

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

BETWEEN:

GREGORY NEWELL and GERARD L. HALIBURTON,

grievors,

- and -

TREASURY BOARD  
(Transport Canada),

employer.

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

For the grievors: Wayne Barry, Canadian Air Traffic Control  
Association.

For the employer: Janet L. de Laat, counsel.

ART 13  
MIA &  
RELIA  
CODE  
402/85

Heard at London, Ontario, November 20, 1987.



## DECISION

The grievors Gerard Haliburton and Gregory Newell alleged that the employer refused them meal and relief breaks to which they were entitled under the collective agreement. They claim that this was due to the fact that the necessary staff required to provide these breaks had not been assigned to duty by management. Mr. Haliburton's grievance alleges a denial of meal and relief breaks on January 4, 1987 and Mr. Newell's grievance alleges a similar denial on September 14, 1986.

The parties agreed that only Mr. Haliburton's grievance would be heard and that the decision would apply to both grievances.

### THE EVIDENCE

Gerard Haliburton testified that on January 4, 1987, while working as an air traffic controller in London, Ontario, he was not able to take relief breaks after 9:00 a.m. as there was nobody to replace him. There is no written policy on breaks and on that particular day no supervisor was present and there was nobody he could complain to.

Carl Chambers, Unit Manager at London Tower, testified that the controllers themselves determine when to take their breaks. Since 1982 London Airport uses four controllers per day, a reduction of one controller from previously, because the volume has decreased. January 4, 1987 was the busiest day of the month and

the extra traffic had not been anticipated. The traffic statistics indicate clearly that on all other days the controllers had the opportunity to take relief breaks. The controllers do not leave the Tower to take breaks but normally can leave their position. The controllers are paid for the time taken for meal and relief breaks.

#### ARGUMENTS

The grievors' representative argued that the employer violated paragraph 13.01(b) of the collective agreement between Treasury Board and the Canadian Air Traffic Control Association covering all employees in the air traffic control group bargaining unit - Code 402/85. The grievor had to work from 9:00 a.m. to 3:00 p.m. without breaks. No supervisor was present on January 4 and no replacement could be obtained by grievor Haliburton. The representative cited Randall and Yates (Board files 166-2-13810 and 13811) and Lawes et al (Board files 166-2-6437 to 6440, 6473, 6474, 6666, 7026 to 7029).

Counsel for the employer argued that on January 4 the problems were caused by unanticipated traffic. Mr. Haliburton stated that up to 9:00 a.m. the traffic was normal. The grievor was not refused relief. Air traffic controllers themselves determine when operational requirements permit them to take meal and relief breaks. They are paid for the entire shift because they cannot be assured to be able to have breaks. Counsel cited Noakes (Board file 166-2-9688), Randall and Yates (supra),

Randall, Boymook, Hingley and Ritchie (Board files 166-2-4828 to 4831), Baker (Board file 166-2-16090), Shield (Board file 166-2-16410) and Dooling (Board file 166-2-16387).

REASONS FOR DECISION

Paragraph 13.01(b) of the relevant collective agreement reads as follows:

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

The evidence is that Mr. Haliburton was not able to take breaks between 9:00 a.m. and 3:00 p.m. The situation was caused by very heavy traffic which had been unexpected. The normal work complement was present on January 4. While the grievor did not take his usual breaks on that day, I am satisfied that this was an unusual circumstance at the London Airport. Management could not have predicted the unusual traffic and cannot be forced to have extra personnel available to satisfy rare occurrences. I am satisfied that operational requirements did not permit the grievor to take meal and relief breaks on January 4, 1987.

For all these reasons, the grievances are denied.

Guy D'Avignon,  
Deputy Chairman.

OTTAWA, May 13, 1988