

File No.: 166-2-15125

No. 34

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

BETWEEN:

JEAN-GUY HAINS,

grievor,

- and -

TREASURY BOARD  
(Transport Canada),

employer.

Before: J. Maurice Cantin, Q.C., Vice-Chairman.

For the grievor: C.H. MacLean, counsel, Canadian Air Traffic Control Association.

For the employer: Luc Leduc, counsel.

( R. LEE REPRESENTED EMPLOYER - ACK )

COLL. AGREEMENT  
CODE 402/82

Heard at Ottawa, on January 27, 1986.

ART. 15

OVERTIME ASSIGNMENTS



## DECISION

This is a reference to adjudication arising from a grievance of Jean-Guy Hains, an air traffic controller for Transport Canada in the Montreal Area Control Centre.

Mr. Hains submits that the employer has contravened the applicable collective agreement bearing code 402/82 by refusing to pay him overtime at two times his straight time hourly rate for the period between 23:00 hours on August 5th and 3:00 hours on August 6th, 1984.

### THE EVIDENCE

The parties produced the following Agreed Statement of Facts:

1. The grievor is an air traffic controller employed in the Montreal Area Control Centre. 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. On August 5th, 1984, the grievor was scheduled to work overtime on the regular afternoon shift at his place of work. He was scheduled to commence work at 14:45 hours and finish work at 23:00 hours.
3. The grievor reported for work and worked as scheduled. At approximately 22:00 hours, the grievor's supervisor requested him to work an additional four hours from 23:00 hours to 3:00

hours on August 6th, 1984. The grievor complied and worked from 23:00 hours on August 5th to 3:00 hours on August 6th, 1984.

4. The grievor was paid at one and one-half times his usual hourly rate for all of the overtime hours worked by him between 14:45 hours on August 5th, 1984, on (sic) 3:00 hours on August 6th, 1984.

THIS AGREEMENT is without prejudice to the right of either party to introduce additional evidence at the adjudication of the grievance.

Pierre Senay also testified on behalf of the employer. He was on the above dates the employer's shift manager. He stated that on August 5, 1984 a number of air traffic controllers had called in sick. He had no alternative but to ask three employees, that is, the grievor and two other air traffic controllers, to work overtime. The grievor was asked at that time to work overtime from 14:45 hours to 23:00 hours on August 5th. Shortly before 23:00 hours, the witness realized that he would need additional help from 23:00 hours to 3:00 hours on August 6th. He asked the grievor to continue to work these additional four hours. He decided not to call anybody else as he needed someone for only four hours. Up until the time when he was asked to work from 23:00 hours to 3:00 hours, the grievor had reason to believe that he would leave work at 23:00 hours. August 5th and 6th were the grievor's first and second days of rest respectively.

ARGUMENTS

Counsel for the grievor argued that subparagraph 15.02(a)(i) of the collective agreement applies and that the grievor was entitled to receive two times his straight-time hourly rate for his work after 23:00 hours. Counsel referred to a letter of understanding dated August 20, 1982 relating to "an employee's overtime assignment" and forming part of the agreement. The question is to determine what is meant by "an employee's overtime assignment". What constituted the grievor's assignment? Was it from 14:45 hours on August 5th to 3:00 hours on August 6th? Surely not. There were two distinct overtime assignments. An assignment requires that a manager make a decision and advise an employee that he is going to be required to work for a certain period of time. The grievor did accept a first overtime assignment and shortly before 23:00 hours, a second one. There were in this instance two separate decisions, two separate requirements and two separate assignments. The second assignment was for a period of four hours, three of them falling on the grievor's second day of rest.

Counsel for the employer replied that the French version of the above letter of understanding merely refers to "une période de travail supplémentaire". A period of overtime comprises simply the time between arriving at and leaving work. If originally, the grievor had been called in to work overtime for twelve consecutive hours, surely there would have been no grievance. At the most, there were two "phases" between 14:45 hours and 3:00 hours the next day but there was only one period of overtime.

REASONS FOR DECISION

Subparagraph 15.02(a)(i) of the collective agreement reads as follows:

An employee shall be paid for overtime worked by him at one and one-half (1½) times his straight-time hourly rate except that:

- (i) if the overtime is worked by the employee on two (2) consecutive and contiguous days of rest, the employee shall be paid at two (2) times his straight-time hourly rate for each hour worked on the second day of rest;

The English version of the letter of understanding dated August 20, 1982 and forming part of the agreement is as follows:

Mr. W.J. Robertson,  
President,  
Canadian Air Traffic  
Control Association,  
Suite 604,  
1 Nicholas Street,  
Ottawa, Ontario  
K1N 7B7

Dear Mr. Robertson:

This is to clarify the intent of the overtime provisions of clause 15.02(a) of the collective agreement expiring December 31, 1982, for overtime worked on days of rest.

Where an employee's over-time assignment does not commence and end on the same day, such assignment shall be considered for all purposes to have been entirely worked:

- (a) on the day it commenced where half or more of the hours worked fall on that day,
- or
- (b) on the day it terminates where more than half of the hours worked fall on that day.

Yours sincerely,

"R.A. Hunt"

R.A. Hunt,  
Negotiator,  
Staff Relations  
& Compensation  
Division.

Received and Accepted

"W.J. Robertson"  
W.J. Robertson

and the French version:

La présente a pour objet d'apporter une précision au sujet de la clause 15.02(a) de la convention collective expirant le 31 décembre 1982, en ce qui concerne les heures supplémentaires effectuées pendant les jours de repos.

Lorsqu'une période de travail supplémentaire s'étend au lendemain, on considère à toutes fins utiles qu'elle est effectuée entièrement:

(a) le jour où elle commence, si au moins la moitié des heures effectuées tombent ce jour-là;

ou

(b) le jour où elle finit, si plus de la moitié des heures effectuées tombent ce jour-là.

Veillez agréer, Monsieur, l'expression de ma considération distinguée.

The grievor did work overtime from 14:45 hours on one day to 3:00 hours on the next day. If the period of four hours which he worked from 23:00 hours is to be considered separately, he would be entitled according to him to be compensated at two times rather than only one and one-half times his straight-time hourly rate.

It seems to me that we have to ask ourselves what was the grievor's overtime assignment? What was his "période de travail supplémentaire"? Was it from 14:45 hours to 23:00 hours and then 23:00 hours to 3:00 hours the next day or simply from 14:45 hours to 3:00 hours? In other words, do we have here one or two overtime assignments or "une ou deux périodes de travail supplémentaire"?



I agree with counsel for the grievor that he (the grievor) was instructed twice by his supervisor to work overtime. The grievor received his first instructions before 14:45 hours. The second instructions were given to him shortly before 23:00 hours. The grievor agreed on two occasions to work overtime. The employer decided on the other hand on two occasions that it needed someone to work overtime. The first time was before 14:45 hours and the second time, before 23:00 hours. The employer no doubt found it easier before 23:00 hours to ask the grievor to work another period of overtime rather than to call in another employee. The employer's manager admitted that he did not call anybody else because the overtime assignment would have been for only four hours.

I am of the opinion that there are in this instance two separate, different and distinct overtime assignments and that for the hours worked between 23:00 hours on August 5th, 1984 and 3:00 hours the next day, the grievor is entitled to be compensated at two times his straight-time hourly rate.

Accordingly, for all these reasons, this grievance is upheld.

J. Maurice Cantin, Q.C.,  
Vice-Chairman.

OTTAWA, February 7, 1986