

Board File no.: 166-2-15381

No. 73

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

BETWEEN:

MICHEL PINARD,

grievor,

- and -

TREASURY BOARD  
(Transport Canada),

employer.

Before: J. Galipeault, Board Member.

For the grievor: A.C. Fischer, Canadian Air Traffic Control  
Association.

For the employer: R. Lee, Counsel.

Heard at Ottawa, January 31, 1986.

ARTICLE 16  
CODE 402/85  
DENIAL OF  
LIEU DAYS



## DECISION

The grievor, M. Pinard, an air traffic controller, AI-4, for Transport Canada, in Dorval, Quebec, submitted July 13, 1985 the present grievance against his employer's decision to deny him, without any valid reasons, a statutory holiday he had requested for July 13, 1985. Mr. Pinard stated that the employer had contravened articles 1.01 and 16.05 of his collective agreement plus article 6 of Unit Policy 1-AI. The grievor requested, as corrective action, that he be remunerated pay at the rate of time and one half for the hours he worked July 13, 1985.

The employer told the grievor, at the last level of the grievance procedure, that it considered that the decision of local management to augment the number of controllers in service July 13 and 14, 1985 was reasonable in order to satisfy service needs. Therefore, the corrective action requested was denied.

Articles 1.01 and 16.05 of the relevant collective agreement are as follows:

1.01 The purpose of this Agreement is to establish and maintain harmonious relationships between the Employer, the Association and the employees and to set forth herein the terms and conditions of employment upon which agreement has been reached through collective bargaining.

16.05 For operating employees,

(a) The designated holidays in a fiscal year shall be anticipated to the end of the year and "lieu day" credits established.

- (b) For the purpose of paragraph (a) above only, in those years wherein Good Friday and/or Easter Monday fall in the month of March they shall be deemed to fall in the month of April, except in any case where the application of this paragraph would cause an employee to lose credit for the holiday(s).
- (c) Lieu days may be scheduled as an extension to vacation leave or as occasional days and shall be charged against the lieu day credits on the basis of one shift for one day.
- (d) Consistent with operational requirements of the service and subject to adequate notice, the Employer shall make every reasonable effort to schedule lieu days at times desired by the employee.
- (e) Where in any fiscal year an employee has not been granted all of the lieu days credited to him, he may elect to carry forward into the next fiscal year the unused portion of his lieu days.
- (f) Lieu days earned in the fiscal year will be utilized before lieu days carried forward from the previous fiscal year.
- (g) At the employee's option, any lieu days which cannot be liquidated by the end of the fiscal year in which they are earned will be paid off at the employee's daily rate of pay in effect at that time.

- (h) In cases where lieu days from the previous fiscal year have not been fully utilized by the end of the current fiscal year, any outstanding carry-over lieu day credits will be paid off at the employee's daily rate of pay in effect at that time. This provision does not apply to lieu days accumulated prior to June 1, 1982.
  
- (i) Any leave granted under the provisions of this clause in advance of holidays occurring after the date of an employee's separation or commencement of retiring leave or after he becomes subject to clause 13.09 shall be subject to recovery of pay.

Paragraphs 4 and 6 of Unit Policy 1-AI on annual leave are to the following effect:

4. Number of persons on leave

Based on the approved establishment the number of persons allowed shall be as follows:

For each sub-unit\* the number permissible is three (3):

One (1) supervisor and two (2) controllers

Only one (1) DSC at a time

\* The number permissible for the South sub-unit is four (4):  
One (1) supervisor and three (3) controllers.

NOTE 1: There is a possibility of overlap exceeding the above mentioned numbers. The overlap is limited to an employee who takes a complete cycle of annual leave and the overlap is only possible once per each employee at the beginning or at the end of a cycle.

NOTE 2: An additional controller could be approved in lieu of a supervisor, where no annual leave has been requested by a supervisor fifteen (15) days or more prior to the requested date.

