File: 166-2-17125 No. 2

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

BETWEEN:

JOHN D. MACLEOD,

grievor,

AND:

TREASURY BOARD
(Transport Canada),

employer.

Before: Walter L. Nisbet, Q.C., Deputy Chairman.

For the grievor: Catherine McLean, counsel.

For the employer: Harvey A. Newman, counsel.

CODE 402/85
ART 15
OVERTIME RATE

Heard at Vancouver, B.C., December 1, 1987.

DECISION

The grievor is an Air Traffic Controller at the Vancouver Area Control Centre (ACC) classified AI-04. He was subject to the collective agreement between the employer and the Canadian Air Traffic Control Association that expired on December 31, 1986 (Code: 402/85). He complained that he was incorrectly paid for an overtime shift worked on October 25, 1986. He says the shift was his third consecutive and contiguous overtime shift and that he should have been paid at two and one half times his regular hourly rate. He says he was paid at one and one half times his regular hourly rate for that shift and contends that such payment contravenes clause 15.02(a)(ii) of the collective agreement. That clause reads as follows:

> "15.02(a) An employee shall be paid for overtime worked by him at one and one-half (1½) times his straight-time hourly rate except that:
>
> (i) ....
>
> (ii) if the overtime is worked by the employee on three (3) or more consecutive and contiguous days of rest, the employee shall be paid at two and one-half (2½) times his straight-time hourly rate for each hour worked on the third and subsequent days of rest."

The grievor testified on his own behalf and Messrs Dennis Herbert Wyatt and Wayne Douglas McCuaig testified on behalf of the employer. Counsel for the grievor produced six documents which were entered into evidence and marked G-1 to G-6. No documents were produced on behalf of the employer.

The grievor has been an Air Traffic Controller for 22 years, 14 of which he has spent at the Vancouver ACC. He became an AI-04 in October, 1986. He lives at Langley, B.C., 30 miles south of the Vancouver International Airport.

The Vancouver ACC is a 24 hour operation and the hours of work of the Air Traffic Controllers employed there are scheduled according to the following shifts, each of which is eight hours and fifteen minutes long: 6:00 a.m. to 2:15 p.m.; 7:00 a.m. to 3:15 p.m.; 11:00 a.m. to 7:15 p.m., known as the swing shift; 2:00 p.m. to 10:15 p.m.; 3:00 p.m. to 11:15 p.m.; and 11:00 p.m. to 7:15 a.m. An Air Traffic Controller goes through a cycle of shifts according to a pattern of shifts and days off, i.e. five days on shift and four days off, five days on shift and four days off, five days on shift and four days off, six days on shift and three days off. This cycle is referred to as a triple five, four, six, three. It repeats indefinitely. Within this cycle an Air Traffic Controller may work a variety of shifts with different starting times. These are posted for each Air Traffic Controller 15 days in advance of their coming into effect.

There are three specialties in the Vancouver ACC: the west complex responsible for air traffic along the BC coast and over the ocean; the east complex responsible for the area east of Vancouver to the BC Alberta border; and terminal control responsible for air traffic landing, departing and over flying the Vancouver International Airport or moving within a 50 mile radius of that airport. Operating Air Traffic Controllers are qualified in one of these complexes at a time and their licences are endorsed for the particular specialty. The grievor's licence is endorsed for terminal control. His work site is in the ACC building at the south end of the airport. It is a large two story building that, in addition to the ACC, accommodates the regional air traffic control training centre, the telecommunications maintenance and equipment shop, the Canadian Coast Guard radio station and the administrative offices for these facilities. It has three entrances: north, south, and east.

Detailed evidence was presented showing the position of the doors giving access to the air traffic control operating room and the arrangement of the various radar monitors in groups according to their use in a particular specialty. In addition, the evidence showed the location of the shift supervisor's desk and the briefing table near his desk on which are located the attendance register, the operational bulletin binder (red) and other books that may be there from time to time. Under a sheet of plexiglass is the monthly shift schedule. There are clip boards on the wall near the

table and there is a small desk attached to the table to permit the reading of material on it. It is called the briefing table because the operational bulletin binder (red) is located there. It contains mandatory briefing information. (See sketch plan marked Exhibit G-1). The Manual of Air Traffic Control Operations issued under the Aeronautics Act contains, in section 112 titled Preparation for and Completion of Duty, a description of the mandatory briefing information, particularly the information contained in section 112.2, paragraphs A to E (Exhibit G-2). Paragraph 112.2(b) describes operational information that relates to the terminal complex. Before commencing their duties, Air Traffic Controllers are required to examine the material on the briefing table and initial a sheet showing that they have read that material. Exhibit G-3 is an example of such a sheet. The red operational binder is divided into two parts, the second of which contains mandatory briefing items. An example of such an item is provided by Exhibit G-3 dated November 18, 1987 stating that the Nanaimo airport radio station has extended its hours of operation.

