Files Nos: 166-2-17046
and 17047

PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

JOCELYN DROLET
RAYMOND TREMBLAY,

Grievors,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

Before: Charles Turmel, Board Member.

For the Grievors: Paul Gauthier.

For the Employer: Raymond Piché, counsel.

Heard at Montreal, Quebec, November 23, 1987

## DECISION

This case concerns references to adjudication made by Messrs. Jocelyn Drolet and Raymond Tremblay, two air traffic controllers at the Montreal R.C.C. Both are governed by the collective agreement (code 402/85) entered into by Treasury Board and the Canadian Air Traffic Control Association. They complain that, on October 17, 1986, the employer denied them the meal and relief breaks provided for in clause 13.01(b) of the agreement.

This clause reads as follows:

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

Both grievors essentially allege that, on the day in question, the employer denied them the meal and relief breaks to which the collective agreement entitles them because the employees who should have relieved them during these breaks were not assigned to work or did not report for duty and because no other employee was assigned to work overtime in order to replace them.

Each grievor is asking the adjudicator to make, in the words of their respective grievances:

> 1. a declaration that I was improperly denied meal and/or relief breaks, contrary to the provisions of the collective agreement;

> 2. an order that in future the employer ensure that sufficient staff is available so that I can be granted meal and relief breaks in accordance with the collective agreement.

When the hearing began, the parties agreed to treat the two grievances as one and the same case.

THE FACTS

The first witness was Mr. Raymond Tremblay who has been an air traffic controller for thirteen years. He is assigned at present to the James Bay and Ungava sub-unit, a section that is not served by radar. Mr. Tremblay testified that, on October 17, 1987, his shift ran from 11:00 a.m. to 7:00 p.m. He began work at 10:50 a.m. Mr. Tremblay took his meal break at 4:55 p.m. that day. It lasted thirty minutes. This was the only break he received between 11:00 a.m. and 7:00 p.m., whereas he normally would have received breaks totalling some two hours.

Mr. Jocelyn Drolet was the next witness. He testified that, on October 17, 1986, his shift ran from 7:00 a.m. to 3:00 p.m. He began work at 6:45 a.m. At 7:50 a.m., he went for breakfast, but was called back to work urgently at 8:03 a.m. and could not therefore have his breakfast. Mr. Drolet received no other breaks during his shift or during the two overtime hours he worked until 5:00 p.m. Mr. Drolet also testified that the number of

breaks received generally totalled two hours on average. Dr. Drolet explained that, between 8:00 a.m. and 5:00 p.m., he had only one coffee "at his work station".

Mr. Larry Lachance, supervisor of the north sub-unit, testified next. He confirmed the contents of the report of October 19, 1986 that he sent to Mr. Barry Downing, shift manager, at the latter's request. Mr. Lachance, like the two previous witnesses, described the day of October 17 as exceptional because of the number of aircraft, 88, that crossed the north sub-unit, as compared with a forecast of 60 aircraft that he had made that morning. Mr. Lachance also explained that the largest one-day volume of air traffic he had witnessed prior to October 17 was 72 aircraft.

Mr. Barry Downing, shift manager at the Montreal Control Centre, gave his version of the facts. He was on duty on October 17, 1986 from 7:00 a.m. to 3:50 p.m. He confirmed that the regular staff is scheduled to handle 60 aircraft and that this heavy traffic (88 aircraft) was not anticipated and had never been experienced before. Mr. Downing also pointed out that, following the events of October 17, steps were taken to improve the situation by adding more equipment. Mr. Downing also confirmed that breaks total on average two hours a day. He added, however, that on some days, they may total as many as four hours. Mr. Downing acknowledged his concern about finances. He stated that, on October 17, he expected to be able to shift personnel and provide breaks, but was unable to do so because of the constant heavy traffic. In

his words, "What I didn't figure on was the flood of traffic that made is impossible to shift personnel." He too described the situation as exceptional that day and added that he was very proud of the staff.

The final witness, Mr. Vincenzo Della Serra, is manager of operations at the Dorval Control Centre. He is Mr. Downing's superior. Mr. Della Serra received Mr. Downing's report concerning the day of October 17 and he himself wrote a report for his boss at regional office. He confirmed that it was an exceptional and unexpected day, given the available equipment and resources. Mr. Della Serra explained, however, that the number of aircraft forecast at the start of the day was 69, and not 60 as stated in Mr. Lachance's report.

THE GRIEVORS' ARGUMENTS

In support of his arguments, the grievors' representative cited Lawes et al., (Board files 166-2-6437, 6440, 6666, 6473, 6474, 7026 and 7029), and more particularly paragraph 41 in which Mr. Leon Mitchell, Q.C., then deputy chairman, said the following:

> I think the words used in Article 13.02(d) create an obligation on the employer to supply such staff as is needed to enable an operating employee to get a meal and relief break at such times and for such length of time as is reasonable, unless "operational requirements" and not "staffing" makes it impractical to do so. I am of the opinion that to interpret these words

> as imposing no obligation on the employer is inconsistent with the agreed upon purpose of the collective agreement as provided in Article 1.02 thereof which reads:
>
> The parties to this Agreement share a desire to improve the quality and to increase the efficiency of the Air Traffic Control Service and to promote the well-being of its employees so as to provide safe and efficient services to the public. (emphasis added)

The grievors' representative also cited Canadian Air Traffic Control Association and Her Majesty the Queen in right of Canada as represented by the Treasury Board and The Public Service Alliance of Canada and the Professional Institute of the Public Service of Canada, [1982] 1 S.C.R. 696, more particularly with respect to the situation where the Board is called upon to make a determination under subsection 79(3) of the Public Service Staff Relations Act:

> ... the task of the Board when called upon to make a determination under subs. 79(3) is to consider those employees and classes of employees in the bargaining unit who have been designated by the employer, and to decide whether the performance of their stipulated duties as employees is necessary for public safety or security.

