File No. 166-2-22489

PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

ALAN NORMAN MACGREGOR,

Grievor,

- and -

TREASURY BOARD
(Transport Canada)

Employer.

Before: P. Chodos, Deputy Chairman.

For the Grievor: Peter Barnacle, Counsel

For the Employer: Rob Cunningham, Student-at-Law

Heard at Halifax, Nova Scotia on September 23, 1992.

DECISION

Mr. MacGregor is employed at the Halifax Tower as an Operational Air Traffic Controller (AI-3). On November 30th, 1991 he submitted the following grievance which is the subject matter of this reference to adjudication:

> I requested leave for the period Dec. 31 1991 to Jan. 4, 1992. Leave was not granted for Jan. 3 & 4, 1992 due to inadequate staffing in the Halifax Tower. No one is on leave on Jan. 3 & 4, 1992.
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> The employer is not meeting contractual obligations under the current contractual agreement Code 402/91, and according to adjudications - "Graham, Winnipeg ACC" and "Rooney, St. Andrews Tower" recently rendered.
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> Corrective Action Requested
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> The Employer honour contractual obligations and provide leave as though proper staffing levels are available and specifically, that leave be approved for Jan. 3 & 4, 1992.

Prior to the commencement of these proceedings the employer advised the Board and the bargaining agent that it intends to raise a preliminary objection to the effect that the matter raised by the grievance is now moot as the employer had approved vacation leave for the grievor for January 3 & 4, 1992 and the grievor was in fact on vacation on those days. While it was acknowledged by counsel for the grievor that this is correct, it is the grievor's position that the employer was in breach of the collective agreement and is seeking a declaration to that effect.

The facts are for the most part not in dispute. The Department of Transport has developed a set of policies or guidelines respecting the staffing of air traffic control facilities. This policy includes a formula known as a staffing multiplier to be used in determining the number of controllers needed to staff a particular operation, taking into account such requirements as annual leave, sick leave, training, etc. According to Mr. Victor Boymook, who is employed as an Air Traffic Controller at the Halifax Tower and is also Branch Chairman of the bargaining agent, the Air Traffic Services Administration and Management Manual (ATSAMM) indicates that the Halifax Tower requires seven shifts per day. In accordance with the relevant staffing multiplier (i.e. 2.12), the Halifax Tower staffing requirements are 14.84, which is rounded to 15 controllers per day. In effect, having a full complement of 15 controllers would provide for one extra person available to cover off for all leave requirements, etc. The evidence is that prior to August of this year, except for a brief period between September 6, 1991 to October 17, 1991, there has not been a full complement of 15 controllers since 1989.

On November 28, 1990 a memorandum was issued by Mr. Paul Coolen, the Manager of Halifax Tower, which provided, in effect, that overtime assignments could not be used to cover off periods of vacation leave. However Mr. Coolen issued a subsequent memo on May 29, 1991 temporarily suspending the restrictions in the November 28, 1990 memorandum. It was acknowledged by Mr. Boymook that since the May 1991 memorandum there have been occasions when vacation leave has been granted notwithstanding that it would require overtime.

The shift schedules normally cover a period of thirty six days and are posted 15 days in advance of the first day of the schedule. The schedule in question, which covered the period of December 11, 1991 to

January 15, 1992 was posted on November 25th, 1991. Some time prior to that date the grievor, Mr. MacGregor, submitted a written request for leave for the period December 31, 1991 to January 4, 1992 inclusive. This would have allowed him to be off work from December 27th to January 9th, 1992. It was Mr. MacGregor's intention to use this period of time to visit with members of his family in Mississippi who also planned to take vacation time during this period.

When the schedule was posted Mr. MacGregor discovered that he was scheduled to work on January 3rd and 4th, notwithstanding his request for leave for those days. On that day he approached the Unit Operations Supervisor, Mr. Wayne Jollymore in order to ascertain why his leave had not been approved as requested, particularly in light of the fact that no one else had been scheduled for leave at that time. Mr. Jollymore advised him that he had received instructions from Mr. Coolen to issue a schedule which would not require the utilization of overtime for vacation leave purposes. He also stated that a decision would be made by December 10th whether overtime could be used to grant leave requests for this period. In response Mr. MacGregor prepared the above-noted grievance which he brought to Mr. Coolen on December 5th. He told Mr. Coolen that he needed an answer as soon as possible in order to complete his vacation plans. Mr. Coolen asked him to hold on to his grievance until December 9th, by which time he expected he would be able to give him an answer as to his leave request. Mr. Coolen explained that he was waiting for instructions from the regional office. Mr. MacGregor agreed to withhold filing the grievance until Monday, December 9th. He had not received word by that date; when he reported to work on December 10th Mr. Coolen advised him that he could not give him an answer at this time and he would have to wait. Mr. Coolen also told him that under the collective agreement he had up to fifteen days prior to the leave dates to make a decision whether to approve the leave. Mr. MacGregor then asked him to process his grievance.

