

Files Nos: 166-2-16635
166-2-16638
166-2-16703

No. 8

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

BETWEEN:

GILLES VIAU, RÉGIS RICHARD
and DANIEL BROSSEAU,

Grievors,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

Before: J. Galipeault, Board Member.

For the Grievors: P. Gauthier, Canadian Air Traffic
Control Association.

For the Employer: M. Bouzigon, counsel.

CODR
402/85

ART 13

MAL & RELIEF

Heard at St-Honoré, Quebec, September 3, 1987.

DECISION

Messrs. G. Viau, R. Richard and D. Brosseau are all air traffic controllers, AI-01, employed by Transport Canada at the St-Honoré, Quebec airport. In their grievances, they complain that, on certain dates, they were denied meal and relief breaks, contrary to the provisions of clause 13.01 of their collective agreement. This clause reads as follows:

13.01 Operating Employees

- (a) Thirty-four (34) hours, inclusive of a mandatory fifteen (15)-minute period in which the employee shall prepare himself to assume his duties prior to the commencement of each shift, shall constitute the workweek for operating employees; except that when hours of work are scheduled on a rotating or irregular basis, employees will work thirty-four (34) hours per week averaged over a period of time not to exceed seventy (70) days.
- (b) Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.
- (c) An employee's days of rest shall be consecutive and not less than two (2).

The three grievances were heard simultaneously.

EVIDENCE

Grievor G. Viau filed as Exhibit G-1 an Operations Letter, Operating with one controller, of June 6, 1986 signed by Donald Côté on behalf of R. Vigeant, chief, St-Honoré Tower. The letter sets out the rules that must be followed in cases where a controller who is on duty alone must leave his post. The first rule states that the absence must be necessary and of short duration, as in the case, for example, where a controller has to attend to bodily functions. The second rule speaks of a zone that is "clear of traffic". According to Mr. Viau, there are always aircraft that are ready to take off or about to land. The controller cannot leave his post. On July 26, 1986, Mr. Viau was on duty from noon until 8:30 p.m. Between 4:30 p.m. and 8:30 p.m., he was on duty alone. Statistics showed that, after 4:30 p.m., the volume of air traffic is heavier than during all the preceding hours. The witness stated that as the workday progresses, a controller increasingly feels under stress, nervous and insecure. Two controllers should be on duty between 4:30 p.m. and 8:30 p.m. On July 26, Mr. Viau did not receive either a meal or a relief break. He worked from noon until 1:00 p.m., and then from 2:00 p.m. until 8:30 p.m., non-stop.

Grievor Viau is paid for 8 3/4 hours a day. He works 34 hours a week. The St-Honoré airport does not handle commercial traffic. It handles glider traffic, consisting of either launched gliders or gliders on tow. In January, there is no traffic, but in July, the

situation is hectic. The St-Honoré airport has no radar. There is visual flight only. The weather was clear on July 26, 1986.

Grievor R. Richard worked alone as a controller on August 2, 1986 between 4:30 p.m. and 8:30 p.m. There were eighteen itinerant movements. Mr. Richard could not take his meal and relief breaks because "there was continual traffic". On August 2, the weather in St-Honoré was good.

Grievor D. Brosseau worked as a controller on July 7, 1986 from 11:45 a.m. to 8:30 p.m. Between 4:30 p.m. and 8:30 p.m., he was alone. There were eighteen itinerant movements during this period. On July 7, the witness did not receive either a meal or a relief break. On July 15, Mr. Brosseau was at his post from 11:45 a.m. to 8:30 p.m. He was the only controller on duty between 4:30 p.m. and 8:30 p.m. He did not receive either a meal or a relief break. There were seventeen itinerant movements during this four-hour period. On July 7, the grievor took a break between noon and 2:00 p.m. On July 15, he took a break from 1:00 p.m. to 2:00 p.m.

Mr. M. Bussières, acting unit manager at the St-Honoré airport, explained that there are three controllers on duty each day at this class B airport. The controllers are scheduled during the busiest periods. The manager is responsible for scheduling them. Paragraph 1.1 of a memorandum of September 5, 1984 from the chief of the St-Honoré Tower to Personnel stipulates that, between

4:30 p.m. and 8:30 p.m., and 4:30 p.m. and 11:30 p.m. during the fall schedule, there is only one controller on duty. The St-Honoré airport is a training site for student pilots. The vast majority of aircraft that take off and land all perform in the same manner. This facilitates the controllers' work. When traffic is heaviest, between 7:45 a.m. and 4:30 p.m., two controllers are on duty. The St-Honoré Tower operates from 7:45 a.m. until 8:30 p.m.