Each Air Traffic Controller has assigned to him a set of operational initials he uses to show that he has read the mandatory briefing items. The same initials are used to designate each controllers shifts in the shift schedule. The grievor's initials are "DM".

When an Air Traffic Controller reports for duty he first signs the attendance register, reads the

mandatory briefing items and initials the mandatory briefing items form. He then checks the shift schedule, scans the clip boards for general information and staff memoranda and picks up his head set for use at the radar monitor he will use to perform his duties.

The terminal complex supervisor is Mr. Dennis Herbert Wyatt. The shift manager at the time relevant to the grievance was Mr. Wayne Douglas McCuaig. The centre operational manager was Mr. Foster Richardson and the unit chief was Mr. Rick Johannson.

October 23, 24 and 25, 1986 were scheduled days of rest for the grievor. On October 23 the grievor attended a training session indicated in the attendance register for that date (Exhibit G-4) by the initials PAIRS, for which he was paid for eight and a quarter hours of overtime at one and one-half times his regular rate.

On October 23 the grievor was asked, and agreed, to work overtime on October 24. He was originally scheduled to perform that overtime on the shift commencing at 7:00 a.m. but he exchanged shifts with another air traffic controller who was scheduled to perform the swing shift that day from 11:00 a.m. to 7:15 p.m. The swing shift is used to cover the lunch, dinner and relief breaks of controllers performing other shifts.

On October 24 the grievor went to a hockey practice at 6:45 a.m. after which he went to a restaurant

and then to the ACC where he entered the operations room through "door 3" shown on the sketch of the floor plan marked Exhibit G-1. He proceeded to the right along the wall of the room and turned left to proceed along the wall on the right hand side of the sketch to the briefing table where he signed the attendance register, checked the mandatory briefing items and picked up his head set on the wall behind the radar consoles. He then walked back to the briefing table area and the supervisor's desk by proceeding around the unmarked console next to console #1 shown on Exhibit G-1. He reached the end of the briefing table and said "who is next for a break" to the complex controllers on duty.

Mr. Wyatt, who was sitting at the supervisor's desk shown as a small rectangle in the upper right hand corner of the operations room sketch plan (Exhibit G-1), said "what are you doing here"? The grievor replied that he was scheduled to perform the swing shift on overtime, whereupon Mr. Wyatt asked "didn't you get the message"? The grievor said "what message"? Mr. Wyatt then explained to the grievor the steps he had taken in an attempt to advise him that he would not be needed to perform the swing shift that day and not to come to work. As the grievor was at his hockey practice, his wife received the telephone call from Mr. Wyatt and said she would convey the information to the grievor. She was unable to do so because the grievor proceeded directly from his hockey practice to a restaurant and then to the ACC without going home. The parties are in agreement that the grievor did not receive Mr. Wyatt's message.

After this exchange between Mr. Wyatt and the grievor, Mr. Wyatt said "I don't know what we're going to do now .... hang around and I'll check with the shift manager". Within about ten minutes, Mr. Wyatt returned and advised the grievor "they don't want you to work". The grievor replied by saying he had just driven 30 miles from Langley and that he might as well work. Mr. Wyatt said that, as the grievor was at work, he would be entitled to four hours pay without performing any work. The grievor said that was stupid and that he might as well work for four hours to help with relief during the lunch hour, whereupon Mr. Wyatt said to the grievor "stand by, I'll be back to you". When Mr. Wyatt returned he advised the grievor that he was not to work. The grievor said he would be in the building for some further time and that if any controller scheduled to perform the evening shift could not report for duty, he should be contacted about replacing him before he left the building. It was about 11:30 a.m. when Mr. Wyatt advised the grievor that he was not to work and it was about 12:00 noon when the grievor left the building.