On the evening of December 16th Mr. MacGregor received a call from his relatives in Mississippi concerning his vacation plans. They had informed him that if he was not able to visit with them they would proceed with alternative plans. He advised them that he was unable to make any commitment at that time and consequently they should proceed with their alternative plans. Either on December 18th or 19th, while on his day off, he received a call from Mr. Jollymore who told him that his leave had been granted for January 3rd and 4th and would be covered by overtime. Mr. MacGregor took these days as annual leave, but was unable to follow through with his original vacation plans.

It was Mr. Coolen's recollection that he had told Mr. MacGregor that he would probably be in a position to respond to his request by December 9th; at that time a Mr. Ritchie was taking sick leave on a day-to-day basis. Had Mr. Ritchie been back to work, there would have been no requirement for overtime to cover off Mr. MacGregor's leave period, and he could have approved it immediately. It was not until December 16th that he became aware that Mr. Ritchie would be on long term sick leave. Mr. Coolen testified that there had been occasions when vacation leave had been granted notwithstanding that it would generate overtime; he is allotted a budget of $125,000. per fiscal year for overtime purposes and has to budget these expenditures carefully. He noted that Mr. Jollymore and Mr. Boymook were paid overtime to cover off for Mr. MacGregor for January 3rd and 4th. According to Mr. Coolen it was open to Mr. MacGregor to exchange his shift with another controller, provided it does not breach the agreement. Such exchanges are normally approved.

On behalf of the grievor Mr. Barnacle first addressed the employer's preliminary objection. Counsel submitted that the time period within which to view the crystallisation of the grievance is at the point

where the schedule is posted; at that time the question arises as to whether the employer made a reasonable effort to schedule vacation leave as required under Article 17.06 of the collective agreement. The subsequent granting of vacation leave on January 3rd and 4th only goes to the issue of damages. In any event the grievance was not exhausted by the granting of vacation leave on January 3rd and 4th; there remains in dispute whether the employer had an obligation to respond to the grievor's request in a timely fashion; that is, the meaning of Article 13.04, as dovetailed with paragraph 17.06(b) remains outstanding.

Mr. Barnacle noted that the Board has not previously addressed the question of mootness directly. He did refer to the Board decision in Milne (Board file 166-2-18376) where it was argued that, as the remedy was not required the matter should not be put before the adjudicator. This argument was rejected. Counsel also referred to the award in International Nickel Co. of Canada Ltd. and United Steelworkers, Local 6500 (1975) 9 L.A.C. (2d) 83 (Simmons) where the arbitrator found that unless the differences between the parties have totally disappeared the Board should proceed with arbitration. Likewise in Re: Durham Region Roman Catholic Separate School Board and Canadian Union of Public Employees, Local 218 (1991) 19 L.A.C. (4th) 72 (Brandt), it was held that the fact that the grievor no longer had any monetary claim did not extinguish the grievance. In Canada Post Corporation and Canadian Union of Postal Workers (Mundle) (1989) 8 L.A.C. (4th) 201 (Thistle), the employer had withdrawn disciplinary action subsequent to a policy grievance award. The arbitrator held that unless the employer sustains the grievance and admits that it violates the agreement there is still an issue outstanding.

Counsel submitted that in this case the employer has made no admission concerning the violation of the agreement and that remains an

outstanding issue. The employer failed to make reasonable efforts to schedule leave, which was not remedied by the granting of leave on January 3rd and 4th; alternatively, the interpretation of the agreement remains in dispute and therefore the lis survives.

