

File no.: 166-2-17146

No. 345

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

BETWEEN:

WILFRED G. SUMMERS,

grievor,

- and -

TREASURY BOARD
(Transport Canada),

employer.

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

LTR 3/85

For the grievor: C.H. MacLean, counsel.

CODE 402/85

For the employer: S. Ray, counsel.

Heard at Ottawa, November 20, 1987.

NOT ACCUMULATED

DECISION

This is a reference to adjudication of a grievance relating to the interpretation or application of a collective agreement. The grievor is Wilfred G. Summers, an air traffic controller, and the agreement is the one between the Treasury Board and the Canadian Air Traffic Control Association (Code 402/85).

The difficulty is about a letter of understanding attached to and forming part of the agreement. The provision contained in this letter is unique. It provides that under certain terms and conditions "a controller... no longer able to perform active control duties due to medical reasons would suffer no loss of his normal pay for a minimum of one (1) year."

It is not the first time, unfortunately, that parties of good faith have signed an agreement on the assumption that the wording is clear and covers all possible scenarios and discover later that one scenario may not have been foreseen.

THE FACTS

The facts can be summarized as follows on the basis of the agreed statement of facts which was filed (Exhibit G-1) and a further agreement at the time of hearing:

1. The grievor has been employed as an air traffic controller since August 1971.

2. To perform his duties, the grievor was required to hold an air traffic controller licence with a current medical validation.
3. On August 17, 1979, the grievor was assessed as medically unfit to hold a licence. Accordingly, such licence was suspended and the grievor was no longer able to perform the duties of his position.
4. At the time, the relevant agreement (Code 402/79) contained a letter of understanding which was similar to the one forming part of the agreement referred to at the beginning of this decision.
5. The grievor returned to work on December 19, 1979, after he was declared medically fit and his licence was reinstated. He was on maintenance of salary until such time or for about four (4) months.
6. The grievor performed his duties until his licence was suspended once more for medical reasons on March 17, 1987.
7. The illness which caused the grievor to again lose his licence was a reoccurrence of the illness which had caused him to lose his licence in 1979.
8. The grievor is still unable to perform his duties and he is still medically unfit.

The employer advised the grievor on March 25, 1987 that "taking into account a previous salary maintenance period (August to December 1979), current salary maintenance provisions will end on October 29, 1987".

According to the grievor, the salary maintenance period should end on March 16, 1988 or one year after he was declared medically unfit and the previous salary maintenance period of four (4) months in 1979 should not be considered or taken into account.

ARGUMENTS

Counsel for the grievor argued that the letter of understanding is a type of disability insurance. It is, counsel declared, a very special and unique provision which is not to be found in other existing collective agreements in the Public Service. The reason is that air controllers have to meet the highest medical standards. The question is simply: What happens if an employee loses his licence twice? The employer contends that it is a "one shot deal" and that the employee is entitled to only one (1) year of salary maintenance during his career. There is, counsel argued, no suggestion that if there is more than one loss of licence, the periods of salary maintenance are cumulative. There is no such limitation. There is no stated limitation. There is also the fact that the first salary maintenance period was under a different collective agreement. The word "minimum" means that there is a discretion, but such discretion is after the minimum salary maintenance period has been paid. The period is not cumulative.

Counsel for the employer replied that the agreement is silent as to whether or not the periods of salary maintenance are cumulative. Discretion, counsel said, always remains with the employer to deal with what is not covered in the agreement. The word "minimum" suggests that the employer has to grant the benefits that were negotiated but that to grant more than one year is at its discretion. Yes, counsel continued, the employer could allow a minimum of one year twice but that is at its entire discretion. The wording in the letter of understanding is clear: The employer has the obligation to grant one year only once and it is cumulative.

REASONS FOR DECISION

This is a clear case, to put it briefly, of cumulative or not cumulative. "To be or not to be", as was said by a well-known writer, much before I was born.

The letter of understanding bearing no. 3-85, dated February 22, 1985, reads in part in English:

Provided a controller has performed active control duties for a period of five (5) years and is no longer able to perform active control duties due to medical reasons, it was agreed that the individual involved would suffer no loss of his normal pay for a minimum of one (1) year. This one (1) year period will commence on the date on which the medical endorsement of his air traffic

controller licence is revoked or sixty (60) days following the first day that he ceased to exercise active control duties as a result of being on sick leave, whichever is earlier. This maintenance of salary would be conditional upon the employee first performing other duties related to his technical background and/or experience as assigned by the Employer for which he is medically qualified.

And in French:

Lorsque le contrôleur a effectivement exercé des fonctions de contrôle pendant une période de cinq (5) ans et que, à cause des raisons médicales, il n'est plus capable d'exercer effectivement ces fonctions, il est convenu qu'il ne subira aucune perte de sa rémunération normale pendant au moins une (1) année. Cette période d'une année commence à la date de l'annulation de l'autorisation médicale de sa licence de contrôleur de la circulation aérienne ou soixante (60) jours après le jour où il a cessé d'exercer effectivement des fonctions de contrôle en raison d'un congé de maladie, la première éventualité étant retenue. Pour avoir droit au maintien de son salaire, l'employé doit exercer d'autres fonctions correspondant à ses connaissances techniques et/ou à son expérience, que

lui assigne l'employeur et pour lesquelles il est médicalement apte.

It is not disputed that all preconditions set forth in the letter of understanding have been met and complied with.

The only question, as I said above, is whether the salary maintenance period of a minimum of one year is cumulative or not. In other words, is there only, during a controller's career, one such period of a minimum of one year? Or are there several such periods of a minimum of one year?

I cannot accept, as suggested by counsel for the grievor, that the latter would be entitled to a salary maintenance period of a minimum of one year during each period of a collective agreement. Firstly, the collective agreement does not say so. Secondly, the above-mentioned understanding, as I see it, is simply a renewal or confirmation of an understanding reached at the time of previous negotiations. Thirdly, the benefits cannot increase solely because they appear in two consecutive agreements.

I have read the letter of understanding. I have read it several times, in English and in French. It does not say that a controller will suffer no loss of his normal pay for, "at the minimum, any given one year". It says: "a minimum of one year" or in French "pendant au moins une année". The letter also reads: "this

one year period will commence..." The letter does not read: "any given one year period..." If the parties had in mind at the time of the negotiations to cover the loss of the salary for more than a one year period or several one year periods, they should have said so. They did not.

It is my opinion that the one year period to which the letter of understanding refers is cumulative. I confirm the employer's interpretation.

This grievance is, for the above reasons, dismissed.

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

OTTAWA, November 26, 1987