On the morning of October 25, the grievor's third consecutive scheduled day of rest, he was called in some time after 7:00 a.m. to work overtime by the shift supervisor on duty at that time who advised the grievor that he would be paid overtime compensation at the rate of two and one-half times his regular pay. The grievor worked the shift on October 25 as requested and as indicated in the attendance register for that date (Exhibit G-6). The writing in the "O/T" and the

"Remarks" columns stating "Kathy check with FR (Foster Richardson) to confirm rate for DM" was not there when the grievor left at the end of his shift that day. However, the figures "7 X 2½" were there when he signed the register. The shift supervisor for the evening shift advised the grievor that he would not be needed after 5:00 p.m. on October 25 and said to him "that will give you 7 hours at 2½ times". The grievor received overtime compensation for this shift at one and one-half times his regular hourly rate.

The grievor said he didn't know whether or not a shift supervisor can authorize overtime compensation. He said he assumed that such compensation would be authorized by the unit chief.

When the grievor arrived at the operations room on the morning of October 24, Mr. Wyatt said he was surprised to see him.

The grievor said he received four hours compensation at his regular rate of pay for reporting to work on October 24. He said his only concern was the failure of the employer to pay him overtime compensation at two and one-half times his regular hourly rate for the overtime he performed on October 25, work performed on the third consecutive and contiguous day of rest for which he says he was entitled to be compensated at the rate of two and one-half times his straight-time hourly rate.

The operations room of the Vancouver ACC is kept very dark in order to facilitate the viewing of the radar consoles by the controllers on duty. The supervisor's desk is located about 15 to 20 feet from the briefing table and a supervisor seated at the desk can only see someone at the briefing table if he turns around. There are two lights in the room that may be turned on and it is only if they are on that the supervisor can see anyone at the briefing table. Mr. Wyatt knew that the grievor was not needed when he came in to work on October 24. After the grievor left the building, Mr. Wyatt entered the words "came in in error" in the O/T column of the attendance register for October 24. He also wrote the word "cancelled" opposite the grievor's name in the column headed "Remarks" in the same register (Exhibit G-5).

Mr. McCuaig, the shift manager on October 24, 1986, said that he was responsible for the scheduling of shifts for the controllers. He said the shift manager's signature on the attendance register indicates that he has received it and confirms its accuracy. He said that he became aware of the grievor's change to the swing shift on that date at about 7:00 a.m. and noted that one controller was not needed. He decided to advise the grievor not to come to work but did not wish to disturb him at home before 8:00 a.m. He said that when the grievor arrived at work he was confronted with an unusual situation that presented two questions, first, fairness of treatment for the grievor and, second, the requirements of the collective agreement. After

consultation with his superior, Mr. McCuaig and his superior determined that the situation was unusual and that its disposition might set a precedent. Mr. McCuaig said he apologized to the grievor for the inconvenience of him having come to work when not needed but he did not say to the grievor that he would be paid anything. He said he thought payment to the grievor of four hours at his straight-time hourly rate was reasonable but he did not authorize it. He said there was never any question of putting the grievor to work. He was not needed.

Mr. McCuaig said he knew the grievor had come to work on October 24 but that he had not "plugged in", meaning that he had not plugged in his head set to a radar console in the operations room. He said he did not believe the grievor was waiting to ascertain what work he was to perform, but rather was waiting to ascertain what he would be paid as a result of his having reported for duty on October 24.

The parties are in agreement that the only issue I must determine is whether or not the grievor may have been said to have worked on October 24. If he can be said to have worked on that date, he would be entitled to be paid at two and one-half times his straight-time hourly rate for each hour worked on the following day, October 25.

ARGUMENT FOR THE GRIEVOR

Counsel for the grievor submitted that the determination of the issue in this case depends upon the meaning to be given to clause 15.02(a)(ii) of the collective agreement, with particular attention being paid to the opening words of that clause, "if the overtime is worked by the employee .... ". She stated that the employer intended to cancel the grievor's swing shift on October 24 but failed to notify him. The result was that he went to the ACC and proceeded to take the initial steps to prepare for the commencement of his work, although he did not commence air traffic control. She submitted that, by the time Mr. Wyatt saw the grievor in the operations room, the grievor was "working". She contended that the manual of air traffic control operations (Exhibit G-2) makes it clear what the initial duties of an air traffic controller are. The time it takes to perform the initial duties is paid time. She referred to paragraph 13.01(a) of the collective agreement which 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; .... "

Counsel contended that this provision of the agreement recognizes that mandatory briefing time is paid time and therefore becomes part of the grievor's work.