6. Ad-hoc leave

Any annual leave and/or lieu days request made with less than two (2) months notice shall be considered as ad-hoc leave and will be granted, subject to the following conditions:

- A) subject to the operational requirements;
- B) the approval should not cause any overtime nor shift change premium;
- C) for request made with less than fifteen (15) days: notwithstanding A) and B) whenever possible every effort should be made to accomodate as many employees as possible;

- D) once assigned and inserted on the work schedule, ad-hoc leave must be taken;
- E) should there be many request for ad-hoc leave, the priority is given to the person who has taken the least amount of leave over the last four (4) weeks. Seniority will be used as a tie breaker.

#### EVIDENCE

Mr. M. Pinard was heard with respect to his own grievance. He filed two exhibits. Mr. V. Della Serra testified for the employer. The employer filed three exhibits.

The grievor stated that he is an IFR controller. He works at the east sub-unit in Dorval. The east sub-unit gives radar services to the Ottawa-Montreal Region and also for a distance of sixty miles to the USA boundary. Mr. Pinard's sub-unit covers, with services with and without radar, Quebec City to Gaspé and also from the USA boundary to Shefferville. Talking about the traffic for the eastern part of Quebec, Mr. Pinard said that such traffic comes 15% to 20% from airlines like Quebecair and Air Canada, and 80% to 85% from small airplanes, which carry from six to twelve people. The grievor explained that light aircraft like to fly VFR if the weather permits. The witness declared that the controllers are more busy in the tower if the visibility is poor.

The grievor recalled that Saturday July 13, a day he was supposed to work, he had some people coming to work at his house because some renovations had to be done. He had to move his family out of the house that day. Mr. Pinard said that he arranged with another controller to change shifts so he could take July 13 off. He made, July 10, a first request to his employer for leave for July 13. The shift manager called him and told him his request was refused. The staff for the day shift on weekends normally consists of 3 controllers plus one supervisor. There were eventually, at the day shift, on July 3, 4 controllers plus one supervisor. On weekdays, the staffing policy is to the effect that there are 4 controllers plus one supervisor. Mr. Pinard revealed that the employer approved his shift change with another controller.

Mr. Pinard said that on July 12, he put in another request. It was denied by shift manager Jean Blais. Mr. Blais told the grievor that since there was a golf tournament that day, July 12, there was a possibility that some participants might not be able to work the next day, Saturday July 13, and that he was thus expecting sick calls. Mr. Blais told Mr. Pinard that he should put in a new request on the morning of July 13. The grievor was supposed to work at 8.00 AM on July 13. He said that he called the east sector Saturday morning and asked if anybody had reported sick. He was told nobody had. Mr. Pinard called the shift manager Barry Downey at 6.45 AM and asked for annual leave for that day. Mr. Downey checked with his



superior and called back to say that the request was denied. Mr. Downey told the grievor he checked with his superior because there was "anticipated traffic" for that Saturday morning. Mr. Pinard went to work at the requested time and then filed the present grievance.

The grievor stated that when he got to his work place, Saturday morning July 13, he put for seven hours, six hours, five hours, four hours, three hours, two hours and one hour. The witness said he worked until 1.00 PM when he was granted a three-hour leave. The three-hour leave was granted between noon and 12.30 PM. Mr. Pinard, while at work, checked the weather and he found that there was a 3000 foot ceiling. The planes could fly VFR. The grievor declared that controllers are more busy when the ceiling is below 3000 feet. Mr. Pinard affirmed that Saturday morning July 13 was quiet. It was the usual Saturday morning. Many airlines do not fly on Saturdays. The witness revealed that he had worked the same hours three Saturdays before and the traffic on July 13 was the same as on that day. Mr. Pinard declared that it may happen that, on some weekends, 4 controllers instead of 3 are at work. The grievor referred to paragraph 6 of Unit Policy 1-AI which states that "for request for annual leave and/or lieu days made with less than fifteen (15) days: notwithstanding A) and B) whenever possible every effort should be made to accomodate as many employees as possible" and added that if more than the adequate personnel is scheduled, ad hoc leave will be allowed. The adequate staffing on Saturdays is 3 controllers plus one supervisor. On July 13, 4 controllers were at work plus one supervisor. The grievor recalled that on July 13, he left work at 1.00 PM. He added that there is a rush of traffic, on Saturdays, between 1.00 and 2.00 PM.

