

File no.: 166-2-17848

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

BETWEEN:

DOUG C. LUND,

grievor,

- and -

TREASURY BOARD  
(Transport Canada),

employer.

Before: J. Galipeault, LL.L., Board Member.

For the grievor: C.H. MacLean, counsel, Canadian Air  
Traffic Control Association.

For the employer: R. Edge, counsel.

Heard at Thunder Bay, Ontario, November 29, 1988.



## DECISION

The grievor, D.C. Lund, is a VFR Controller, AI-02, for Transport Canada, at Thunder Bay Airport. He grieves that he was denied, by the employer, overtime for attendance at a Health and Safety Inspection on April 27, 1988 during off duty hours.

At the outset of the hearing, a number of documents were filed by counsel for the grievor. Among those were the relevant collective agreement between Treasury Board and the Canadian Air Traffic Control Association, code 402/85; the Occupational Safety and Health Committees' Standards, TB STD 3-20; and parts of the Canada Labor Code. Counsel for the employer agreed to the filing of the above documents. He agreed that the aforementioned Standards were part of the relevant collective agreement.

Clause 12.01 of the collective agreement says:

### CALL-IN

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.

Article 15 relates to Overtime.

Paragraph 4 of the Occupational Safety and Health Committees' Standards says:

Every department shall, for each departmental work place at which twenty or more employees are normally employed, establish a safety and health committee consisting of at least two persons, one of whom is an employee or, where the committee consists of more than two persons, at least half of whom are employees who

(1) do not exercise managerial functions;

and

(2) have been selected by the bargaining agent representatives.

Paragraph 24 says:

Members of a safety and health committee are entitled to such time from their work as is necessary to attend meetings or to carry out any other functions as members of the committee, including reasonable meeting preparation time, and any time spent by the member while carrying out any of his or her functions as a member of the committee shall, for the purposes of

calculating wages owing to him or her, be deemed to having spent at work.

Subsection 92(9) of Part IV of the Canada Labor Code says:

A member of a safety and health committee is entitled to such time from his work as is necessary to attend meetings or to carry out any other functions as a member of the committee, and any time spent by the member while carrying out any of his functions as a member of the committee shall, for the purpose of calculating wages owing to him, be deemed to have been spent at his work.

The Central Region Air Traffic Services Management Directive, dated June 29, 1987, with respect to Occupational Safety and Health Meetings, says:

Occupational Safety and Health meetings are held once a month during normal working hours. To ensure that an employee representative is available to attend, it is suggested that ATS Managers have the bargaining agent(s) submit the names of a designate and an alternate representative. The alternate should be an employee who is on an opposite shift to the designate. In instances when neither employee is on duty or cannot be released

to attend, a call-in will be authorized and overtime paid.

ATS Managers may, in consultation with bargaining agent(s), apply for exemption where the workplace is relatively free from risks to safety and health. Please contact RPRC for details regarding exemption requests.

#### EVIDENCE

The grievor holds the position of chairman of the Canadian Air Traffic Control Association local branch at Thunder Bay Airport. Mr. Lund sent, as chairman, on November 11, 1987 a round trip memorandum to the Chief, in which memorandum he said the following:

This memo is to advise that CATCA wishes to have a representative at all Occupational Health and Safety Committee meetings. The CATCA representative will be the chairman in most cases. The only exception would be if the chairman is absent due to annual leave, sickness or prior commitments. During these times the chairman will designate another member of the CATCA executive as his replacement. Would you please make this information known to the chairperson responsible for the Occupational Health and Safety Committee and ensure that CATCA is advised of the date and time of the next scheduled meeting.

The Occupational Health and Safety Meetings and Site Inspections were, according to the grievor, attended by him 60% of the time. An alternate attended the rest of the time. When Mr. Lund was in town, he attended the Site Inspections and the meetings. When there was a meeting scheduled at the time the grievor would be on a shift, he would approach his supervisor in advance to ask him for permission to attend said meeting as CATCA representative and it would be granted. He would be paid, for his time spent attending the meeting, regular pay. If Mr. Lund had a meeting scheduled for 9:00 A.M. at a time when he would be on a 10:00 A.M. to 6:00 P.M. shift, he would come in early and attend said meeting. If a meeting was scheduled while Mr. Lund was on days off, he would leave home and attend said meeting. He would, thereafter, request to be paid the overtime rate.