Counsel stated that the grievor was told not to work but Mr. Wyatt did not tell him to go home; he was simply not to "plug in" to the relevant radar console.

Counsel submitted that, when Mr. Wyatt went to see his superior, he did not ask the grievor to wait until he found out what he was to be paid. There was no immediate decision as to what to do. The grievor was kept waiting. Counsel argued that, if the only question was what the grievor was to have been paid, he could have gone home right away. Instead he waited for the results of Mr. Wyatt's second consultation with his superior.

Counsel submitted that there are two distinct bases for saying the grievor performed work, i.e., he performed his initial duties upon arrival at the operations room and then went to see what was to be done. She argued that the question of whether or not the grievor "worked" is to be determined by reference to the Manual of Air Traffic Control Operations, and in particular to section 112 thereof (Exhibit G-2). She stated that the general jurisprudence is not very helpful and acknowledged that this case is factually unique.

Counsel referred to Lapierre (Board file 166-2-9258). She stated that the facts in that case are completely different from those in the case of the grievor. However, in Lapierre, the adjudicator had to determine what was meant by the phrase "services rendered" in the collective agreement. He focused on the meaning of "service". He referred to a number of dictionary definitions, including one contained in Webster's New Collegiate Dictionary which he quoted at page 9 of his decision as follows:

> "activity in which one exerts strength or faculties to do or perform something-a-sustained physical or mental effort to overcome obstacles and achieve an objective or result-b-the labour, task, or duty that affords one is his accustomed means of livelihood-c-a specific task, duty, function, or assignment often being a part or phase of some larger activity."

Counsel commended this definition to me, stating that it would be of assistance in determining the meaning of the word "work" in the context of clause 15.02(a)(ii) of the collective agreement. Counsel also referred to a reference by the adjudicator in Lapierre at page 12 to the question whether or not the grievor in that case was performing at the relevant time an "occupational activity". The adjudicator found that he was not. Counsel argued that the grievor was engaged in an

"occupational activity" on the morning of October 24 and may thus be said to have "worked" on that occasion. Until the grievor was given notice to return home, he was at the employer's disposal.

Counsel referred to Palmer, Collective Agreement Arbitration in Canada, at page 632 where the author states:

> "Problems of construction may also arise where overtime is dependent on the performance of work, either during the alleged overtime hours or during a period preceeding the assignment. It has been held that the phrase 'time worked' may embrace other periods, such as time spent waiting for instruction, during which no work is actually performed".

She referred to Re International Nickel Co. of Canada Ltd and United Steelworkers (1975) 8 L.A.C. (2d) 433 cited in support of the statement quoted above from Palmer. She said the facts in that case are analogous to the facts relating to this reference. In that case the union's position was that the time spent by employees waiting to see whether the cage that would take them underground to work could be repaired was "time worked" for the purpose of determining the amount of overtime compensation. The employees were instructed by the foreman to wait. The employees waited one and one-half hours. The applicable collective agreement provided that occasional delays, not exceeding ten minutes were

to be disregarded. The agreement also provided that delays in the hoisting schedule which exceeded ten minutes were to be considered "time worked". However, the collective agreement also provided that this waiting time is not time worked for the purposes of calculating overtime payment. The arbitration board stated that it would have found that the employees were at work for the purposes of the payment of wages even in the absence of the provision stipulating that the time spent waiting was not time worked for the purposes of calculating overtime payment.

Counsel referred to Article 12.01 of the collective agreement which provides as follows:

> "12.01 When an employee is called in to work overtime that is not contiguous to his scheduled shift, he is entitled to the greater of:
>
> (a) compensation at the applicable overtime rate,
>
> or
>
> (b) compensation equivalent to four (4) hours' pay at his straight-time hourly rate".

Counsel submitted that the grievor "worked" only thirty minutes and was paid in accordance with paragraph 12.01(b) of the agreement. This means, contended counsel, that the next day's work ought to be paid at two and one-half times regular pay.