When cross-examined, Mr. Pinard stated that if the controllers were to be busy on Saturdays, it would be between 1.00 and 2.00 PM.

Mr. V. Della Serra was, at the time of July 1985, operations manager at the Montreal ATC. He had been appointed the previous May. Six shift managers report to him. Jean Blais is one of Mr. Della Serra's shift managers. Twenty supervisors report to the six shift managers. There are five supervisors per sub-unit. Mr. Della Serra commented on exhibit E-1, Flight plan stats analysis for Montreal, for every Saturday and Sunday from June 1, 1985 to July 28, 1985, inclusive. The abbreviations PCA, PHV and PLE represent the sectors covered by the east sub-unit, Mr. Pinard's sub-unit. The stats show that on Sunday July 28, 1985, the number of flight plans, initial plus other, for the east sub-unit, was 186. For Saturday July 27, the number was 182. Mr. Della Serra affirmed that by looking at exhibit E-1, he can determine how busy each sector was, hour by hour. The witness added that the stats in exhibit E-1, which are not given to shift managers and supervisors, are used by him for analysis purposes. The shift managers and supervisors knew that there was an increase in volume during weekends.

The witness said that when the weather is down, the traffic increases. Light aircraft only fly VFR when the weather is nice. When the weather is down, they ask for ATC's services. Mr. Della Serra declared that although weather forecasts exist and are used, weather is still difficult to predict in the eastern area. He explained

that there were 4 controllers plus one supervisor at work Saturday July 13 and Sunday July 14 because of the application of the 5-4, 5-3 schedule. Mr. Della Serra added that he is not obliged to have 4 controllers at work. The witness said that mid-June 1985, after having looked at the numbers, he came to the conclusion that the traffic was going up on weekends and he told his shift managers about it. The controllers were overstaffed by one on July 13 because it was the shift managers' opinion that there was "anticipated traffic" for that day. If there had been no traffic anticipated for July 13, Mr. Pinard would have been allowed his leave. The witness declared that it is easier to predict the weather on the morning of the same day than before. He did not know what the weather was on July 13. Mr. Della Serra said that on July 13, following the provisions of paragraph 4 of exhibit G-2, 2 controller plus one supervisor were on leave, which is the maximum allowed.

When cross-examined, Mr. Della Serra said that the numbers 0 to 23 which appear at the complete left of each page of exhibit E-1 concern not local time but Greenwich meantime. 0 Greenwich meantime for Saturday July 27 meant 9.00 PM local time. The Greenwich meantime for a controller working from 8.00 AM to 4.00 PM local time would correspond to numbers 12 to 20. The witness stated that exhibit E-1 was used by him for his decision-making process. He added that he discussed with his shift managers the different trends shown in exhibit E-1. Mr. Della Serra stated that he does not determine staffing on a day-to-day basis.

The grievor's representative, commenting on the text of article 16.05(a) of the relevant collective agreement, argued that the evidence clearly showed that the employer was unreasonable when it denied, three times, Mr. Pinard's requests for a lieu day for July 13. It is to be noted that the employer had previously approved the shift change made by the grievor with another controller. Since the usual staffing on weekends at the east sub-unit is 3 controllers plus one supervisor, Mr. Pinard believed that his leave request would be accepted. It is uncontradicted evidence that when the grievor asked Mr. Blais for leave on July 12, it was denied, and he was told to call again the next day, because there was a golf tournament going on the same day and Mr. Blais was concerned that some people would call in sick the next day. If nobody was sick July 13, Mr. Pinard could get his leave for the same day. The grievor called on the morning of July 13 and nobody had reported sick. His request was nevertheless denied because of the level of traffic anticipated for that day. Mr. Pinard worked July 13, from 8.00 AM to 1.00 PM, then was granted annual leave for the last three hours of his shift. The evidence adduced showed that on July 13, the weather was good, planes could fly VFR and it was a normal, quiet Saturday.