On April 27, 1988 the grievor was scheduled to work from 3:00 P.M. to 11:00 P.M. There was, on that day, an Occupational Health and Safety Site Inspection scheduled for 9:00 A.M. Mr. Lund attended the scheduled Site Inspection. It lasted one and one-half hours. Mr. Lund's alternate on the Safety and Health Committee was working on a shift at the time of the Site Inspection. Mr. Lund did not ask him to attend the Site Inspection in his place. The understanding, for the grievor, is that the alternate is to attend meetings or Site Inspections in his place only if he cannot attend. The grievor could attend the scheduled Site Inspection on April 27.

Mr. Lund sent, on April 27, following his attendance at the Site Inspection, a memorandum to the employer in which he asked to be paid four hours at straight time. The employer refused on May 3 to pay Mr. Lund the overtime he asked for. The reason was that, since an alternate was at work on April 27, he, not the grievor, should have attended the Site Inspection scheduled. When Mr. Lund met with his supervisor, after April 27, he reminded him that he had previously sent him a memo in which he had told him that he would send his alternate only when he could not himself attend.

Mr. Lund said that he did not attend, on May 4, the Occupational Health and Safety meeting, which meeting followed the April 27 Site Inspection. He added that he was out of town that day. The grievor advised, with regard to the letter which was sent, April 20, 1988, by Mr. J.C. Butt, President of CATCA, to Mr. G.M. Allan, Director General, Staff Relations, Transport Canada, that he was, at the time of the hearing, seeing said letter for the first time. Mr. Butt's letter says:

I am in receipt of your letter dated April 11, 1988 which proposes changes to the Draft Workplace Occupational Safety and Health Committee and Representatives Policy.

We propose the policy to read:  
"When members are either on leave or travel status, alternates will be appointed..."



It is our position that the appointed Safety and Health Committee Representative should attend all meetings of the committee whenever possible in order to maintain continuity on the Safety and Health Committee. It is our opinion that the committee can be more effective when its operation is approached in this manner.

If you wish further clarification of our position please contact the undersigned.

Mr. Lund said that the union had rejected, prior to April 27, management's position on the proposed changes to the draft Workplace Occupational Safety and Health Committee and Representative Policy.

The grievor's supervisor, Mr. D. Buchanan, testified for the employer. He said that it was only at 11:00 A.M., on April 27, when he had a discussion with the grievor in his office on certain matters, that he learned that Mr. Lund had previously attended, at 9:00 A.M., the scheduled Site Inspection. Mr. Buchanan's position was that, since an alternate could have attended the Site Inspection, he did not think the employer should pay to Mr. Lund the four hours of call-in pay at straight time asked for. Mr. Buchanan showed to the grievor, in order to convince him that his decision was the right one, some documents, including a Central Region Management Directive, dated June 29, 1987, but Mr. Lund did not agree with his supervisor's interpretation of them.

ARGUMENTS

Counsel for the grievor argued that paragraph 24 of Exhibit G-1 clearly shows that when Mr. Lund attended the Site Inspection on April 27, 1988 he was deemed to be at work. He should be thus paid for his overtime since the work he did was done outside his regular shift. Clause 15.01 of Mr. Lund's collective agreement was cited. Ms. MacLean submitted that, in order to resolve the present matter, I should read the decision rendered by D.H. Kates, April 5, 1988, in Canadian Union of Postal Workers and Canada Post Corporation, decision number 88-65. The circumstances in the above decision are, according to counsel for the grievor, the same as in the present instance. At the end of his decision, Sole Arbitrator D.H. Kates directed the employer to compensate the grievor in accordance with Article 16 of the collective agreement for an amount of time spent during off duty hours attending committee meetings.