With respect to the merits, counsel for the grievor submitted that it is apparent on the evidence that the only reason the employer failed to schedule the leave as requested is because it would require the payment of overtime. Mr. Barnacle maintained that Mr. Coolen had in fact referred to operational staffing concerns, by which he meant staffing shifts without paying overtime. This raises the issue as to whether the employer made reasonable efforts to schedule vacation leave when the reasons for failing to do so was the refusal to pay overtime. Counsel noted that no other controllers had requested leave for the period in question. He also referred to the staffing situation existing at the Tower at the time; the evidence clearly indicates that the Tower had been understaffed by the employer in Halifax. According to the employer's own assessment, the appropriate Halifax complement was 15 controllers plus one Operational Unit Supervisor. The Board's own jurisprudence makes it clear that shortstaffing has become chronic, which was certainly true of Halifax for a two and a half year period, until August, 1992. Accordingly the employer was unable to meet normal staffing requirements without overtime.

In Milne (supra) paragraph 17.06(b) was at issue. The employer had denied leave because it would require overtime, due to a shortstaffing situation. The adjudicator found that the employer did not meet its obligations under the agreement to allow vacation leave as requested. In Rooney (Board file 166-2-21306) where again the question was the interpretation and application of paragraph 17.06(b), it was found that the refusal to pay overtime was not a satisfactory reason to deny vacation

leave. In Graham (Board file 166-2-21414) the adjudicator set out the principles respecting application of paragraph 17.06(b) and issued a declaration that the employer had been in violation of the collective agreement.

Mr. Barnacle submitted that the obligation of the employer under Article 17.06 arises at the time of scheduling, in accordance with clause 13.04. The process of amending the schedules is a different issue which brings to bear the question of penalties. The intent behind these provisions is to allow employees to rely on scheduling in making their plans. In this instance Mr. MacGregor was unable to make vacation commitments because of the employer's failure to provide adequate notice. This illustrates the mischief that can occur if the employer is allowed to provide a rolling schedule; the employee would only be able to make vacation plans no more than 15 days in advance. This is entirely unreasonable given flight requirements, etc. Pursuant to the plain meaning of the language of the agreement the employer failed to make reasonable efforts to schedule Mr. MacGregor's vacation. He submitted that the reason for so doing was to avoid the payment of overtime. The argument respecting shift exchanges only goes to the question of remedy, which is irrelevant here.

On behalf of the employer Mr. Cunningham submitted that the grievance is now academic given that the entire period of leave requested by the grievor was ultimately granted to him. He noted that there was no request in the grievance for a declaration. He submitted that if an employer is required to face adjudication notwithstanding the granting of corrective action, then the employer would withhold any remedy until the final stages of the adjudication process, thereby unnecessarily causing delays in that procedure. In support of this submission, Mr. Cunningham referred to Re

Imperial Tobacco Products (Ontario) Ltd. and Tobacco Workers' International Union, Local 323 (1975) 8 L.A.C. (2d) 388 (Weatherill) where the Arbitration Board noted that had the company, during the grievance procedure, allowed the grievance and issued a cheque then it would not be open to process the matter to arbitration. He also referred to the Board cases in Despres (Board file 166-2-14209) and Cooke (Board file 166-2-16484); in both cases the grievances were dismissed because the employer had granted the remedy sought. Mr. Cunningham submitted that in this case the remedy was granted during the grievance process and therefore is distinguishable from the authorities cited by the grievor. Mr. Cunningham also referred to the award in Re American Can of Canada Ltd. and Sheet Metal Workers International Assoc., Local 487 (1975) 10 L.A.C. (2d) 73 (O'Shea) wherein the Board refused to grant a declaratory remedy because it had not been sought in the grievance. Accordingly, it was Mr. Cunningham's contention that the grievance should be dismissed because the employer had met the entire requested action during the grievance process; in addition, the request for declaration was not made until after the corrective action was taken.

With respect to the substantive issue, it is the employer's position that there was no obligation on the part of the employer to respond to the vacation leave request on a timely basis. Paragraph 17.06(b) does not impose any requirement that there be a timely response to a vacation request. Counsel noted that clause 17.11 contemplates a recall from vacation leave; if the employer is required to make an early commitment with respect to a vacation leave request there is a greater risk of recall because of operational needs, which is undesirable both from the point of view of the grievor and the employer.

Mr. Cunningham cited the Board decision in Hill (Board file 166-2-14425, 14426) wherein the adjudicator considered the interpretation of paragraph 17.06(b), and concluded that it refers to the dates when vacations are to be taken and not to how quickly the employer is to respond to the request for vacation leave. The employer's representative also referred to the French version of this provision which speaks of the "fixing" dates for vacation leave and uses the phrase "en tenant compte"; Mr. Cunningham submitted that this is less strong than "in a manner acceptable". The French version suggests that the obligation is to take into account the employee's wishes, and not necessarily to be bound by those wishes. Mr. Cunningham also argued that the contra proferentum rule applies; that is, the provision should be interpreted restrictively in respect of that party which benefits from the provision, in this case the employees.

