

File No. 166-2-15191

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

BETWEEN:

PIERRE L. DRAPEAU,

Grievor,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

Before: Guy D'Avignon, Deputy Chairman.

For the Grievor: The grievor himself.

For the Employer: Stephen Barry.

Heard at Quebec City, October 15, 1986.

DECISION

The grievor, Pierre Drapeau, is employed as an air traffic controller at the Val d'Or airport. His grievance concerns a one-day suspension imposed on him by his supervisor in a letter of November 30, 1984 (Exhibit A-3), which reads as follows:

On November 29, 1984, while you were responsible for the position of airport controller, an aircraft was authorized to take off from runway 18, despite the fact that a vehicle had received prior authorization to be on the same runway. This operational negligence or carelessness endangered the safety of the aircraft, the vehicle and the persons on board. Negligence of this type is totally unacceptable. Consequently, you will be suspended for one day on December 4, 1984.

We trust that, in future, you will take the necessary steps to avoid any repetition of this incident.

Should you consider this action unwarranted, you have the right to present a grievance in accordance with the relevant provisions of your collective agreement.

(unofficial translation)

Mr. Drapeau alleges that the employer contravened article 6 of the collective agreement and section 4 of the Personnel Manual. The employer called two witnesses: Messrs. Ghislain Beaudoin and Jean Grandmont. The grievor did not call any witnesses.

Mr. Ghislain Beaudoin is unit chief at the Val d'Or control tower. He is the grievor's superior. He testified that, on November 29, 1984, around 11:15 a.m., Mr. Drapeau informed him that an aircraft had been cleared for take-off while a truck was on the same runway. The witness then met with Miss Henri, a trainee who was on duty at the time of the incident. Mr. Drapeau was in charge of Miss Henri's training, and she had authorized the movement of both the aircraft and the truck. The witness then reviewed the events with the grievor around 2:00 p.m. Mr. Drapeau and Miss Henri were relieved of their duties following this interview. The witness stated that he followed the mandatory procedure in the case of an incident of this kind. He notified the regional manager in Rouyn around 4:00 p.m. He was subsequently informed, around 5:00 p.m., that the investigation would be conducted not by Transport Canada, but by the Canadian Aviation Safety Board. He then notified the grievor that he was to appear at the investigation on the following day, November 30. Around 8:30 a.m. on November 30, the witness summoned the driver of the truck to obtain his version. The driver, Mr. Fontaine, submitted a written report (Exhibit A-2). At 9:00 a.m., the witness met with Mr. Drapeau and his union representative. Jean Grandmont, an operations expert, was also present. The meeting, the purpose of which was to review the facts, lasted 20 minutes. At 10:30 a.m., the witness gave the grievor, the union representative, and the members of the board of investigation copies of the transcript of the recordings made during the period in question. He then prepared the discipline notice that he gave to Mr. Drapeau, in the

presence of the union representative, around noon. Mr. Drapeau was disciplined because he had not followed the directives.

Under cross-examination, Mr. Beaudoin stated that the incident endangered the safety of the passengers. He also stated that this was the first time he had taken disciplinary action. He did not take notes during the interviews.

Jean Grandmont travelled to Val d'Or from Dorval on November 30, arriving around 8:00 a.m. He participated in the interview with Mr. Drapeau and corroborated Mr. Beaudoin's testimony. In reply to a question from the grievor, Mr. Grandmont stated that he did not take any notes and that this was his first investigation at the scene of an incident.

ARGUMENTS

Counsel for the employer argued that the employer followed to the letter the steps, as set forth in the collective agreement, in the disciplinary procedure applied in the case of a breach of the operational directives. The testimony of the witnesses established that the disciplinary measure imposed was justified. The grievor had indeed cleared an aircraft for take-off while a truck was on the runway, and the one-day suspension was therefore reasonable.

The grievor, for his part, stated that he was not given the opportunity to present his side of the story. He added he was never told why he was disciplined and that, since he had no previous disciplinary record, the disciplinary measure was too harsh.

REASONS FOR DECISION

The employer suspended Mr. Pierre Drapeau for one day for clearing an aircraft for take-off while a vehicle was on the runway. The employer's evidence reveals that the incident did in fact occur, and no evidence to the contrary was adduced by the grievor. Disciplinary action is therefore indicated.

In his defence, the grievor does not deny that the incident took place but alleges that he was not given the chance to give his side of the story and that the employer did not follow the procedure set down in article 6 of the collective agreement (code 402/85).