Counsel argued that the collective agreement must be interpreted in the context of the facts established by the evidence. Increasing disruption suffered by an employee is to be more highly compensated. The grievor experienced disruption on October 24. He went to work on October 23, 24 and 25. The collective agreement provides that the grievor is entitled to be compensated in accordance with clause 15.02(a)(ii) as a result of that disruption.

Finally, counsel argued that the employer is estopped from denying the grievor overtime compensation at the rate of two and one-half times his regular hourly rate on October 24. She stated that the grievor was told that he would be paid at that rate for the overtime he performed on October 25 and he relied on this statement. Counsel stated that a supervisor said to the grievor "I'll give you seven times two and one-half", meaning that the grievor would be paid for seven hours of overtime work on October 25 at two and one-half times is regular hourly rate of pay. Counsel said that this is an alternative argument if her argument that the grievor "worked" on October 24 is rejected.

ARGUMENT FOR THE EMPLOYER

Counsel for the employer submitted that the evidence in this case does not establish grounds for raising estoppel against the employer. The grievor is not a party to the collective agreement. Counsel submitted that, if estoppel applies, it cannot arise

where a supervisor said something to an employee about the collective agreement. He referred to the case of Combe v Combe, [1951] 1 All E.R. 767, in which Lord Justice Denning sets out the principle of estoppel at page 770:

> "The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualifications which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word".

Counsel submitted that the element of intention must exist in order to give rise to estoppel. In this case the evidence does not support a conclusion that the employer, through its managers, intended to affect the legal relations between them and the grievor. Counsel argued that all that may be inferred from the evidence is that Mr. Wyatt's statement to the grievor represents

what he thought was right; that statement does not meet the requirements of estoppel.

Counsel referred to clause 15.01 of the collective agreement which defines overtime as follows:

> "15.01 Time worked by an employee in excess or outside of his scheduled hours of work shall be considered as overtime".

Counsel also referred to paragraph 15.02(a) of the agreement, the opening words of which are as follows:

> "(a) An employee shall be paid for overtime worked by him at one and one-half (1½) times his straight-time hourly rate .... ".

Counsel referred to the words "overtime worked by him" and emphasized that the overtime must be worked if overtime compensation is to be paid. He submitted that, in order to determine the grievor's entitlement to overtime compensation on October 25, it must be determined whether or not he worked overtime on the previous day. Counsel referred to the opening words of Article 12.01 of the agreement which state:

> "When an employee is called in to work overtime that is not contiguous to his scheduled shift, ... ".

and submitted that an employee may be called in to work but if he is called in, that does not mean the employee worked. Counsel referred to Canadian Labour Arbitration, Second Edition at page 614 where the authors quote a passage from the decision in Webster Manufacturing (London) Ltd. (1971) 23 L.A.C. 37 at pages 40 and 41 which includes the following sentence dealing with call-in compensation:

> "What the provision does is to guarantee an employee a specified amount of minimum earnings in certain overtime situations, whether the company has enough work for this purpose or not."

Counsel stated that the grievor was called in to work overtime on October 24. When he arrived he found that there was no work for him to perform. As a result, stated counsel, the grievor became entitled to compensation for disruption, not for work.

Counsel submitted that the only issue is the rate of premium compensation to be paid the grievor for October 25. That rate depends on whether or not the grievor worked the day before. The word "cancelled"

was on the attendance register for October 24 (Exhibit G-5) when the grievor signed it. Counsel stated this was a reasonable conclusion to reach based on a balance of probabilities. The grievor did not recall whether the word was there and counsel submitted that the grievor saw it and decided to ignore it. He wanted to stay at work and decided to let his supervisor decide what to do with him. As a result, counsel submitted that the grievor was at work on his own volition and that if his status was not clear to him initially, it quickly must have become clear to him when he was advised there was no work for him to perform and that he was not needed. Counsel stated that, although the grievor's supervisor might have been embarrassed and somewhat flustered by the arrival of the grievor, he did not leave the grievor in doubt that he was not needed at work.

Counsel submitted that the grievor was not waiting to commence work during the absence of his supervisor to consult with his superior; rather the grievor was simply waiting to find out about the compensation he would be paid and hoped that he would be put to work. Counsel submitted that the grievor was not working in any relevant sense. The time spent by the grievor waiting for advice from his supervisor was not "work", and the grievor had no real expectation of work. He did not "plug in" to a radar console.

