

No. 15

File no.: 166-2-15839

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

BETWEEN:

THOMAS M. WATT,

grievor,

- and -

TREASURY BOARD
(Transport Canada),

employer.

Before: Guy R. D'Avignon, Deputy Chairman.

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

For the employer: Larry M. Huculak, counsel.

CODE 402/85
ARTICLE 7

Heard at Calgary (Alberta), on September 16, 1986.

5 DAY SUSPENSION - ALLEGED LOSS OF
SEPARATION - GRIEVANCE UPHOLD

DECISION

The grievor in this matter is Thomas M. Watt, Air Traffic Controller, at Calgary Tower, Calgary, Alberta. Mr. Watt grieves a five day suspension imposed by Mr. F.G. Lowe, manager of Calgary Terminal, in a letter dated July 2, 1985. This disciplinary letter reads as follows:

Suspension

J. Marsden, D. Lukawesky and I have considered the information provided to us by yourself, M. Comtois, D. Myrthu and V. Peloquin.

We find we cannot fully accept your explanation of the events of 24 June 1985 concerning the departures of CP57 and AWE400, neither can we accept your explanation for failing to report this operating irregularity. MANOPS very clearly prohibits deviation from separation minima. On 24 June 1985, as a result of control action initiated, communicated and executed by yourself and despite there being alternatives available, less than minimum separation was applied between CP57 and AWE400. You did not report this loss of separation as required by MANOPS and Unit documentation.

Accordingly, it is our decision that you be suspended from duty without pay for a period of five days for failing to adhere to MANOPS direction concerning application of separation, and to report an operating irregularity.

In determining the penalty to be assigned, full consideration was given to your past record, and your clearly superior skills as an Air Traffic Controller. Nevertheless, your actions constitute negligence and this period of suspension is considered warranted.

Your suspension is to be effective 18-22 July, 1985, Annual leave displaced will be rescheduled later in the year.

Be advised we consider these events extremely serious and that similar action by yourself in the future will be dealt with more severely.

Witnesses for the employer were Mr. Lowe, Mr. John F. Marsden, Operations Supervisor, Calgary Terminal and Dennis Myrthu, supervisor, Air Traffic Control. The grievor and R.T. Smith testified for the employee.

Mr. F.G. Lowe testified that on June 25th, 1985, while reviewing the log for June 24th he noticed an entry showing that two aircraft had been launched by the grievor with less than minimum allowed spacing. Mr. Myrthu who was IFR shift supervisor at the time had made the notation in the log book. The separation was one and one-half miles instead of the three miles required by safety regulations. The witness met with John Marsden and Maurice Comtois, who had been the radar departure controller (IFR), at the time of the incident. The tape of everything that was said in the tower at the time the incident occurred was played and a transcript

was made of the tape. Both the tape and the transcript were submitted as exhibits. The witness, having conducted an inquiry and having spoken to representatives of the Canadian Air Traffic Control Association and the grievor, removed Mr. Watt from operational duties and told him that a disciplinary hearing would be held on June 26th. The witness testified that the grievor agreed that he had launched the aircraft without proper separation. Mr. Watt was suspended for five days by letter of July 2, 1985. He was disciplined, according to the witness, because he failed to follow MANOPS and because he did not report the infraction.

During cross-examination Mr. Lowe testified that controllers know by experience how far three miles is on the radar screen. He also stated that when he saw Mr. Myrthu on the 27th of June the decision to suspend the grievor had already been made. He had discussed possible disciplinary measures with regional headquarters before speaking with Mr. Myrthu. When he did talk to Mr. Myrthu, he was told that proper separation existed at the time he looked out. Mr. Myrthu only logged Mr. Comtois' report because Mr. Comtois insisted. Mr. Myrthu was of the opinion that proper separation existed at all times. He thought that Mr. Comtois had over reacted. The witness also stated that he did not believe that the grievor had told the truth at the disciplinary interview and that Mr. Comtois and Mr. Watt did not like one and other. He then said that Mr. Watt was a superior air traffic controller who could not abide lack of proficiency in others. Mr. Lowe agreed with counsel for the grievor that a time interval of 53 seconds between

launchings would result in proper separation if the departure point was the same.

The second witness for the employer, Mr. John F. Marsden, was at the relevant time, Operations Supervisor for Air Traffic Control in Calgary. He reports to Mr. Lowe. He testified that in checking the log book for June 24th, 1985 he noted that Dennis Myrthu had made an entry about the lack of proper separation between the launching of two aircraft. He then saw Mr. Comtois who had been the controller at the terminal and who maintained that what was in the log book was correct. Mr. Lowe came in at the end of the discussion. The witness heard the tape mentioned before and said that he was flabbergasted at the language used. Mr. Marsden was present at the disciplinary hearing and he testified that the grievor stated, at that time, that he knew the separation minima and did not fool with them. Mr. Marsden testified that the grievor had said, at the disciplinary hearing, that the exchange heard in the playing of the tape was bantering.

During his cross-examination, Mr. Marsden stated that on June 26th, 1985 Mr. Comtois told him that after talking to Mr. Guy Michaud who was present in the terminal on the 24th, he came to the conclusion that he might have been in error in reporting lack of proper separation. Mr. Comtois told the witness that he might have been mistaken about the position slashes on the radar screen. Mr. Marsden believed that he might have said to Mr. Comtois that it was too late to do anything as the incident had already been reported to Ottawa. Mr. Marsden also

said that he did not talk to Mr. Myrthu before reporting the incident to Ottawa. When he did speak with Mr. Myrthu, the latter was upset and claimed that there was proper separation and that he disagreed with the action taken by management. Mr. Marsden then stated that the disciplinary measures were not taken because of lack of proper separation but that the banter and words used were the basis of the discipline. He then said that banter is usual in air traffic communications.