Mr. Fischer, commenting on the content of exhibit E-1, the Flight Plan Stats Analysis for Montreal in June and July 1985, advances that, with respect to the present grievance, the concern is only on Saturdays. While the average flight plan stats show an average of 212 for Saturdays from June 1st to July 13, the stats for July 13 are 198.

It shows no trend toward an increase. The employer had no reason to deny Mr. Pinard's request. The weather was good, the traffic was below average and the grievor had made a previous shift change with a fellow controller, shift change approved by the employer. The grievor's representative stated that the granting of leave by the employer to Mr. Pinard would not have cost any overtime to the employer. Mr. Fischer contended that Unit Policy 1-AI allowed the grievor to be granted the leave requested.

Counsel for the employer argued that, with respect to the present grievance, three paragraphs of the relevant collective agreement are most pertinent. They are 3.01(b), which has to do with management's rights; 13.02(a), which says that shift cycles cannot be changed unless certain conditions are met, which was not the case here, and 16.05(d), which says that operational requirements have to be taken into account before a request for a lieu day is granted to an employee. Uncontradicted evidence adduced showed that in June and July 1985 there was an increase of volume at the east sub-unit on weekends and the shift manager responsible having in his mind safety in the air, was thus acting reasonably when he denied Mr. Pinard's request for July 13. The employer, with everything that it had to consider, could not take a chance and let the grievor have his leave on July 13. If the shift manager concerned had let Mr. Pinard go and an increase in air traffic volume had continued and an unfortunate accident had happened, one can imagine the consequences.

Mr. Lee submitted that the supposed evidence put forth by the grievor's representative to the effect that a golf tournament was going on on July 12 and that participants could have called in sick the next day was pure hearsay. It is to be taken into account that the grievor's representative did not call in Mr. Blais as a witness in order to corroborate Mr. Pinard's version. That supposed evidence should be thus rejected but if it is not rejected, it would not change all that much the evidence heard in the present matter. Counsel for the employer advanced strongly that, with regard to air safety, the employer has a serious obligation to the public and it could not fool around with the figures it had in its possession, which showed an anticipated increase in traffic for the weekend of July 13 and 14.

Counsel for the employer, commenting the text of article 16.05(d) of the collective agreement, said that the employer is only asked to make a reasonable effort, that is an effort which would be considered reasonable by a normal average person. When Mr. Pinard made his second request for leave July 12, he was not told a straight no. He was told to call again the next morning. When he called, it was denied. The grievor came to work and was finally let go at 1.00 PM. The employer acted reasonably. The employer, because of the anticipated increase in traffic for the weekend of July 12 and 13, could not operate with 3 controllers as it usually did. It could not take any chances and it had to operate with 4 controllers.

Mr. Lee advanced that there is nothing in the relevant collective agreement to the effect that the employer has to automatically grant an employee's request for leave. It is always subject to operational requirements and reasonableness. The only expert, with respect to safety and security in the air, is the employer. It was argued that if the grievance were to succeed, I would be amending the collective agreement, I would go against section 7 of the Public Service Employment Act and of the Financial Administration Act and I would violate section 3 of the collective agreement. An adjudicator should be very reluctant to give an opinion as to safety in the air. Mr. Pinard, on another hand, never showed that the employer acted in bad faith towards him when it denied his request for leave. The evidence is, on the contrary, to the effect that the employer acted reasonably with him.

The grievor's representative replied that I should take note that, with respect to the wording of article 16.05(d), the obligation is on the employer to make every reasonable effort to schedule lieu days at times desired by the employee. Mr. Fischer again argued that the flight plan stats filed for June and July 1985 do not show, from one Saturday to another Saturday, an increase in "anticipated traffic".

#### REASONS FOR DECISION

As we know, the grievor, M. Pinard, submitted the present grievance because, as he said, his employer denied him, without any valid reasons, a statutory holiday he had

requested for Saturday July, 13, 1985. Mr. Pinard stated that the employer had contravened articles 1.01 and 16.05 of his collective agreement plus article 6 of Unit Policy 1-AI. The grievor requested, as corrective action, that he be remunerated pay at the rate of time and one half for the hours he worked July 13, 1985.

