controller (article 31).

### 3. Training Courses

When an operational employee undertakes training for thirty or more consecutive calendar days and remains in his substantive position during this period, his status is changed to non-operational in accordance with clause 13.08 of the AI collective agreement.

Although the employee's status is changed, his rate of pay in the operating employee salary range is not affected. However, he ceases to be eligible for the Operational Facility Premium during the period of non-operational status, except where the controller has completed ten working days in a calendar month as an operational controller (article 31).

### 4. IFR Conversion Training

When an operational employee is selected for IFR Conversion Training, he/she is appointed to an operational

1. Indeterminate Appointments

When an operating employee is appointed on an indeterminate basis to a non-operational AI position at the same or higher classification level, such an appointment is considered to constitute a promotion in accordance with Section 65 of the Public Service Terms and Conditions of Employment Regulations. The employee's rate of pay on such appointment shall be calculated in accordance with Section 66 of the Public Service Terms and Conditions of Employment Regulations:

"...at the rate of pay nearest the rate of pay he was receiving immediately before the appointment that gives him an increase in pay that is at least equal to the lowest pay increment for the position to which he is appointed."

2. Temporary Assignments

When an operating employee is temporarily assigned to a non-operational position (instructor, projects, etc.) or is assigned duties which correspond to a position classified at the same or higher classification level, he shall be paid in accordance with the acting pay provisions of the AI collective agreement (clauses 14.03 and 14.04) in the non-operating employee salary range. The acting pay calculation issued by Treasury Board is attached for your information. Upon completion of the acting assignment, when the employee returns to his substantive position, he shall be paid in the operating



5. In her opening statement, counsel for the grievor said that the grievor was appointed to an AI-3 position at Ottawa in May 1983. In September 1984, he was sent, by the employer, to receive french language training. The period during which he attended classes began on 1 October 1984, and continued until the end of January 1985.

6. While the grievor was attending language school, the employer placed him on "non-operating" status (paragraph III of Annex B). The question to be determined in the present reference to adjudication is whether, during that period, the grievor ought to have been compensated in accordance with the rates of pay applicable to operating employees or the rates of pay applicable to non-operating employees.

7. She said that it is the position of the grievor that during the period of language training, he ought to have been paid as a non-operating employee. The position of the employer, she said, is that he ought to have been paid as an operating employee but without the operational facility premium provided for in Article 31 of the collective agreement.

8. She said that Article 14.02 of the collective agreement is not helpful here because the certificate of appointment does not specify whether the appointment is to a position of AI-3 (operating) or AI-3 (non-operating). Article 14.02 reads:

training position in the ATC unit for which he/she is destined upon successful completion of the training. His/her classification level of the new position shall be the same as the level of the position he/she occupied at the time of his/her selection. The employee's status is changed to non-operational at the commencement of classroom training. This status change does not result in a change to the employee's rate of pay. When the employee commences on-the-job training, his status is changed to operational with no effect on his rate of pay. While in non-operational status, the employee is not entitled to the Operational Facility Premium and he assumes the 37½ hour work week.

5. Maintenance of Salary

When an operational employee becomes subject to Letter of Understanding 3-82 of the AI collective agreement (Maintenance of Salary), his status shall be changed to non-operational in accordance with clause 13.08 of the collective agreement. His rate of pay in the operating employee salary range is not affected and he ceases to be eligible for the Operational Facility Premium.

4. During the proceedings, it was also agreed between the parties that the grievor's certificate of appointment provides that the classification of his position is at the AI-3 level.

11. The Treasury Board minute was challenged before the Federal Court of Canada which, in February 1984, held that it was without effect. As a result, it was necessary for the Department to review the pay provisions of the collective agreement and issue guidelines on their application in order to ensure uniformity of application across the country. These guidelines are Annex C to the agreed statement. This document was prepared to reflect the employer's understanding of the collective agreement.

12. He said that after reviewing the collective agreement, the employer had concluded that it was silent on the matter of the pay scales applicable to air traffic controllers whose status changes. Neither the collective agreement nor the Public Service Terms and Conditions of Employment authorized a change in the applicable pay scales.