Alternatively, the employer submitted that it was not in breach of any timeliness requirement. The employer was only obligated to post schedules fifteen days in advance, on a day-to-day basis. The employer should not be penalized for going beyond the minimum obligation. In this instance the request for leave for January 3rd and 4th was granted on December 17th, more than fifteen days in advance; the clear implication from clause 13.04 is that fifteen days' advance scheduling is entirely reasonable.

The employer's representative also noted clause 15.03 which provides that there is an obligation on the part of the employer to keep overtime to a minimum, which is what the manager was attempting to do in this instance. Mr. Cunningham also disputed the grievor's submission that there was a chronic staff shortage; he noted in Mr. Boymook's testimony that there was a full complement of fifteen from September 6 to October 16, 1991.

The employer's final submission is that the grievor was the author of his own misfortune in that he failed to inform the manager of the deadline by which a decision was needed. The employer must respond to hundreds of leave requests per year; if there are special concerns in this instance, the employee had an obligation to make this clear. Moreover if the matter was particularly pressing then it was open to the employee to have arranged an exchange of shifts. There should be some requirement on the part of the grievor to make reasonable efforts on his own behalf. In support of this contention Mr. Cunningham referred to the Board decisions in Fitzpatrick and Cull (Board files 166-2-16573 and 16589).

The grievor's counsel replied that the grievance requested that the employer honour all obligations as well as grant the leave requested. Only the latter was granted as a remedy; accordingly the employer has not met the remedy which was sought by the grievor. Mr. Barnacle submitted that in the Graham decision (supra) no remedy had been requested. While the grievor may not have used the term "declaration" he in effect gave a virtual definition of that term in referring to the honouring of obligations.

Mr. Barnacle contended that the Imperial Tobacco award (supra) contained no definitive statement regarding the question of mootness. Similarly, in the American Can decision (supra) the declaration sought was of a general nature; in this instance the declaration sought is much more specific. In Despres (supra) the remedy sought was outside the ambit of the grievance itself. Mr. Barnacle noted that in the Canada Post award (supra) the arbitrator held that the matter was indeed arbitrable.

Counsel also contended that the contra proferentum rule is based on assumption of ambiguity. In this instance neither party has

argued that there is an ambiguity here; rather, there is a difference in interpretation.

Mr. Barnacle referred to the definition of "shift schedules" and "shift cycle"; in Halifax the cycle is thirty six days, the definition of "shift schedules" is the advance posting of the thirty six day cycle, which must be posted fifteen days in advance, thereby requiring notice of fifty one days. This is contrary to the notion of a rolling shift schedule as put forward by the employer. If clause 17.06 has any meaning at all it must refer to the schedule posted in accordance with clause 13.04; no other schedule of work is provided.

He noted that the reference in the collective agreement is to "schedule" not to dates. He also submitted that one should not look to a literal translation of the French version to ascertain its meaning.

The grievor's counsel further contended that it would be an administrative nightmare for the employer to have to change schedules every fifteen days. It would be impossible to deal with sick leave situations, etc. if it had to change schedules on a daily basis. The early posting of schedules is a two-way street, providing benefits to the employer as well as to the employees. Counsel also maintained that the employer has an obligation to deal with leave requests on the basis of a full complement; the failure here is no different than in those cases where it failed to actually grant the vacation leave. Finally Mr.Barnacle submitted that the question of self help only goes to the matter of mitigation, not to the question of whether there is a violation of the agreement. At the very least Mr. MacGregor provided Mr. Coolen with notice of his need to receive a timely reply to his leave request.

REASONS FOR DECISION

The first question to be addressed is whether, as alleged by the employer, the grievance has been rendered moot by the employer granting the days off in question, that is January 3rd and 4th, 1992. The evidence is that while the grievor did in fact take off this time as vacation leave, his request for leave was not granted in a timely fashion, that is by December 9th, 1991; as a result, the grievor was unable to accommodate his vacation plans which were the basis for his request in the first place. In light of these facts, I do not agree with the employer that the matter has been rendered moot. In this respect reference should be made to subsection 92(1) of the Public Service Staff Relations Act which states that where a grievance "has not been dealt with to the satisfaction of the employee, the employee may ... refer the grievance to adjudication". It can hardly be argued here that the subject matter of the grievance, namely the request for vacation leave was dealt with by the employer to the satisfaction of the employee. Mr. MacGregor is clearly not satisfied with how the subject matter of his grievance was dealt by the employer, notwithstanding that he was ultimately granted the time off in question. Accordingly, I find that this grievance has not been rendered moot and should be addressed.

