

File No.: 166-2-17723

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

BETWEEN:

JACK M. PINSENT,

Grievor,

- and -

TREASURY BOARD
(Transport Canada),

Employer.

Before: Roger Young, Board Member.

For the Grievor: Catherine MacLean, Counsel.

For the Employer: Robert Lee, Counsel.

Heard at Gander, Newfoundland, June 13 and 14, 1989.

DECISION

"I fucked up." That was the answer, given at the time, by Jack Pinsent, an Air Traffic Controller, AI-04, at the Area Control Centre in Gander, Newfoundland, when asked to explain how a loss of separation had been allowed to occur between two jumbo jets over the Atlantic ocean just east of Newfoundland. In potential jeopardy were the lives of some 600 passengers and crew.

For having allowed this operating irregularity to occur (the fact that it did was never in question though the aircraft were never closer than one minute's flying time - about eight miles distance) Pinsent was given a one-day suspension. It is against this disciplinary sanction that he has grieved; the basis of his claim that the discipline ought to be overturned is that he was, on the day in question, suffering from stress, burn-out and impaired analytical abilities after some 22 years in a high pressure working environment. Thus, it is argued, Pinsent was physically and mentally incapable of noticing his error and, therefore, should not be penalized. This was, argued Pinsent's counsel, an incident which had resulted from a serious medical problem; it was not corrigible conduct and, thus, was not culpable. But, first, the facts.

On November 14, 1987, Jack Pinsent was working a shift from 0945 to 1740 local time, or 1315 to 2110 Z (Zulu) or Greenwich Mean Time (GMT). (All times herein are henceforth given as GMT.) This was Pinsent's third working day following four days off. On reporting for work that day, he was assigned to the Oceanic sector.

Mr. Pinsent worked 45 minutes and then was allowed to take a 40-minute coffee break. At 1440 Z he was again assigned to the Oceanic sector where he worked until commencing his lunch break at 1608 Z. At 1640 Z, Pinsent returned from lunch and resumed work on the Oceanic sector.

A word of explanation about control procedures in the Oceanic sector is helpful here. Unlike flights overland, those over the vast expanses of ocean waters are not covered by radar control. Aircraft are guided by computerized gyroscopic, inertial navigation controls. They fly along established "aerial highways" or tracks which are set paths through the sky. Pilots report their positions and progress along these tracks to the respective air traffic area control centres. Position reports and other relevant data such as air speed and altitude, etc., are gathered by the air traffic controllers responsible. Data strips with respect to all aircraft within a particular controller's area of responsibility are kept in a series of "bays" on an upright "board" in front of the controller. The controller has a data strip for each aircraft. These strips are sorted into bays according to altitude; within the bays aircraft at the same altitude are further prioritized according to their direction of flight and geographical (longitudinal) position.

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Grievor Pinsent was handling 31 different west bound aircraft on the afternoon in question. These aircraft were separated so that they were flying along one of three separate tracks across the ocean (Bravo, Charlie and Delta) which are located 60 nautical miles

apart. Information on the most westerly of these aircraft would be kept on strips at the bottom of the "bays"; information on aircraft in more easterly positions (i.e. later in approaching Gander) would be kept on strips correspondingly found more to the top of the "bays". By scanning up and down the strips in the various bays an air traffic controller can form a mental picture of which aircraft are at which level and by checking on their position reports relative to one another, he/she can determine their lateral separation as well.

Air traffic control regulations call for aircraft proceeding through the Gander Oceanic sector to be kept at least 2,000 feet apart vertically or ten minutes flying time (in this case about 80 miles distance) laterally. Two of the 31 aircraft being handled by Pinsent were Boeing 747 jumbo jets - KLM 621 and SAB 541. Both parties agreed that the traffic volume - i.e. handling 31 aircraft on those three tracks - would constitute an "average board", a "normal" traffic flow. The employer considered the work flow - i.e. the message flow and handling or control procedures required - to be "moderate" while the grievor stated that it had been "heavy".

It should be pointed out here that, in the Oceanic sector, controllers such as Pinsent are not in direct contact with the pilots of the aircraft. Messages must be relayed through a Flight Services Specialist (FSS) - i.e. radio operator. Position fixes given by aircraft pilots to the FSS are entered into a teletype machine; they are collected from the printer by a controller's

assistant and delivered in batches to the respective controllers. It is expected that these data updates will be delivered within five minutes of printing. Urgent updates are printed on pink paper, regular messages on buff coloured paper. Evidence presented suggested that messages could be delivered from the printer to the controller within one minute or could take as long as 15 minutes.