Ms. MacLean submitted that the employer, with its Central Region Management directive of June 29, 1987, violates the content of the Occupational Safety and Health Committees' Standards, which are part of the collective agreement. Paragraph 4(2) of Exhibit G-1 shows that the union's representatives on the Safety and Health Committee are chosen by the union and not by management. Mr. Lund, as union local chairman, told management in November 1987 that he would attend the Committee's meetings as the union representative and that an alternate, for the specific reasons given in

the appropriate memo, would replace him only if he were unavailable. The employer cannot determine when the designate or the alternate shall attend the Safety and Health Committee's meetings. The following additional jurisprudence was cited: Canadian Air Traffic Control Association and Treasury Board (Board file 185-2-312).

Counsel for the employer submitted that the position of the employer is that members of Safety and Health Committees are entitled to time off from their work for the purpose of attending scheduled meetings only as part of their work responsibilities. The position of the union to the effect that when a Committee member on days off, vacation or sick leave leaves his home and attends a Committee meeting he should be paid for it is wrong. With respect to the provisions of the Canada Labor Code, one should read all of Part IV and not just subsection 92(9). Counsel for the employer submitted that Sole Arbitrator D.H. Kates' decision (supra) is wrong. Brown and Beatty, at page 189 of Canadian Labour Arbitration (Second Edition), were quoted. Mr. Edge argued that when one reads the whole of Part IV of the Canada Labor Code, one comes to the conclusion that its provisions do not apply in the present matter.

Mr. Edge submitted that the costs of committees, such as Occupational Safety and Health Committees, cannot be borne by the employer. It would be fiscally irresponsible if it were to happen. The employer can certainly not be obliged to pay wages to an employee member of a Committee every time he is to attend a committee's

function. If a committee, such as a Safety and Health Committee, accomplished all the functions permitted by law and the employer was obliged to pay the costs, the tab could be monstrous. It is certainly not the intent of the law that matters should go that way. Fiscal responsibility exists and should be followed. Counsel for the employer argued that the real intent of Parliament, with respect specifically to the present matter, was only to maintain the income of an employee who is at a work on a shift and who is asked to attend, at the same time, a meeting of a committee of which he is a regular member. Mr. Edge added that it is impossible for the employer, across Canada, to schedule meetings and Site Inspections at a time when all the union designates would be on shifts. When a committee designate is not on a shift at the time of a scheduled meeting or Site Inspection, it is thus necessary to ask an alternate on shift to attend, in place of the designate, such meeting or Site Inspection.

Counsel for the employer submitted that if I were to come to the conclusion that the employer has to pay an off duty employee attending a committee meeting or Site Inspection, the payment allowed to said employee ought to be straight time, as overtime, under the collective agreement, can only be initiated by the employer. Clause 13.06 of the relevant collective agreement shows that the employer has the control of shifts and hours worked. The following authors and jurisprudence were cited: Series of excerpts from Francis Bernion's Statutory Interpretation; Cliffs of Canada Ltd. and

United Steelworkers (1972) L.A.C. (2d) 48; The Goodyear Tire and Rubber Company of Canada Limited, Firestone Tire and Rubber Company of Canada Limited, B.F. Goodrich Company of Canada Limited and The T. Eaton Company Limited and others, [1956] S.C.R. 610; Poole Stadium Ltd. and another v. Squires, [1982] 1 All E.R. 404; Nokes v. Doncaster Amalgamated Collieries, Ltd. (1940) 3 All England Law Reports Annotated 549; Corporation of City of Greenwood v. Board of School Trustees of School District No. 13, 54 W.W.R. 432; Janet McBratney and Sadie McBratney (1919) (Vol. LIX) S.C.C. 550; Attorney General v. H.R.H. Prince Ernest Augustus of Hanover [1957] 1 All E.R. 49; Director of Public Prosecutions v. Schildkamp [1969] 3 All E.R. 1640. Perley Hospital and Ontario Nurses' Association, (1981) 29 L.A.C. (2d) 178; Black-Clawson International v. Papierwerke Waldhof-Aschaffenburg AG, [1975] 1 All E.R. 810; and The City of Winnipeg and Winnipeg Police Association, grievance of Gary Kowalski, decision rendered July 15, 1987, by Martin H. Freedman, Q.C., Mel Myers, Q.C. and Harold Piercy.