Thus, in the opinion of the grievors' representative, the Board must consider the safety of the public.

The grievors' representative also stressed that no meal or relief breaks were granted to the complainants on the day in question, with the exception of the thirty-minute break granted to Mr. Tremblay at 4:55 p.m. Mr. Gauthier argued that additional personnel were not authorized because of budgetary considerations.

THE EMPLOYER'S ARGUMENTS

The employer recognized that the principle established in Hawes was that clause 13.02(d) obliged the employer to provide the necessary personnel to enable the operating employee to take a meal break and a relief break of reasonable length. It argued, however, that this principle did not apply and had been rejected in the majority of grievances.

According to Mr. Piché, to accept this principle would, for all practical purposes, "render meaningless" the words "operational requirements" because, in the extreme, breaks should always be granted.

Counsel for the employer further argued that the granting of a break was subject to the proviso "where operational requirements permit" and not "that operational requirements should no longer be an obstacle to the granting of breaks".

Counsel also argued that, had the parties intended to make the breaks mandatory, they would have clearly said so in this collective agreement, as was specified in the other agreements.

According to counsel, clause 15.03 stipulated that "the Employer will endeavour to keep overtime to a minimum...", and effect must be given to this clause.

Counsel cited clause 15.04 as evidence that the parties had made provision for emergencies. He then asked whether on October 17, 1986 an emergency or exceptional situation existed because the maximum number of hours required of an employee was ten hours.

In counsel's opinion, allowing the grievance would mean that the adjudicator would have to decide the number of persons required on October 17, 1986 to provide service. I would have to decide that the number of persons was or was not sufficient and substitute myself for the manager, contrary to article 3 of the collective agreement which recognized the employer's exclusive right to manage the service.

Thus, counsel argued, I could not substitute my judgment for that of the employer where the management of the service was concerned. The Supreme Court had criticized the Board for doing so in Canadian Air Traffic Control Association (supra).

Counsel for the employer also cited clauses 10.09 and 11.05(b) of the collective agreement where "operational requirements" were a condition that, in his opinion, must be assessed by the employer.

In support of his arguments, Mr. Piché cited the following Board decisions: Baker (166-2-16090), Randall (166-2-4828 to 31), Randall (166-2-13810-811), Shield (166-2-16410), and Dooling (166-2-16387).

REASONS FOR DECISION

After hearing the witnesses, considering the facts presented and the case law cited, and examining the relevant provisions of the Act and the collective agreement, I conclude that the facts in the present case do not support a finding by me that "operational requirements" allowed the employer to grant longer meal and relief breaks than it granted. Consequently, I am obliged to dismiss the grievance for the following reasons:

1. The expression "operational requirements" used in the collective agreement connotes a very precise factual situation at a given point in time. This factual situation is a function of two principal factors: workload and number of staff.

The workload, for its part, does not depend solely on the employer because the number of aircraft that could enter the area controlled varies, depending in large measure on weather conditions. The employer, however, is responsible for evaluating this workload with a view to providing adequate and safe service and ensuring the well-being of its employees.

.../9

2. The parties themselves, however, recognized in the collective agreement that the employer was responsible for deciding on the number of employees (clause 3.01(b)) and that without necessarily shirking its obligations, the employer could make a mistake and would have to meet the requirements of providing service (clause 13.01(b)), its forecasts notwithstanding.

Consequently, I do not believe that I have the right to substitute my judgment for that of the employer in determining the number of personnel who should have been assigned to air traffic control during the day, based on the forecasts.

3. My role, having regard to clause 15.03, is limited to determining whether, during the period in question, the employer refused to grant meal or relief breaks, when the workload and number of staff assigned to do this work permitted the granting of these breaks.

4. There is clear and uncontradicted evidence that, on October 17, 1986, between 7:00 a.m. and 4:00 p.m., such was not the case. Both sides admit that, on the day in question, the volume of traffic was exceptional, and the employees' response to this situation, moreover, drew praise from management.

5. In my opinion, clause 13.01(b) precludes my deciding on the number of employees required that day, a determination that the grievors would like me to make.

6. Even though I, like any other responsible person, am very concerned with the effect that the employer's planning may have on the safety of the public, I do not have jurisdiction to substitute my judgment for that of the employer in the matter of staff requirements, particularly as the evidence presented to me reveals that the employer normally grants a total of from two to four hours of breaks during each eight-hour period or work. No one claimed that this was insufficient.

With regard to staff requirements, I also believe that, if the number of staff was consistently or frequently inadequate, I could then conclude that it was not "operational requirements", but the employer's own actions, that denied the employees the breaks provided for in the collective agreement. This, however, is not the case here because the evidence shows that this situation seldom arises.

Accordingly, I am obliged to conclude that, on October 17, 1986, "operational requirements" did not permit the granting of longer meal or relief breaks.

Charles Turmel,
Board Member

MONTREAL, March 4, 1988

Certified true translation

Serge Lareau