I have also concluded that the corrective action sought, that is a declaration that the provisions of clause 17.06(b) have been breached by the employer, falls within the ambit of the grievance as formulated by Mr. MacGregor and is a remedy which can properly be granted by the adjudicator. Indeed, the Board has been called upon in many occasions to grant similar kinds of remedies and has often done so; see for example the decision in Fitzpatrick and Cull (supra) cited by the employer, as well as

several cases referred to by the grievor's counsel. To hold, as urged by the employer's representative, that the instant grievance does not subsume a declaration as part of the remedy, would be to take, in my view, an unduly technical approach to the grievance process. This case is clearly distinguishable from the American Can of Canada Ltd. award (supra) where what was sought was a "declaratory order having general application" (page 75). Here what is sought is a specific declaration relating to a particular provision of the collective agreement.

The substantive issue raised by this case turns primarily on the application and interpretation of paragraph 17.06(b) of the collective agreement which provides as follows:

> 17.06
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> (b) Local representatives of the Association shall be given the opportunity to consult with representatives of the Employer on vacation schedules. Consistent with efficient operating requirements the Employer shall make every reasonable effort to schedule vacations in a manner acceptable to employees.

Clause 13.04 also has relevance, as well as the definitions of "Shift cycle" and "Shift schedule" found in paragraph 7 and 8 respectively of the definition section of the collective agreement:

> 13.04 Shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee with reasonable notice as to the shift he or she will be covering. The shift as indicated in this schedule shall be the employee's

scheduled hours of work. If it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him or her of the change at the earliest possible opportunity. If the employee has serious objections to the amendment, the Employer shall make every reasonable effort to accommodate the employee provided that it will not result in any additional overtime payments than would have otherwise been the case if the employee had not been so accommodated.

An employee who is required to change his or her scheduled shift without receiving at least seven (7) day's notice shall be compensated at the rate of time and one-half (1 1/2) for all hours worked on the first shift on the revised schedule which are outside of the employee's original scheduled hours of work. Subsequent shifts worked on the revised schedule shall be paid for at the straight-time rate.

(7) "Shift cycle" means the recurring sequence of an employee's days of work and days of rest.

(8) "Shift schedule" means the Employer's advance posting of shifts to be worked by employees within their shift cycle.

In my view the obligation on the part of the employer to "make every reasonable effort to schedule vacations in a manner acceptable to employees" means that the employer is required, inter alia, to provide notification to employees as to when the employer permits them to be off work in response to the invocation of their vacation leave entitlements. I do not accept the employer's contention that scheduling vacations is analogous to granting vacation leave. Such an interpretation is too

restrictive and is inconsistent with relevant jurisprudence. For example, in the Federal Court of Appeal decision Attorney General of Canada v. Tucker [1979] 1 F.C. 543 the Court considered the meaning of the term "scheduled in advance" in the context of a call-back pay provision. The Court concluded:

> (at page 549) "The term "scheduled in advance", as it is used in clause 30.01, imports the sense of reasonable advance notice; an employee's recall would be "scheduled in advance" if he had notice of it far enough ahead to make reasonable rearrangements in his own plans, so that he could say of it, quite naturally, that he was scheduled to work at the time indicated, just as he might say that he was "scheduled" to go to his doctor for a check-up if he had an appointment to do so."

This term was also considered in the arbitral award of Re Reid Dominion Packaging Ltd. and Teamsters Union, Local 879 (1981) 1 L.A.C. (3rd) 314 (Jolliffe) wherein the arbitrator noted the following (at page 320):

> As to the meaning to be attached to the word "scheduling", there is really no doubt. That word is of course derived from the noun "schedule", which has given rise to a verb — also "schedule".
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> ...
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> However, there is another accepted meaning of the word which has come into general use in North America and to a lesser degree in the United Kingdom. This is the meaning stated by the Shorter Oxford English Dictionary very simply as "time-table". Funk & Wagnall's, a well-known American dictionary, also defines it as "a time-table, as for a transportation service",

> and further as a "detailed and time program". Thus it is very generally used to describe or title time-tables for the departures and arrivals of airplanes, trains, and buses. In the labour relations context, the word is used daily throughout North America to describe the documents posted on the premises of the employer, setting out times at which employees are required or expected to be at work. This practice is of course vitally important in all those establishments where shifts rotate on a three-week or a four-week cycle.
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> ...
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> The whole point of posting schedules regularly (which unfortunately is not required by the agreement under consideration) is to maintain some order about the sequence of work, thereby enabling employees to know exactly what their obligations are.