13. With respect to the grievor, he said that Section 3 of Annex C applies. The section deals with training courses of more than 30 days duration. It provides that the grievor's status be changed "to non-operational in accordance with clause 13.08 of the AI collective agreement". It also provides that "his rate of pay in the operating employee salary range is not affected" and that he is not to receive the operational facility premium except in respect of a month in which he had completed 10 working days as an operational controller.

14. Article 13.08 of the collective agreement reads:

14.02 An employee is entitled to be paid for services rendered at:

(a) the pay specified in Appendix "A" for the classification of the position to which he is appointed, if the classification coincides with that prescribed in his certificate of appointment,

or

(b) the pay specified in Appendix "A" for the classification prescribed in his certificate of appointment, if that classification and the classification of the position to which he is appointed do not coincide.

9. Mr. Bruce Ogilvie testified for the employer. He said that he has been a staff relations officer at Transport Canada for three years and had previously been a personnel officer for 14 years.

10. He said that he had participated in the preparation of the guidelines submitted as Annex C to the agreed statements. For some three years prior to July 1984, the entitlements of air traffic controllers whose status was changed had been determined in accordance with Treasury Board minute TB 784715 also known as Terms and Conditions Governing the Application of Pay to Members of the Air Traffic Control Group. This document had provided guidelines for the interpretation of the pay provisions of the collective agreement and the Public Service Terms and Conditions of Employment in respect of air traffic controllers.

16. He said that Annex C ceased to have effect from 22 February 1985. On that date a new collective agreement was executed (Code 402/85) which made other provision for the matters dealt with in Annex C. He identified Letter of Understanding 12-85 of 22 February 1985, as the provision which would now apply in a case such as that of the present grievor.

17. In cross-examination he said that Treasury Board Minute TB 784715 had not been in effect when collective agreement 402/82 was executed in May 1982. During the summer of 1982, the employer and the bargaining agent attempted to reach agreement on matters related to changes in employee status as between operating and non-operating. These negotiations proved fruitless and, consequently, Treasury Board in its capacity as the employer, promulgated TB 784715.

18. In reply to further questioning by counsel for the grievor, he admitted that Annex C is simply the department's interpretation of the collective agreement and that as such it could be seen as an employer document.

ARGUMENT FOR THE GRIEVOR

19. Counsel for the grievor said that the provisions of collective agreement 402/82 apply in the present case. In May 1983, the grievor was appointed to the position of airport ground controller at Ottawa airport at the AI-3

13.08 Change in Employee Status

It is understood that certain employees, because of the nature of their duties, may be required to change from an operating employee to a non-operating employee for varying periods of time. No change in such an employee's status will be made unless the requirement to change is consistent for thirty (30) consecutive calendar days or more. Advance notice of such requirement which will involve a change in the employee's status should be given at the earliest possible date but in any case no less than fifteen (15) calendar days prior to the earliest date that the changed circumstances may commence. If notice of the change is less than fifteen (15) calendar days, the employee shall be paid a premium of four (4) hours' pay at the straight-time hourly rate for each shift or day worked during the period of the change for which he had not received fifteen (15) calendar days' notice. Such notice shall not be required nor is the premium payable when the employee concerned is promoted, is acting in a higher level position or the change is in response to the employee's request.

This clause does not apply to an Air Traffic Controller-in-Training prior to the completion of his ab-initio training at TCTI.

15. According to the witness, this provision of the collective agreement authorizes the employer to change the status of the grievor in the present case.

provides that the normal work week for operating employees shall be 34 hours.

(2) Article 31 provides for the payment of an Operational Facility Premium (OFP) to operating employees. The relevant provisions of Article 31 read:

ARTICLE 31

OPERATIONAL FACILITY PREMIUM

31.01 Effective January 1, 1981 in addition to all other entitlements he may be eligible to receive, each operating employee employed in an Area Control Centre, the Airspace Reservation Unit, a Control Tower, or a Terminal Control Unit, shall be paid a premium for each calendar month in which the employee has earned at least ten (10) days' pay while subject to this clause, based on the formula

Annual Operational Facility Premium as specified in Appendix B to this agreement for the facility in which the employee is employed, divided by twelve (12).