Counsel for the grievor, in reply to counsel for the employer, stated that the present grievance has nothing to do with fiscal responsibility. The decisions cited by counsel for the employer do not concern at all the present matter. Ms. MacLean stated that, if the intent of employees, like the grievor, was to spend on committees, like the Safety and Health Committee, unlimited time outside their work, they would be quickly

released by the employer. The clear meaning of paragraph 24 of the relevant Standards is not income. It says that an employee attending, for example, a Safety and Health meeting is deemed to be at work and he gets paid for it. With respect to the amount which should be paid to the grievor, the evidence is to the effect that said grievor was called in to attend the April 27, 1988 Site Inspection and he should thus be paid the overtime rate.

#### REASONS FOR DECISION

Mr. D.C. Lund grieved that he was denied, by the employer, overtime for attendance, as the designated representative for CATCA on the Occupational Safety and Health Committee, at a Site Inspection held on April 27, 1988 during his off duty hours.

The employer refused the grievor's request because it thought that, since an alternate working on a shift at the time of the Site Inspection could have attended said Site Inspection, it did not have to pay to Mr. Lund the four hours of overtime at straight time asked for.

Counsel for both parties agreed that the Occupational Safety and Health Committees' Standards, filed as Exhibit G-1, were part of the relevant collective agreement.

Paragraph 24 of the Standards says:

Members of a safety and health committee are entitled to such time from their work as is necessary to attend meetings or to carry out any other functions as members of the committee, including reasonable meeting preparation time, and any time spent by the member while carrying out any of his or her functions as a member of the committee shall, for the purposes of calculating wages owing to him or her, be deemed to have been spent at work

(emphasis added)

Counsel for the grievor argued that paragraph 24 clearly shows that when Mr. Lund attended the Site Inspection on April 27, 1988, he was deemed to be at work. I do not agree with her.

A Site Inspection was scheduled for 9:00 A.M. on April 27, 1988. My interpretation of paragraph 24 is that it applies, in the present instance, only to members of the Safety and Health Committee who were at work at the time of the Site Inspection, which was held at 9:00 A.M. on April 27, 1988.

The uncontradicted evidence adduced before me showed that, at 9:00 A.M. on April 27, 1988, the designate, Mr. Lund, on the Safety and Health Committee was at home, waiting for his shift to begin at 3:00 P.M.,

while the alternate was on a shift. The only member of the Committee for CATCA who was at work at the time of the Site Inspection was the alternate. The meaning of paragraph 24 is that if the alternate had attended the Site Inspection, he would have lost none of his income, remuneration or wages during the whole time he attended said Site Inspection. Mr. Lund attended the Site Inspection and he surely had the right to do so but he cannot be paid for it since he did it at a time while he was not at work. Mr. Lund's grievance cannot be sustained for all the above reasons.

The evidence further showed that when Mr. Lund met with his supervisor, D. Buchanan, on April 27, after he had attended the Site Inspection, without having told said supervisor in advance as he said he had done at other times, Mr. Buchanan showed the grievor, in order to convince him that his decision to refuse his request for pay was right, some documents among which were the Central Region ATS Management Directive, dated June 29, 1987. When the Central Region ATS Management Directive was referred by Mr. Buchanan to Mr. Lund, the reaction of the latter was not that he did not know the content of the directive but that he did not agree with Mr. Buchanan's interpretation of it.

We know that the Directive says, among other things, that in instances when neither employee, that is the designate and the alternate, is on duty or neither employee can be released to attend a Safety and Health meeting or Site Inspection, a call-in will be authorized and overtime paid.



Counsel for the grievor argued that the concerned Directive violates the content of the Occupational Safety and Health Committees' Standards, which are part of the relevant collective agreement. In view of my previous interpretation of the content of paragraph 24, I cannot agree with her for the simple reason that, nowhere in the Standards, do we see anything which tells us what happens when, at the time of a Safety and Health meeting or Site Inspection, neither the designate or the alternate are on a shift at work. The Directive says that it is only at that time that a call-in will be authorized and overtime paid. The matter did not arise at the time of the Site Inspection held at 9:00 A.M. on April 27, 1988 because the alternate was at work on a shift.

For all these reasons Mr. Lund's grievance is dismissed.

Jean Galipeault,  
Board Member.

OTTAWA, January 30, 1989