On the afternoon in question both KLM 621 and SAB 541 were proceeding westerly along the same track from Europe towards Gander. KLM 621 was travelling slightly faster than SAB 541 (Mach .84 as compared to Mach .82). KLM 621 had been flying at 31,000 feet, SAB 541 at 33,000 feet prior to passing 40° W longitude. KLM 621 passed this point at 1654 Z, SAB 541 at 1655 Z; in other words, KLM 621 was 2,000 feet below and one minute's flying time ahead of SAB 541 at that point and proper separation was in effect.

At 1709 Z the pilot of KLM 621 requested permission to climb to 33,000 feet. At 1712 Z, Pinsent cleared this request and at 1715 Z, KLM 621 reported that he had "reached cruising altitude". This maneuver put the two aircraft in a situation where they were both at the same altitude, on the same track but only something over one minute's flying time apart. That is, a "loss of separation" had occurred, otherwise known as an "operating irregularity".

This incident began over the North Atlantic some 200 to 300 miles off the southern tip of Greenland. It continued unnoticed by anyone until 1751 Z when a controller in the adjacent Moncton Area Control Centre telephoned Pinsent on the hot line to ask him to check whether a loss of separation had, in fact, occurred and was still going on. Pinsent found this error and immediately cleared KLM 621 to descend to 31,000 feet so that proper separation would once again be achieved. The two aircraft had by this time passed 50°W longitude (another reporting point - KLM 621 reporting there at 1739 Z, SAB 541 at 1741 Z) and were approaching position "Oystr" (Exhibit 2) the final over-water reporting point before reaching the North American shore line.

Mr. Pinsent reported the operating irregularity to his supervisor at 1755 Z and was immediately relieved of his control position. He was extremely shaken by the incident and allowed to go home for the balance of his shift. The following day, David Soucy, the Shift Manager, conducted a unit investigation at which he and another management representative were present along with Pinsent and a union representative. The grievor was asked a series of questions by Soucy in an effort to determine just what had caused the loss of separation to occur.

The grievor responded at the meeting that he had done a proper board check on assuming control of the sector; that he had checked for proper separation before authorizing KLM 621 to climb to 33,000 feet; that

he had continued to monitor his board afterwards; that there had been no disturbing factors present; that he had not been experiencing any personal problems. When asked his opinion, then, what had caused the operating irregularity to occur, he had responded: "I fucked up! I had the strip cocked to remind me to advise KLM 621 that I was unable to clear him higher due to other traffic but then, after passing some estimates to Moncton, I marked 133' (33,000 feet) on the strip and passed his (KLM 621's) estimate too ..." When asked how a similar mistake could be avoided in future, Mr. Pinsent had responded that there was no specific corrective action necessary, it had been a "one in a million" mistake.

Soucy testified at this hearing that he subsequently decided to discipline the grievor and had imposed a one-day suspension. His concern had been caused by the fact that not only had Pinsent authorized an unsafe climb by KLM 621, but that the resulting loss of separation had gone undetected by Pinsent for a further 39 minutes until pointed out to him by a controller in the adjacent Moncton Area Control Centre. The Moncton controller had detected the operating irregularity based upon the information contained in the estimates passed to him by Pinsent. This suggestion was that Pinsent should have been able to detect such a "confliction" equally well from the very same information which was before him on his own board.

Soucy stated that the continuing loss of separation over this protracted period of time rather than the mistake

in allowing KLM 621 to climb was the real reason for the need to discipline Pinsent. Furthermore, Pinsent had been involved in a very similar incident in December 1985, when he also had authorized a climb which later resulted in a loss of separation which then went undetected for more than a half hour.

Soucy did not believe that Pinsent was suffering from stress in November 1987. Although Pinsent had taken some time off following the previous incident, he had returned to work and had performed well. Soucy regarded Pinsent as being in the top ten per cent of his staff. Prior to November 1987, Pinsent had taken some three or four months away from his job. He had come back to work in late summer and had undergone ten days of refresher training before resuming his regular duties. Two supervisors had checked Pinsent out and certified that he was ready to resume regular work. Furthermore, Pinsent had passed his annual physical examination for his certification as an air traffic controller in May 1988. For all these reasons, the employer did not accept Pinsent's explanation and claim that he had been suffering from stress, which claim the employer charged had been raised for the first time at this adjudication hearing and not in November 1987 or during the grievance resolution process.

According to grievor Pinsent, although the board of 31 aircraft which he was working was a "moderate" one, the associated work load - i.e. message traffic and required control, procedures - was "heavy". In this

assessment the grievor and Soucy disagree. The latter did not feel that the incident was beyond Pinsent's ability to prevent. Soucy felt that if the grievor had been paying the proper attention to his work the incident would not have taken the form that it did. It was necessary to stay alert and to double-check one's work at all times.

Jack Pinsent testified that he has been an air traffic controller since late 1965. He has held a number of positions and has worked at Gander since January 1968. He has had lengthy experience working the Oceanic sector; control procedures there depend entirely on the use of data strips and messages which are relayed by an FSS between the controller and a pilot. There is no direct communication. Position reports and data updates might take as long as 15 or 20 minutes to get to the controller after being sent by the pilot to the FSS.