ARGUMENTS

The grievors' representative argued that the evidence showed that Messrs. Richard, Brosseau and Viau did not receive their meal and relief breaks because of continuous operational activity. A single controller was on duty after 4:30 p.m. Mr. Gauthier expressed reservations concerning the value of the Operations Letter, Operating with one controller, of June 6, 1986. According to this document, a controller on duty alone could leave his post if his absence was necessary and of short duration, as in the case, for example, where he had to attend to bodily functions, but he could do so only when the zone was "clear of traffic", and hence not during a circuit of several aircraft/gliders with itinerant movements. Mr. Gauthier cited Lawes et al., Board files 166-2-6437, 6440, 6666, 6473, 7026 and 7029. In the instant case, the employer contravened the provisions of clauses 1.02, 3.01 and 13.01 of the relevant collective agreement. The employer must allow the controllers to

take their meal and relief breaks. When a controller took these breaks, the employer must ensure that another controller replaced him.

Counsel for the employer argued that safety at airports must be maintained and that it is up to management to decide how many controllers are to be on duty in control towers. Clause 13.01 revealed (a) that the controllers' workweek is thirty-four hours and (b) that meal and relief breaks are granted only where operational requirements permit. Operational requirements did not permit the grievors to take these breaks between 4:30 p.m. and 8:30 p.m. on the days in question. The evidence revealed that, on these days, Messrs. Viau and Brosseau were allowed breaks of one hour and two hours and thirty minutes respectively during their shifts. On August 2, Mr. Richard worked only four hours. Counsel cited Noakes, Board file 166-2-9688. Ms. Bouzigon pointed out that the evidence revealed that in July and August, traffic at the St-Honoré airport was heavier than at other times of the year and hence the requirement that the one controller on duty not take his meal and relief breaks at these times.

REASONS FOR DECISION

In their grievances, the grievors claim that, on certain dates, they were denied the meal and relief breaks to which their collective agreement entitles them because management did not assign enough controllers to cover these breaks.

Clause 13.01(b) of the relevant collective agreement stipulates the following:

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

The grievors did not prove to me that, on the days and at the times specifically mentioned in their grievances and testimony, operational requirements permitted them to take meal and relief breaks. Messrs. Viau, Richard and Brosseau testified that, between 4:30 p.m. and 8:30 p.m., while only one controller was on duty, they were unable to take either meal or relief breaks. Controller Richard testified that he could not take meal or relief breaks because "there was continual traffic". It is clear that, if "there was continual traffic", the one controller on duty at the time had to remain at his post continuously in order to control the take-off and landing of aircraft. The evidence reveals, in controller Viau's case, that on July 26, he began work at noon, but took a one-hour break between 1:00 p.m. and 2:00 p.m. before resuming work at 2:00 p.m. Mr. Viau testified that there is no traffic at the St-Honoré airport in January, but that the situation is hectic in July. It is therefore quite possible that, on certain days in July, at certain times, especially when the controller is working alone, operational requirements do not permit controllers to take meal and relief breaks.

Grievor Brosseau complains that, on July 7 and 15, he was unable to take any meal or relief breaks. The

evidence revealed that, on July 7, he took a break between noon and 2:00 p.m., a period of two hours. On July 15, he took a one-hour break from 1:00 p.m. to 2:00 p.m.

The grievors complain that there is only one controller on duty at the St-Honoré airport between 4:30 p.m. and 8:30 p.m. Paragraph 1.1 of the memorandum of September 5, 1984 from the chief of the St-Honoré Tower to the Personnel of the St-Honoré Tower states that, between 4:30 p.m. and 8:30 p.m., and 4:30 p.m. and 11:30 p.m. during the fall schedule, only one controller will be on duty. It is the responsibility of management, and not adjudicators, to decide how many controllers are to be on duty in control towers. The above-mentioned memorandum is dated September 5, 1984. The grievors' grievances refer to meal and relief breaks they were not allowed to take in July and August 1986, nearly two years after the memorandum in question took effect. Air traffic controllers who work at the St-Honoré airport have been well aware for some time that, during certain periods, only one controller will be on duty. I have examined the decisions cited by the two representatives and, bearing in mind that each case of the same type as the present cases must be dealt with on its own merits, I can only express my agreement with the principles and conclusions stated by former Deputy Chairman David Kates in Noakes (supra) many of whose facts resemble those of the present cases.

One fact emerged from the grievors' testimony which surprised me somewhat. I was under the impression that the grievors had asked the employer beforehand, even

though clause 13.01 of the relevant collective agreement does not oblige them to do so, for permission to take either a meal or a relief break on the dates and at the times in question here, and that the employer had refused. This prior authorization was not sought. Grievor Viau testified that, as the workday progresses, a controller increasingly feels under stress, nervous and insecure. If this is the case and the controller in question then needs a meal break or a relief break, it seems to me that he must tell his superior so. The employer can then perhaps find time when operational requirements will permit the controller in question to take the break that will give him the necessary rest and then enable him to carry on with his duties in the most effective manner possible.

For all these reasons, I dismiss the grievors' grievances.

Jean Galipeault,
Board Member

OTTAWA, January 14, 1988

Certified true translation

Serge Lareau