

File no.: 166-2-16410 No 307

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

BETWEEN:

C. VERNE SHIELD,

grievor,

- and -

TREASURY BOARD
(Transport Canada),

employer.

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

For the grievor: David Lewis, Canadian Air Traffic
Control Association.

For the employer: Barbara Ritzen, counsel.

Heard at Edmonton, Alberta, October 1st, 1987.

COLL. AGREEMENT
CODIE 402/85
MEAL + RELIEF
BREAKS
—

DECISION

This decision is about a reference to adjudication of a grievance on the part of C. Verne Shield, an air traffic controller, employed by Transport Canada, at its Edmonton Air Control Center.

Mr. Shield grieves the employer's interpretation or application in respect of him of the provisions of paragraph 13.01(b) of the collective agreement between the employer and the Canadian Air Traffic Control Association (Code 402/85).

The paragraph in question reads:

Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.

Mr. Shield claims that on August 26, 1986, he did not receive adequate meal and relief breaks.

THE FACTS

The facts are not in dispute and they were agreed upon as follows by the parties at the outset of the hearing:

AGREED STATEMENT OF FACTS

1. On August 26, 1986, C. Verne Shield, an air traffic controller, was scheduled to work on the west specialty from 7:00 a.m to 3:00 p.m. Two other controllers

were also scheduled to work that shift on the west specialty. One other controller was scheduled to work on the west specialty from 11:00 a.m. to 7:00 p.m.

2. Normally, the schedule provides for a minimum of three people on the west sector by 9:00 a.m.
3. This schedule is sufficient to handle traffic and to provide relief breaks.
4. Although there are no rules providing for the length of the relief breaks, the pattern usually is that a controller working 7:00 a.m. to 3:00 p.m. shift takes his breaks firstly sometimes between 9:00 a.m. and 10:00 a.m., secondly around noon and thirdly between 12:00 and 3:00 p.m.
5. On the above date, one of the three people scheduled to work at 7:00 a.m. failed to report to work. Accordingly, instead, there were only two controllers between 7:00 a.m. and 11:00 a.m.
6. Management attempted to have the controller scheduled to work at 11:00 a.m. report two hours earlier, that is at 9:00 a.m., but it was unable to do this.
7. Management did not make other effort to have the controller replaced on an overtime basis because past experience showed that controllers were not willing to come in for just two or three hours of overtime.

8. The traffic on August 26, 1986 was normal: there were no traffic problems such as lost aircraft, poor weather conditions or unscheduled equipment shutdowns.
9. The two controllers who worked the 7:00 a.m. to 3:00 p.m. shift, one being Mr. Shield, were able to manage the traffic and there was no need for example to restrict the traffic.
10. When the controllers scheduled to work at 11:00 a.m. reported for work, Mr. Shield was able to take a fifteen minute break. He also took a one half hour break at 11:30 a.m. There may have been opportunities for him to take other breaks after 11:00 a.m.
11. Mr. Shield did not take a break prior to 11:00 a.m.
12. It is unusual for a controller to go for four hours without a break.
13. Meal and relief breaks for controllers are paid time thus when Mr. Shield was scheduled to work from 7:00 a.m. to 3:00 p.m., he was paid for that entire eight hour period.

ARGUMENTS

The grievor's representative referred to a number of decisions including Randall & Yates (Board files 166-2-13810 and 13811), Lawes et al (Board files 166-2-6437 to 6440, 6666, 6473, 6474, 7026 to 7029), Baker

(Board file 166-2-16090), Randall, Boymook et al (Board files 166-2-4828, 4829, 4830 and 4831) and Noakes (Board file 166-2-9688). Paragraph 13.01(b) imposes on the employer, the representative said, a clear obligation to provide adequate meal and relief breaks. There was no such break between 7:00 a.m. and 11:00 a.m., the reason being simply inadequate staffing.

Counsel for the employer replied first of all that the grievor cannot, as he does in this case, seek as a remedy a declaration for the future. There is a question of facts and such facts relate only to August 26, 1986. Future cases will have to be looked at separately and individually. The question here is first, whether there was a breach of the provisions of the collective agreement on the part of the employer by not providing the grievor with a break before 11:00 a.m. and, secondly, whether operational requirements can be invoked to justify the employer's refusal. The answer to the first question is "no" and to the second, "yes". The employer has recognized its obligation to provide breaks but nowhere does the collective agreement say that the air traffic controller is entitled to so many breaks at such and such an interval. There is no requirement to provide a break during the first four hours of the shift. Concerning the matter of the operational requirements, the cases which were referred to by the grievor's representative have to be distinguished. In all those cases, the staffing shortage was permanent. In the present case, the situation was temporary. The fact also is that two air controllers

were able to handle the traffic. It would appear that the third person would have been there only to allow the grievor to take a break before 11:00 a.m. In Baker, there was a staffing shortage but the adjudicator nevertheless decided that there had been no breach of the collective agreement.

REASONS FOR DECISION

I understand that the grievor did not receive a relief break during his first four hours of work. He did however, as admitted, receive two breaks during the rest of his shift and he could have had a third one if he had wished to. It is not the employer's fault if a controller failed to show up at the beginning of his shift. I am satisfied that the employer did its best under the circumstances to replace the absent controller. I am in agreement that "operational requirements" were such that the grievor could not take a break before 11:00 a.m. or four hours after the start of his shift.

I am of the opinion that the employer did not breach its obligation to provide meal and relief breaks and did not contravene paragraph 13.01(b) of the collective agreement.

I might add that Deputy Chairman Walter L. Nisbet rendered a few days ago a decision in which he came to the same conclusion. The facts in that case have some similarity to the facts in the present instance. The case is Dooling (Board file 166-2-16387).

This grievance is accordingly dismissed.

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

OTTAWA, October 28, 1987