

File No.: 166-2-15190

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

BETWEEN:

MICHEL SEGUIN,

Grievor,

- and -

TREASURY BOARD  
(Transport Canada),

Employer.

Before: Muriel Korngold Wexler, Deputy Chairman.

For the Grievor: Catherine H. MacLean, Counsel.

For the Employer: Stephen E. Barry, Counsel.

Decided without a hearing.

## DECISION

On February 22, 1988, I rendered a decision denying the grievance of Mr. Michel Seguin against a two-day suspension. I found that Mr. Seguin did fail to follow procedures and this failure was disciplinary negligence. On September 27, 1988, the Federal Court of Appeal set aside my decision and remitted it to me for reconsideration with respect to the severity of the disciplinary action (Court File No.: A-342-88).

The evidence established that in November 1984, Mr. Michel Seguin was an Air Traffic Controller Al-4, employed at the Civil Aviation Branch, Transport Canada, Montreal. He had been employed in this capacity since March 1980 and he had no disciplinary record. His performance had always been assessed as fully satisfactory.

Mr. Seguin was disciplined on the grounds that on November 27, 1984, while monitoring the radar, he was responsible for advising the pilot of the Ascot 5933 airplane that he was not flying according to his clearance. Mr. Seguin had asked the pilot for the Ascot's heading and he was aware of the Ascot's location and heading. He should have, therefore, ensured that the Ascot was proceeding according to its clearance. In addition, he should have taken action to ensure that proper separation be maintained between the Ascot and an Air Canada (Air Canada 515) flight. He was responsible for the flow of traffic in the sector and the monitoring of information. The grievor was operating with the use of radar while the next sector to which the grievor transferred responsibility was not. As a result, the

employer found that Mr. Seguin had failed to observe the rules. The consequence of his lack of action was that the Ascot and the Air Canada 515 flight were involved in a technical loss of separation incident. During 37 minutes and 200 miles the Ascot was under the grievor's jurisdiction and it is during this time that he failed to take any action to rectify the situation and ensure that the Ascot followed the route indicated on the estimate and on the flight progress strip. As a result the Ascot and the Air Canada airplanes were approximately eight minutes apart from meeting. The technical loss of separation was for a duration of approximately two minutes. The evidence also established that at least another four air traffic controllers had contributed to this technical loss of separation incident.

Mr. Seguin explained his failure to rectify the situation by stating that the practice in his unit was not to notify the pilot of the deviation from the airways unless he had deviated more than five to 10 miles from the centerline of the airway. He did not correct the deviation because, at the appropriate time when he should have corrected it, he had 12 to 13 airplanes under his jurisdiction and six of these left his sector at the same time as the Ascot. In addition, he had to do various other tasks. The traffic and his workload had been moderate. He did not write "abeam" on the Ascot flight progress strip even though this was a recognized procedure to follow. In his view this was not a definite, clear and rigid requirement and the omission was irrelevant in this incident since the flight progress strip had

not been transmitted to the next sector. In addition, he attributed the incident to momentary inattention on his part. He stated that such an incident had never happened to him in all the years he had worked as an air traffic controller. He pointed out the sloppy work of the other air traffic controllers involved in this incident.

The employer argued that an operational irregularity had occurred and the evidence had demonstrated that a loss of separation had occurred. Mr. Seguin should have advised the Ascot pilot that he was not on his prescribed route. Mr. Seguin had the benefit of the radar and the traffic had been average. He argued that the loss of separation was very important and Mr. Seguin's casual approach was not acceptable.

Having found that Mr. Seguin's involvement in this incident was of a disciplinary nature and amounted to disciplinary misconduct, I must now determine first whether the two-day suspension was a reasonable penalty in the circumstances. Thus, in a case where reasonableness of the penalty is an issue, arbitral decisions have established that arbitral review

... should not be equated with the power to second guess and ought not to be exercised unless the disciplinary action is "arbitrary, discriminatory, manifestly unjust or unreasonable". This view is justified on the grounds that:

The power conferred on an arbitrator by this section of the Labour Relations Act is wide and consequently it ought to be used cautiously and judiciously. It is hardly necessary to say that honest opinions do vary on the question of what is precisely just and reasonable in any given set of circumstances. The section ought not to be construed as an acknowledgement of an overriding omniscience on the part of arbitrators in matters of discipline. It would seem to me that unless the penalty imposed is, viewed objectively, manifestly unjust or unreasonable in all the circumstances, no substitution of penalty ought to be made.

(Brown and Beatty, Canadian Labour Arbitration, 2nd edition, page 464)

In addition, the issue should not be determined on the basis of whether the arbitrator would have selected the penalty imposed, but rather on the basis of whether the penalty was reasonable in the circumstances.

In the case of Mr. Seguin, the circumstances are such that the two-day suspension is a reasonable penalty for his negligence and participation in the technical loss of separation.