Counsel stated that the managers responsible at the ACC had made up their minds about the lack of

need for the grievor on October 24 hours before he arrived at the centre. The grievor prepared to "render service" on October 24 but did not do so. Counsel referred to Derochie (Board file 166-2-194), a decision in which the employer's contention that the grievor was entitled only to overtime compensation for actual hours worked was upheld. Counsel argued that an employee may report for work but not work. He contended that if service was rendered by the grievor it was de minimus and need not be compensated.

Counsel submitted that I must conclude on the evidence that the grievor came to work but did not actually work.

REPLY FOR THE GRIEVOR

Counsel for the grievor submitted that there is a distinction to be made between reporting for work and working. She referred to Canadian Labour Arbitration, supra, at page 615, and to Johnson (Board file 166-2-16366).

Counsel argued that overtime commences when an employee is asked to make the trip to work as occurred in the case of the grievor.

Counsel contended that the submission made by counsel for the employer that the grievor saw the word "cancelled" on the attendance register for October 24 is unfounded. She argued that the grievor's later

behavior is inconsistent with his having seen that word on the register at the time he signed it.

Counsel contended that although the work may have been de minimus, the grievor nevertheless worked from the time he left the hockey rink and reported to the ACC.

Counsel contended that the grievor was told by his supervisor to "stand by" while he consulted with his superior as to what was to be done as a result of the grievor's arrival at work on the morning of October 24.

Finally, counsel argued that the Derochie decision, supra, is based on the interpretation of a collective agreement that makes a clearer distinction between reporting for work and working than does the collective agreement applicable to the grievor.

REASONS FOR DECISION

After exchanging shifts with another controller, the grievor was scheduled to work the swing shift from 11:00 a.m. to 7:15 p.m. on October 24, 1986. At about 7:00 a.m. that morning the grievor's shift manager, Mr. McCuaig, learned that there would be no need for the grievor to work that shift. Accordingly, the grievor's shift supervisor, Mr. Wyatt, called the grievor's home at about 8:00 a.m., learned that he was not at home, and left a message with the grievor's wife

to the effect that the grievor would not be required to work the swing shift that day. The grievor's wife undertook to convey that information to the grievor. In my view, the responsibility of the employer to make the grievor aware that he would not be needed for the swing shift ended when Mr. Wyatt left his message with the grievor's wife at about 8:00 a.m. on October 24.

The grievor knew that he was scheduled to work the swing shift on October 24 on an overtime basis. He is an experienced air traffic controller and is aware that the need to perform a particular shift, especially on an overtime basis, may become unnecessary for a number of reasons, including a reduction in the anticipated volume of air traffic at the relevant time. Accordingly, I am of the opinion that he showed a lack of prudence by failing to contact his wife before setting out for the ACC following his hockey practice and visit to a restaurant. The employer's course of action, which was to telephone the grievor at home three hours before the start of his shift, was reasonable. The employer could not be expected to trace the whereabouts of the grievor after he left home in order to get the message to him.

The question that arises in this case is the extent to which the employer may be held responsible for the consequences of the grievor's failure to receive the information given to his wife that he would not be needed at work. In this case, the employer cannot be held responsible for those consequences. In completing the preliminary steps to commencing his duties as an

air traffic controller before his presence at the centre was questioned, the grievor was acting on his own volition. He placed himself at the disposal of the employer not because the employer required him to do so, but because he, despite reasonable steps taken by the employer to avoid it, acted in ignorance of the employer's lack of need for his services. As I have already said, the grievor might not have remained ignorant of the employer's lack of need for his services if he had taken the prudent step of contacting his wife before proceeding directly to the ACC.

The operations room at the ACC is very dark. Mr. Wyatt's attention was not drawn to the presence of the grievor until the latter asked the question "who's next for a break?" These facts do not support the contention that the grievor worked for the period of time he was in the operations room. He was not at work at the behest of the employer and when the managers responsible discovered his presence, the grievor was told there was no work for him to perform.

For these reasons, I have concluded that the grievor has failed to establish the conditions prescribed by subparagraph 15.02(a)(ii) of the collective agreement for payment at two and one-half times his straight time hourly rate for each hour of overtime he worked on October 25, 1986. This grievance is dismissed.

Walter L. Nisbet, Q.C.,
Deputy Chairman.

Ottawa, January 4, 1988.