Such premium shall not constitute a part of rates of pay for the purposes of this agreement and the Public Service Superannuation Act.

23. Counsel explained that the level of CFP was calculated in accordance with the complexity of the air traffic control operations at the various airports. Appendix B of 402/82 shows that this payment varies from a low of \$200 at a facility such as Brandon airport to a

level (Annex A). In September 1984, he was notified by the employer that he would be required to attend french language training for a four month period commencing 1 October 1984 (Annex B). He was then made subject to the terms of Annex C.

20. She referred to paragraph I of Annex B. It informed the grievor that he was to remain "in the operating employee salary range". Under the terms of collective agreement 402/82 as extended by the Public Sector Compensation Restraint Act his salary as an operating employee, as from 1 January 1984, was \$32,867. On 2 January 1985, in accordance with Appendix A of collective agreement 402/85, his salary increased to \$34,182. On that date he had not yet completed his increment period and he was, therefore, compensated in accordance with the first step in the AI-3 scale for operating employees.

21. Paragraph II of Annex B, she said, is not of concern here. It deals with pension benefits and early retirement provisions.

22. Paragraph III of Annex B changes the grievor's status from that of an operating employee to that of a non-operating employee. This change was made in accordance with Article 13.08 of the collective agreement. This change produced certain consequences. She referred to collective agreement 402/82 and explained those consequences:

(1) Article 13.01 provides that the normal work week for non-operating employees shall be 37½ hours exclusive of lunch periods. Article 13.02



present case, the grievor, being in the first step of the operating scale would be moved to the first step of the non-operating scale. She said that while the clarification provided by this Letter of Understanding is "nice to have", it is not necessary in order to make a determination in the present reference to adjudication. She said that under the provisions of collective agreement 402/82 it is evident that an employee who is classed as a non-operating employee must be compensated at the rates of pay applicable to that class of employees.

28. She referred again to collective agreement 402/82 and noted the first definition provided therein:

#### DEFINITIONS

Unless specified elsewhere in this Agreement, the following definitions will apply throughout this Agreement:

- (1) For the purpose of this Agreement the following shall be considered as operating employees:
  - (a) all shift supervisors and controllers in Area Control Centres, Terminal Control Units, Control Towers, and in the Airspace Reservation Unit;
  - (b) all Air Traffic Controllers-in-Training in Area Control Centres, Terminal Control Units or Control Towers;
  - (c) Performance Development Officers and Data Systems Co-ordinators.

high of \$2000 at Toronto Centre. The OFP at Ottawa Tower is \$900. (All figures are annual). When the grievor ceased to be an operating employee, he ceased to be eligible for CFP payments.

24. Other points raised included the loss of pay at time and one-half for holidays with the substitution of lieu days, lost opportunities for overtime pay, loss of additional days of rest which result from the use of shift cycles and so on.

25. She said that as a non-operating employee the grievor had lost the benefits which he enjoyed by virtue of his status as an operating employee yet the employer refused to pay him the higher non-operating salary which was intended to compensate for those benefits. The grievor, in effect, had been given the worst of both worlds.

26. She referred to the salary scales in collective agreement 402/82 as extended and pointed out that the first step in the AI-3 rate for non-operating employees, effective 1 January 1984, was \$34,924. The grievor had been paid, as shown above, at the rate of \$32,867, a difference in favour of the employer of \$2,057.

27. She referred to Letter of Understanding No. 12-85, which forms part of collective agreement 402/85. This letter provides that an operating employee whose status is changed to that of a non-operating employee is to be compensated at the same step in the non-operating scale that he had attained in the operating scale. Thus, in the

language training had not been addressed in collective agreement 402/82 and that is why it was necessary to negotiate Letter of Understanding 12-85 to cover such situations. But this letter of understanding was not part of the collective agreement which was in force at the time that the grievor was in attendance at language school and his case cannot be brought within its terms. Furthermore, any attempt to apply the terms of the letter of understanding to the present case would be an instance of amending or adding to, the collective agreement and this I am prohibited from doing by Section 95(2) of the Public Service Staff Relations Act.