As the above-noted decisions indicate, the purpose of schedules, be it for vacation leave or other reasons, is to provide employees with advance notice as to their work schedule so they may plan their lives accordingly. It should be apparent to a manager that this planning in the context of vacation leave must subsume a number of considerations such as airline flights, the vacation plans of spouses and other relatives, all of which require a fair degree of advance notice. I do not take the fifteen day notice referred to in clause 13.04 as representing a benchmark for what is an acceptable period of advance notice for the scheduling of vacation leave per 17.06(b). Firstly, clause 13.04 speaks of "at least fifteen calendar days in advance"; that is, it is clearly only a minimum acceptable time-frame. Secondly, what constitutes paragraph 17.06(b) "every reasonable effort" which is consistent with "efficient operational requirements" and which is

"in a manner acceptable to employees" is a question of fact to be determined in any given set of circumstances.

On the basis of the evidence adduced in this case I find that the employer did not meet its obligations pursuant to paragraph 17.06(b). Mr. MacGregor made it fairly plain to the employer that he required an early answer to his request for leave for the dates in question in order to accommodate his vacation plans. Considering that the grievor's period of days off, including vacation time, would begin to run consecutively as of December 28th, it was entirely reasonable for him to expect that he be given a definitive answer by December 9th, less than three weeks before the commencement of his period of days off. Conversely, it was unreasonable under these circumstances for the employer to delay its final response until December 17th, particularly in view of the fact that Mr. Coolen had indicated that a response would probably be forthcoming by December 9th.

Mr. Coolen testified that his main reason for withholding approval of Mr. MacGregor's vacation leave request for January 3rd and 4th was his concern that it might require the employer to incur overtime costs, depending on the then uncertain sick leave status of Mr. Ritchie. The evidence is that had the employer staffed the Halifax Tower with a full complement of controllers as determined by its own guidelines, such contingencies as Mr. MacGregor's leave request could have been addressed without incurring overtime costs. In view of the fact that Mr. MacGregor was the only employee seeking vacation leave for January 3rd and 4th, it can hardly be argued that this was an unforeseeable matter affecting efficient operating requirements. The fact that the leave was belatedly granted, notwithstanding the incurring of overtime belies this contention. The Board has stated in several decisions that the employer cannot evade its obligations under the collective agreement simply on the basis that to fulfil these responsibilities would require incurring overtime costs. In this

respect the following conclusion in the Graham Award (supra) is apposite:

> Therefore, I am not convinced that operating requirements are a factor in this instant. In this case the employer did not have sufficient staff to meet its full obligations under Clause 17.06(b) of the Collective Agreement, but endeavoured to meet some of them through the payment of overtime to priority or advance leave replacements, but was not prepared to do likewise for casual leave replacements, or satisfy such leave requests by other means.
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> The employer had a definite obligation under the terms of Clause 17.06(b) of the Collective Agreement to make every reasonable effort to schedule the grievor's request for leave in a manner acceptable to him, and in my opinion, this did not occur.

I do not believe that this finding is inconsistent with the Hill decision (supra) cited by the employer's representative. In Hill the issue was the right of the employer to refuse a vacation leave request. The adjudicator was not required to address the matter of notification of vacation leave and did not do so. His statement that "... the intention of the provision (i.e. 17.06(b)) is to schedule vacations at times acceptable to employees" must be seen in that light. I must also disagree with the employer's representative with respect to the application of the contra proferentum doctrine. I have serious doubts as to the application of this principle in the context of labour relations where it is generally assumed that the parties to a collective agreement have more or less equal bargaining power.

In the circumstances of this case, for the reasons noted above, I find that the employer had not fulfilled its obligations under clause 17.06(b). Accordingly, I make a declaration to that effect.

P. Chodos,
Deputy Chairman.

OTTAWA, October 22, 1992.