Dennis Myrthu was supervisor of shift controllers, IFR unit, at the relevant time. He only made the notation in the log book because Mr. Comtois insisted. He was not watching the screen when the incident started. When he had a look, there was proper separation.

During cross-examination, Mr. Myrthu stated that he looked at the screen 15 to 20 seconds after Mr. Comtois complained. The separation was then more than three miles, closer to three and one-half or four miles. The witness did not take any action because he felt that there was no infraction of the regulations.

The grievor Thomas M. Watt has been a Tower Controller since 1981 in Calgary. Before that date he worked in the same capacity in Lethbridge, Red Deer and Yellowknife. He testified that he was never involved in a loss of separation and that his performance evaluations have always been good. Using the transcript of the tape of the conversations between the terminal, the aircraft and the tower, he described the events that occurred

on June 24th, 1985. The traffic was quite heavy. One aircraft AC 121 was 12 miles from the runway and wanted to land. CP 57 was coming up the taxiway and was waiting for departure. The witness cleared CP 57 for take off at 2234.41 and at 2234.47 it was rolling. Mr. Watt was concerned about AC 121 coming in but saw that he had enough room to launch AWE 400. He held that aircraft until CP 57 was close to the end of the runway and then released AWE 400 at 2235.42. AC 121 was then cleared to land. The comments he made were uncalled for but he knew all the time that he had proper separation even if close to the minimum allowed. His comments were sarcasm because Mr. Comtois had asked for five mile separation the day before. He does not get along with Mr. Comtois.

The next day he was called to Mr. Marsden's office. Mr. Lowe and Mr. Rick Smith, the union representative were present. The witness said he lost his temper. Nobody asked him what happened and he cannot recall what went on at the meeting because he was so mad. Mr. Watt also affirmed that at no time did he state that he had lost separation. He reiterated that he had ample time to get proper separation and did not report an operating irregularity because there was no irregularity.

During cross-examination, the grievor agreed that MANOPS is the bible for air traffic controllers and that he is well aware of the regulations. He declared that he had no idea why he said: "That's why this one isn't going to have three miles." He also said that he jokes around with Mr. Comtois on the air.

Richard T. Smith, Western Region Director fo CATCA, testified that he came to Calgary on June 25th to attend the hearing on the 26th. He was told when he entered the meeting that Mr. Watt would receive a five day suspension because he had launched two aircraft without proper separation. Management supplied no information at the meeting. Mr. Watt maintained that he had at all times proper separation.

ARGUMENTS

Counsel for the employer argued that on June 24th, 1985, the grievor faced a tight situation and released flight AWE 400 with less than three mile separation and that he did not care if he broke the rules. There should be no deviation from the separation standards. The tape is very clear and shows Mr. Watt's attitude. This is not normal banter but a very serious matter. Mr. Lowe and Mr. Marsden testified as to what happened at the disciplinary hearing. One should believe their statements. Mr. Watt remembers very little and Mr. Smith has forgotten. Management believed that proper separation was not obtained. Even if by chance it was obtained, it is the attitude of the grievor and the fact that he did not report the incident that is serious. The penalty is deserved even if the grievor has a good record.

Counsel for the grievor stated that Mr. Watt was disciplined for failure to adhere to separation standard and for not reporting the failure. She argued that if there is no loss of separation, there is no need to report. Management cannot prove lack of separation.

Mr. Lowe agreed that an interval of 53 seconds is adequate to achieve proper separation. Mr. Marsden at cross-examination testified that Mr. Comtois backed down and stated that proper separation might have been achieved. Mr. Myrthu did not think that there was a loss of separation. The grievor is categorical in his statement that there was proper separation. Counsel argued that the employer is now saying that the grievor was disciplined because of his cavalier attitude; he did not care. This goes against everything the grievor stands for. Mr. Watt is a conscientious controller, as everyone recognized. He cares about his job and is concerned with safety. He was not evasive in his testimony and finds the allegations incredible. The employer has failed to prove the allegations contained in the suspension letter and also has not proved the new accusations.

REASONS FOR DECISION

The letter of discipline is very clear. The grievor was suspended because he presumably launched two aircraft without three mile separation, thereby violating the minimum prescribed by MANOPS. He is also charged with not reporting the incident. At the hearing management indicated that even if proper separation was achieved, the grievor should still be disciplined because of his attitude and the language used as recorded in the tape of the conversations between tower, terminal and aircraft.

I have listened to the tape and read the transcript. While I agree that certain words would have better been

left unsaid, I believe the grievor's explanation that it was bantering and that he never intended to purposely launch the aircraft without proper separation.

On the more serious charge contained in the above-mentioned letter, I conclude, after careful consideration of the evidence, that proper separation was achieved in launching the two aircraft. Everything in the evidence points to the fact that the grievor is very serious about his responsibility as an air traffic controller. All witnesses have agreed that he was a superior controller. Furthermore, one witness for the employer, Mr. Marsden, admitted that Mr. Comtois backed down and stated that proper separation might have been achieved. Another witness for the employer, Mr. Myrthu, the only witness with the exception of the grievor, who was present at the relevant time, testified that when he looked out, separation was more than three miles. Mr. Lowe, the other witness for the employer, agreed that 53 seconds was sufficient to insure proper separation. Perusal of the transcript indicates that the second aircraft was launched at least 53 seconds after the first aircraft.

As I find that the grievor did not violate the regulations, there was no cause for him to report an irregularity.

For these reasons I allow this grievance.

Guy D'Avignon,
Deputy Chairman

OTTAWA, January 21, 1987