31. She said that in the absence of Letter of Understanding 12-85, the collective agreement was silent on the grievor's case and that, therefore, the regulation of such cases came within the provisions of Article 3 of the collective agreement. Article 3 reads:

ARTICLE 3

MANAGEMENT

3.01 The Association recognizes and acknowledges that the Employer has and shall retain the exclusive right and responsibility to manage and operate the Air Traffic Control Service in all respects including, but not limited to, the following:

- (a) to plan, direct and control operations, to determine the methods, processes, equipment and other matters concerning the Air Traffic Control Service, to determine the

All employees other than those listed above shall be considered non-operating employees.

She also referred to Article 13.08 providing for changes in the status of employees as between operating and non-operating. She said that these provisions demonstrate that the status of an operating or non-operating employee is not part of the classification of a position but, rather, depends upon the functions actually performed by the employee. Thus, there is nothing unusual about a change in status and, as the collective agreement makes clear by providing two distinct pay scales, it is intended that when the status of an employee changes the applicable pay scale must change also. Such a view is the only one that is consistent with the collective agreement and with the rationale behind the specification of two distinct pay scales.

29. In conclusion, she asked me to find that during the period when the grievor was attending language training and was classed by the employer as a non-operating employee, he was entitled to be compensated in accordance with the first step in the pay scale applicable to non-operating employees at the AI-3 level.

#### ARGUMENT FOR THE EMPLOYER

30. Counsel for the employer said that the question of which pay scale was applicable to the grievor in the circumstances in which he found himself while attending

she said that attendance at language school must be seen as an opportunity for the grievor and that it is not unreasonable to expect that he would be called upon to make some sacrifices in return for this opportunity.

REPLY FOR THE GRIEVOR

34. Counsel for the grievor said that if the collective agreement is truly silent on a matter then it lies within the powers of management to make provision for that matter. However, it is not the case that collective agreement 402/82 is silent with respect to the point at issue in the present reference to adjudication.

35. She said that collective agreement 402/82 sets out two distinct rates of pay and provides a definition for the determination of the rate applicable to any particular employee. There is, therefore, no gap in the collective agreement and the employer cannot claim the right to compensate an employee in accordance with one pay scale if, in accordance with the terms of the collective agreement, he is entitled to the compensation rates set out in another scale.

36. She said that it is clear by the terms of collective agreement 402/82 that the grievor ought to have been compensated according to the salary scale applicable to non-operating employees while he was in attendance at language school. She admitted that in asking that I find the grievor was entitled to be compensated at the first step of the AI-3 pay scale for non-operating employees she

location of facilities and the extent to which these facilities or parts thereof shall operate;

- (b) to direct the working forces including the right to decide on the number of employees, to organize and assign work, to schedule shifts and maintain order and efficiency, to discipline employees including suspension and discharge,

and it is expressly understood that all such rights and responsibilities not specifically covered or modified by this Agreement shall remain the exclusive rights and responsibilities of the Employer.

She noted especially the concluding words of this article and said that in the absence of specific provisions in the collective agreement the employer was entitled to issue the document affixed to the agreed statement as Annex C.

32. She said that it was merely an assumption on the part of counsel for the grievor that the pay scale applicable to any employee is determined by their status as an operating or non-operating employee. There was nothing in the collective agreement which so provided and this lacuna was only filled with the execution of Letter of Understanding 12-85 of 22 February 1985.

33. With respect to the argument that the grievor was deprived of the special advantages accruing to operating employees when he was assigned to attend language school,

39. The applicable collective agreement (402/82) provides a definition by which employees may be classed as either operating or non-operating. There is no question but that while attending language school the grievor was not, by that definition, an operating employee. By the concluding words of the definition he must, therefore, have been a non-operating employee.