Pinsent claimed to have been constantly busy on the afternoon of November 14, 1987. He stated that he never ever had been quite able to catch up to the message traffic. Reports would come in batches of 15 or 20 at a time. He could never quite finish dealing with one batch before the next arrived. However, Pinsent did not ask for a "split" of his duties - i.e. for assistance from a back-up controller or from his supervisor. Nor did he ask to be relieved. He stated that he was never without two or three things requiring his attention at the same time.

Pinsent stated that he had originally noticed the potential "confliction" between KLM 621 and SAB 541 if he were to allow KLM 621 to climb to 33,000 feet. Thus he left the strip "cocked". He then turned to doing several other things including passing some estimates to Moncton. Had the work load been lighter, Pinsent claimed that he would not have made the mistake that he did. Instead, when he came back to the KLM 621 strip he proceeded to clear him to 33,000 feet. That is, Pinsent forgot about the "confliction" which would result.

Pinsent stated that he passed several estimates to Moncton including KLM 621 and SAB 541 which both were reported at 33,000 feet. He said he then made continuous board checks but failed to note the "confliction". This probably occurred because the KLM 621 strip was "cocked" and the position reporting points would not line up to his eye with the points on other strips. Also, he was kept quite busy throughout. Pinsent claimed that he did not get the position reports of KLM 621 and SAB 541 crossing 50° W until the same moment (1751 Z) that the Moncton controller was asking about a "confliction". That is, Pinsent claims, this information was not on his board previously (and therefore not seen by him) because of delays in getting it to him from the teleprinter.

Pinsent stated that he had been having problems at work since December 1985, when he had the previous loss of separation incident. He had been having "off days" and was slowing down. He did not like to admit that he was "losing it" because he was a proud man.

In January 1986, he had gone to see Dr. Blackie. He had been told that it was a normal "ageing" process and to take things a bit easier. Pinsent stated that he told a supervisor, in confidence, that he would appreciate working easier assignments or being given "splits" when requested.

During the summer of 1987, Pinsent took some time off to participate in a "Canadian Airspace Review" and also because of illness. He passed a check-out for the resumption of control duties in September 1987. However, he said that he never could quite seem to reach his former level of proficiency. He had problems sleeping; his concentration was poor; he was unable to sit still and watch television or read; he felt irritable and had problems socializing. All of this led up to the operating irregularity concerned herein.

After the incident, Pinsent testified that he had had his eyes examined and now wears glasses. There had been some slight deterioration in his sight. In May 1988, he arranged to see Dr. Blackie again who diagnosed him as suffering from stress and advised that he take a leave of absence from his work and that Pinsent's certificate of fitness for duty be revoked. In the fall of 1988, Pinsent underwent counselling with a psychiatrist. He has since left air traffic control work and is presently on a retraining and reassignment program.

Pinsent stated that he was contesting the discipline because it suggested that his past work record

would account for his symptoms when seen by Dr. Blackie in January 1986. But then he had improved within a few weeks without medication or the need for further care.

I have no doubts that Pinsent again suffered stress following the second loss of separation. I do not question Dr. Blackie's assessment that Pinsent was burnt-out and ought to retire and seek retraining. But again no medication was prescribed and improvement seemed to follow in a few weeks. What is strange is that Pinsent received his annual certification of fitness at almost the same time.

I have trouble, therefore, accepting Dr. Blackie's surmise that it was stress all along and stretching back over two years that rendered Pinsent medically incapable of doing his tasks and, therefore, according to Ms. MacLean non-culpable. That, it seems to me, is stretching things too far. What about all the other days in between? Where was any evidence of illness or intermittent incapacity? Why did it strike only on November 14, 1987? And why, if Pinsent was stressed out and unable to cope, did his condition affect only one aircraft out of 31 on that afternoon? It seems to me that if it were a case of medically-driven inability we would be faced here with a more complete breakdown than occurred.

I conclude, therefore, that this was a case of inadvertence or inattention to duties, a matter of sub-standard performance rather than a very selective case of non-culpable inability. I do not believe that this

oversight on Pinsent's part which led to the operating irregularity was beyond his ability to prevent. Indeed, it was his own evidence that he first noticed the potential "confliction" that would occur if he allowed KLM 621 to climb to 33,000 feet but then he forgot about this. Pinsent's analytical abilities, by his own words, were not impaired; he simply forgot to deal with what was quite clear to him at one point. Subsequently, he failed to note the loss of separation which he had allowed to occur even though he remained conscious of the need to continue to scan his board. His mind or his eyes may have strayed or overlooked the information. However, that seems to me to be a case of inattention, not one of incapacity.

This grievance is hereby dismissed.

Roger Young,
Board Member.

OTTAWA, July 7, 1989.

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