The second point I have to determine is whether the penalty should be altered because of mitigating

factors. The penalty imposed was a two-day suspension for an infraction involving two airplanes, a military airplane and a commercial passenger airplane. The incident did not bring about serious injuries but it did cause a technical loss of separation. Mr. Seguin submitted a number of reasons why the two-day penalty should be reduced.

Counsel for the grievor has submitted that I should replace the suspension by a written reprimand because of the following mitigating factors:

- (1) Nature of the mistake which did not amount to negligence or a breach of a clear regulation;
- (2) The incident was an isolated one in that the grievor had never been involved in a similar incident;
- (3) The employee had a good work record, good performance and no disciplinary record;
- (4) Mr. Senay exaggerated the seriousness of the incident. The situation was not dangerous. The Ascot was 95 miles apart from the Air Canada and they had eight minutes' separation for a period of one minute and a few seconds;
- (5) Other air traffic controllers and the pilot

of the Ascot contributed to the incident. The Ascot flight was involved in a string of errors. Mr. Boyce did find that other people contributed to the incident and he disagreed with Mr. Senay's findings on this matter. For example, Mr. Gervais, data controller at the Valley Center, gave instructions to the pilot of the Ascot to follow HL 560 at Mirabel. But this should have been at Quebec. This clearance was impossible. Mr. Roger, Data Controller at the Thurso Centre passed this impossible clearance (HL 560 at Mirabel) to the flight specialist who advised that this was not possible. However, the correct information was not provided to the pilot of the Ascot. Mr. Lebel was the radio operator at the Thurso Centre responsible for telling the pilot of the Ascot the correct airway but he never passed this information on to the Ascot. Hence, the pilot of the Ascot did not realize he had an impossible and mistaken clearance; and

- (6) The employer did not treat all air traffic controllers involved in the incident equally. Mr. Senay admitted that the employer's policy before 1981 was not to discipline air traffic

controllers responsible for the loss of separation. There were at least 20 losses of separation each year. In a period of three years, there had been only one case of discipline (Choquette and Hodgson (supra)).

According to Ms. MacLean, this fact showed the employer's attitude. The grievor was the first air traffic controller who received a disciplinary penalty from Mr. Senay, who was a new operational manager. The grievor was treated unfairly and he should not suffer because of Mr. Senay's lack of experience as an operational manager and an operational air traffic controller. The grievor should not have been singled out.

(Board Files 166-2-15135 and 166-2-15190, pages 31 to 33 of decision dated May 27, 1987)

I find that the employer has proven, on a balance of probabilities, that Mr. Seguin committed the alleged infraction. In addition, I find that the two-day suspension is warranted and reasonable in this case and the alleged mitigating factors submitted by Ms. MacLean do not warrant that I reduce the penalty to a written reprimand:

- Mr. Seguin committed a serious negligence. He was aware of the rules and he did not follow them. He did not make sure that the Ascot was



proceeding according to its clearance. He did not take action to ensure proper separation. He did not write "abeam" as required. He took no action to rectify the situation with respect to the Ascot's flight route. He did not notify the Ascot pilot of his deviation.

- In addition, I find it irrelevant that the evidence showed that he had never been involved in a similar incident. Had there been an accident, it would have been his first incident with very disastrous consequences. As an air traffic controller, he has very heavy and serious responsibilities. He cannot err and he cannot enjoy the luxury of being inattentive. Crews and passengers aboard airplanes put all their trust in the competent performance of air traffic controllers' duties. It is imperative that the air traffic controller perform his duties in a highly competent and professional manner. Any error on his part could result in a major disaster and loss of life.

- The situation was serious even though no accident occurred. It may not have been dangerous in this case because of the amount of separation between the two planes involved. However, the possibility of a more serious consequence did exist. Mr. Seguin was lucky.

- The fact that other air traffic controllers and the pilot contributed to the incident does not excuse Mr. Seguin's inaction and negligence.

- It is irrelevant that the employer did not treat all air traffic controllers involved in the incident equally. No direct evidence was submitted with respect to the other air traffic controllers and the employer's decision concerning their part in this incident. I refer to the Federal Court of Appeal decision in Barratt et al (Court File No. A-1208-83).

In addition, the evidence established that his workload was moderate at the time of the incident. He attributed the incident to momentary inattention. Such momentary inattention could have had serious consequences. Mr. Seguin's line of work does not allow for momentary inattention. Such inattention could result in loss of life. As I stated before, Mr. Seguin cannot enjoy the luxury of momentary inattention. His line of work requires him to perform at the highest level of competency and professionalism.

For these reasons, the grievance of Mr. Seguin is dismissed and I find that the two-day suspension was warranted in these circumstances.

Muriel Korngold Wexler;  
Deputy Chairman.

OTTAWA, October 31, 1988.