40. Article 13.08 of the collective agreement provides for temporary changes of status of 30 days or more. Article 13.01 specifies a work week of  $37\frac{1}{2}$  hours for non-operating employees while Article 13.02 specifies a work week of 34 hours for operating employees. Article 31 makes provision for an Operational Facility Premium that is payable to certain operating employees. There is no provision for comparable payments to non-operating employees. Finally, the collective agreement provides two separate and distinct sets of pay scales, one of which is clearly intended to apply to operating employees and the other, equally clearly, is intended to apply to non-operating employees.

41. Thus, the status of any member of the bargaining unit may be determined by reference to the definition provided in the collective agreement and that determination has consequences for the employee as set out in various other provisions of the collective agreement. The employer cannot, under the terms of the applicable collective agreement, pick and choose between those consequences according to its taste.

may have been anticipating Letter of Understanding 12-85 as alleged by counsel for the employer. She said that she would therefore, amend her request and ask only that I find that the grievor was entitled to be compensated as a non-operating employee at the AI-3 level and she would be content to leave it to the employer to determine the precise step within that range at which he was to be compensated.

37. With respect to the argument that the grievor ought to be willing to make sacrifices for the opportunity to receive language training, she said that it was the employer who decided that the grievor was to attend language school and if it is the employer's view that he ought to make sacrifices in return for this opportunity then the employer ought to negotiate the precise nature of those sacrifices with the bargaining agent rather than imposing them unilaterally in violation of the collective agreement.

#### REASONS FOR THE DECISION

38. The point at issue in the present reference to adjudication is whether, under the terms of the applicable collective agreement, the grievor, while attending language training, was entitled to be compensated in accordance with the pay scales applicable to non-operating employees or, whether the employer was entitled to compensate him in accordance with the pay scales applicable to operating employees. I find, for reasons given below, that the grievor was entitled to compensation as a non-operating employee during the period in question.



their category. This is more than a mere "assumption", it is clearly central to the entire scheme of compensation as set out in the collective agreement.

45. Counsel for the employer also argued that attendance at language school is an opportunity for the employee and that, therefore, it is not unreasonable to expect that employees might be called upon to make sacrifices for the sake of such an opportunity. While I agree that attendance at language school is indeed an opportunity for the employee, I find myself obliged to conclude that if the employer wishes employees to sacrifice benefits to which they are entitled under their collective agreement then it ought to negotiate the nature and extent of those sacrifices beforehand with the bargaining agent.

46. In summary, it is my finding that during the period when the grievor was classed as a non-operating employee, he was entitled to be compensated in accordance with the pay scales then applicable to non-operating employees. I will remain seized of this matter in the event that the parties experience any difficulty in implementing this decision.

David Kwavnick,  
Board Member.

OTTAWA, January 30, 1986.

42. In the present case the grievor's status was changed, correctly in accordance with the definition, to that of a non-operating employee. However, he was compensated on the basis that he remained an operating employee. Nevertheless, his hours of work were stipulated by the employer to be those of a non-operating employee under the provisions of Article 13.01 of the collective agreement. A collective agreement is not a chinese menu. The employer cannot select pay rates from column A and weekly hours of work from column B and thereby create an employment situation which deprives the employee of benefits to which he is entitled under the terms of his collective agreement — either higher pay scales or a shorter work week.

43. Counsel for the employer argued that there is no necessary connection between the status of an employee, either operating or non-operating, and the pay scale in accordance with which the employee is to be compensated. She said that any such connection is merely "an assumption". On the basis of this argument, she proceeded to find a gap in the collective agreement which she then filled with management rights as per Article 3 of the collective agreement.

44. With respect, I cannot accept this line of argument. When a collective agreement clearly defines two categories of employees and, further, sets out two pay scales, each of which is clearly labelled for one of the categories of employees, then it must be taken to have been the intention of the parties to the agreement that employees in each category will be paid in accordance with the pay scale which bears the label applicable to