Article 16.05(d) of the relevant collective agreement states that:

Consistent with operational requirements of the service and subject to adequate notice, the Employer shall make every reasonable effort to schedule lieu days at times desired by the employee.

As we read the above text, we see that when the employer schedules lieu days at times desired by an employee, it has to be consistent with operational requirements; subject to adequate notice, and the Employer shall make every reasonable effort to schedule said lieu days.

There is uncontradicted evidence that adequate notice was given by the grievor to the employer. There is also uncontradicted evidence that before it denied Mr. Pinard's request for leave, the employer had approved his change of shift with another employee.

What I have to answer now, with respect to the evidence which was adduced before me, is, was the employer's denial consistent with operational requirements, and did the employer make every reasonable effort to schedule a a lieu day at the time desired by Mr. Pinard.



When Mr. Pinard testified before me, he said that the staff at the east sub-unit for the day shift on weekends normally consisted of 3 controllers plus one supervisor. When the operations manager was heard, he stated that, although on the weekend of July 13 and 14, the 5-4, 5-3 schedule was on, he was not obliged to have 4 controllers at work.

The grievor recalled, at the hearing, that at 6.45 AM, Saturday July 13, as he was supposed to start to work at 8.00 AM later that day, he called shift manager Barry Downey and asked for lieu leave for that day. Mr. Downey checked with his superior and called back to say that the request was denied. Mr. Downey told the grievor he checked with his superior because there was anticipated traffic for that Saturday morning. When Mr. V. Della Serra testified, he said that in mid-June 1985, after having looked at the numbers (shown in exhibit E-1), he came to the conclusion that the traffic was going up on weekends and he told his shift managers about it. The controllers, added Mr. V. Della Serra, were overstaffed by one on July 13 because it was the shift managers' opinion that there was anticipated traffic for the day. If there had been no anticipated traffic for July 13, Mr. Pinard would have been allowed his leave. There is thus, as far as I am concerned, uncontradicted evidence that the grievor's request for leave for July 13 was denied, not because there was anticipated traffic for the weekend of July 13 and July 14 but because there was anticipated traffic for the particular day he requested, that is only Saturday July 13, 1985.

Does the evidence adduced show that there was "anticipated traffic" for Saturday July 13? As we know, Flight Plan Stats Analysis for Montreal, including Mr. Pinard's east sub-unit, for June and July, 1985 weekends, were filed as E-1. A document, filed as E-2, showed the "measured volume" for each Saturday and Sunday, except one, of June and July 1985. As we are only concerned with the traffic on Saturdays, the stats, shown for every Saturday from June 1, to July 6, that is the six Saturdays before July 13, reveal the following "measured volume":

June 1:	189
June 8:	229
June 15:	234
June 22:	220
June 29:	216
July 6:	206

As we can see, the above stats, which were in Mr. Della Serra's possession prior to July 13, show that, for the last three Saturdays prior to Saturday July 13, there is not an increase in traffic but in fact a decrease. More confirmation of that fact is to be added when we learn that, on July 13, the traffic was 198, a decrease from the previous three Saturdays. When Mr. Della Serra testified, he said that after he came to the conclusion that the traffic was going up on weekends, he told his shift managers about it. As Mr. Pinard's request for leave was for only Saturday July 13, and was denied because there was "anticipated traffic" for that day, the shift managers concerned for July 13 should have been told that there was in fact

a decrease the previous three Saturdays, from one Saturday to another. I have come to the conclusion that there was no anticipated traffic for July 13 at Dorval's airport east sub-unit and the employer was not right when it told Mr. Pinard that his leave for July 13 was denied because of that reason. That reason, I must add, could have been valid if the request had been for a Saturday previous to July 13.