Article 6, in its entirety, reads as follows:

OPERATING IRREGULARITIES

6.01 At any administrative inquiry, hearing or investigation into an operating irregularity, where the actions of an Air Traffic Controller may have had a bearing on the events or circumstances leading thereto, and the Controller is required to appear at the administrative

inquiry, hearing or investigation being conducted into such irregularity, he may be accompanied by an employee representative of his choice.

6.02 The Controller and his representative may require the Department's representative in charge to state the circumstances leading to the inquiry, hearing or investigation before the Controller is required to answer any questions put to him.

6.03 The Controller and his representative may make representations and direct questions concerning the irregularity or events and circumstances leading thereto, to the Department's representative in charge.

6.04 The Department shall notify the Controller and where applicable his representative, of the completion of the report of an investigation pursuant to clause 6.01 of this agreement. Such notification shall be in writing and shall stipulate that an immediate opportunity will be provided to the Controller, and where applicable his representative, to read the report, including the findings of the investigation, and to take such personal notes as they deem necessary.

Subsequent opportunities to read the same report and findings will be provided to the Controller, and where applicable his representative, upon written request.

6.05

- (a) A Controller, his representative or employees called by the inquiry as witnesses will suffer no loss of normal pay while appearing before an administrative inquiry, hearing or investigation.

- (b) A Controller or employees called by the inquiry as witnesses outside of their scheduled hours of work shall be compensated at the appropriate overtime rate.

6.06 With respect to the conditions laid down in MANOP 2209.3 (or its replacement relating to the play-back of recorded information), it is incumbent upon the Employer to treat video and audio recordings, computer readouts of ATC operations, and transcripts of audio recordings as restricted information not (normally) available to the public. However, in cases where Department of Transport legal counsel has determined that there will be no departmental involvement in any subsequent civil litigation the Employer may permit lawyers to make their own transcript under supervision.

6.07 Until such time as the Air Administration redesigns its safety services and redefines authorities and procedures for Accident/Incident Investigations, it is agreed that an operating controller will be named as a

member of any fact-finding board investigating an operating irregularity in which Air Traffic Services has an apparent involvement.

6.08 A controller required to appear before any inquiry, hearing or investigation shall, in the company of his representative if he so desires, but under supervision, be allowed to review any relevant video and audio recordings and computer readouts of ATC operations where available. In addition, the controller shall be provided with a transcript of relevant audio recordings. The foregoing shall take place prior to the controller being required to answer questions put to him by the Department's representative.

6.09 The parties agree that audio or visual tape recordings and transcripts of ATS communications are intended to provide a record of such communications for use in the monitoring of ATS operations and the investigation of operating irregularities, infractions, incidents or accidents. The parties further agree that audio or visual tape recordings and transcripts of ATS communications are not normally intended to provide direct evidence before third parties in disciplinary cases, or incompetency cases under Section 31 of the Public Service Employment Act. It is further agreed that if they are to be used in such cases, a review of the recording or

transcripts will be made by a senior official of the Employer and the Association, and following such review, there must be mutual consent of these officials to introduce such recordings or transcripts as direct evidence.

6.10 Where an operating irregularity occurs that could be the subject of a Fact-Finding Board investigation, and where the circumstances that gave rise to the operating irregularity are not as a result of willful misconduct or gross negligence on the part of an air traffic controller, and where as a result of that operating irregularity the employee's air traffic control licence is suspended, excluding suspensions of the licence validation certificate, by a regulatory agency of the Employer, then the employee will suffer no loss of his normal pay during such period of licence suspension while performing other assigned duties.

Only the employer presented evidence. An examination of this evidence reveals that, even though the persons in charge of investigating the events that gave rise to the present disciplinary measure did not follow to the letter the procedure provided for in article 6 of the collective agreement in the case of operating irregularities, the principal steps in the said procedure were nevertheless observed. The grievor cannot therefore validly claim that he was not aware of the allegations

made against him or did not have the opportunity to present his side of the story. With regard to the alleged breaches of the provisions of the Personnel Manual, suffice it to say that, since the manual is not part of the collective agreement, it imposes no obligation on the employer, other than to provide information on the proper way of conducting a disciplinary investigation. This manual, however, has no bearing on the instant case.

The one-day suspension imposed on Mr. Drapeau seems reasonable to me, given the possible danger that his actions posed.

For these reasons, the grievance is dismissed.

Guy D'Avignon,
Deputy Chairman

OTTAWA, March 24, 1987

Certified true translation

Serge Lareau