Uncontradicted evidence was also put before me to the effect that on July 13, there was a 3000 foot ceiling at the Dorval airport and that the planes could fly VFR. Mr. Pinard worked from 8.00 AM to 1.00 PM and said that it was quiet at his sub-unit. It was the usual Saturday morning. When Mr. V. Della Serra testified, he stated that when the weather is down, the traffic increases. Light aircraft only fly VFR when the weather is nice. When the weather is down, they ask for ATC's services. Since it was uncontradicted evidence that, on July 13, there was a 3000 foot ceiling and that the light aircraft could fly VFR, one can assume that ATC's services were not much required that day. Three controllers plus one supervisor could have been adequate staff from 8.00 AM to 1.00 PM. In fact, since Mr. Pinard was let go at 1.00 PM, there was certainly not an increase in traffic. When the grievor called early Saturday morning, he was not told to come in because of expected increase in traffic anticipated due to bad weather but because there was supposed to be "anticipated traffic" for that day.

I must now answer if the employer made every reasonable effort to schedule a lieu day at the time desired by

Mr. Pinard. I do not think so, in part for the reasons stated in the above paragraphs. I have taken note that article 16.05(d) does not say that the employer shall make "a" reasonable effort to schedule lieu days at times desired by the employee but it shall make "every" reasonable effort. I think that if the parties concerned have come to the conclusion that the wording in the relevant article shall say that the employer shall make every reasonable effort, instead of a reasonable effort, there was good reason for it. The word "every" instead of the word "a", put in the text of article 16.05(d), means that a stronger effort on the part of the employer has to be made. It means that, consistent with operational requirements and subject to adequate notice, the employer must do everything it reasonably can to schedule lieu days at times desired by the employee. The evidence adduced in the present grievance, with respect to what we learned in reference to operational requirements, clearly showed that the employer did not make every reasonable effort to satisfy Mr. Pinard's request for leave for July 13. As we also know, the employer, had it granted the grievor's request, would not have been one controller short since it had previously approved a shift change made by Mr. Pinard with another controller for Saturday July 13, 1985.

When Counsel for the employer argued before me, one of his points submitted was to the effect that the only expert, with regard to safety and security in the air, was the employer, and that an adjudicator should be very reluctant to give an opinion as to safety in the air. I wish to say that when I am rendering the present decision, I am not rendering it as an expert with regard to safety and

security in the air but only as an adjudicator taking into account all the evidence which was adduced before him at the hearing and interpreting, with respect to that specific evidence, the pertinent articles of the relevant collective agreement. As I have previously said in this decision, it is very possible that the employer would have been right in denying a similar request made by Mr. Pinard if that particular request for leave had been for a Saturday other than Saturday July 13. The evidence was just not put before me that, for Saturday July 13, operational requirements required the employer to have absolutely 4 controllers plus one supervisor during the day shift. Mr. Pinard was told that he had to come to work because of "anticipated traffic" and the evidence adduced did not show that that "anticipated traffic" was really coming in, that the traffic was increasing, the previous three Saturdays before July 13, from one Saturday to another Saturday. As all adjudicators' decisions do, in similar cases, my decision only concerns the specific case I had before me.

I conclude that, for all the above reasons, Mr. Pinard's grievance must succeed. I thus declare that the employer should have granted the grievor's request for leave for Saturday July 13. In not doing so, the employer contravened article 16.05(d) of the relevant collective agreement.

As it is seen in the present decision, it was put in evidence, by Mr. Pinard's testimony, that said Mr. Pinard had arranged with another controller to change shifts so he could take July 13 off. It seems that this shift change

was approved by the employer, which employer nevertheless denied afterwards the grievor's request for lieu day for Saturday July the 13. I wish to say that, when I came to the conclusion that the employer should have granted Mr. Pinard's request for leave or lieu day for Saturday July 13, I did not at all take into account the fact that the grievor had arranged with another controller to change shifts so he could take July 13 off. The last fact, with respect to the determination of my decision, was irrelevant.

Mr. Pinard requested, as corrective action, that he be remunerated pay at the rate of time and one half for the hours he worked July 13, 1985. I do not think I should grant that request. The uncontradicted evidence showed that when the employer denied Mr. Pinard's request on the morning of Saturday July 13, it acted in good faith.

Jean Galipeault,  
Board Member.

OTTAWA, March 4, 1986