

JAN 31 1995

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

VINCE CARUANA

Grievor

and

TREASURY BOARD
(Transport Canada)

Employer

Before: Thomas W. Brown, Board Member

For the Grievor: Peter J. Barnacle, Counsel, Canadian Air Traffic Control Association

For the Employer: Roger Lafrenière, Counsel

FAILURE TO REPORT AN INCIDENT
1 DAY SUSPENSION REDUCED TO AN ORAL REPRIMAND.

Heard at Winnipeg, Manitoba,
October 24, 1994

The grievor, Vince Caruana, is employed as an air traffic controller with Transport Canada at its Airport Tower in Thompson, Manitoba. He is covered by the collective agreement between Treasury Board and the Canadian Air Traffic Control Association (Code 402/91). He grieves against the one-day suspension meted out to him by letter dated 19 November, 1991, which reads:

On November 18, 1991, an aircraft within the control zone contravened the air regulations while you were responsible for the control position. You failed to report this incident to the unit manager, as you are required to pursuant to ATC MANOPS section 123.1.

This constitutes insubordination and you will be given a one day suspension without pay. You will serve the suspension on November 20, 1991.

Further acts of insubordination will result in additional disciplinary action up to and including discharge.

You have the right to grieve this disciplinary action as outlined in Article 5 of the collective agreement between the Treasury Board and the Canadian Air Traffic Control Association.

*R.C. Roos
Unit Manager*

The facts in this matter are not in dispute and are to the effect that on 18 November, 1991, the grievor was the air traffic controller responsible for all ground and air traffic at the Thompson Tower. At the same time, he was training a "trainee" air traffic controller, Tony Michaels, in his responsibilities as such. At the grievor's request, his tour of duty that day was being recorded on a compressed audio tape. At around 11:30 a.m., an aircraft took off without first seeking or obtaining permission from the grievor, which was an absolute requirement under air navigation regulations (Exhibit E-7). There was, at the time of take-off, no other traffic on the ground or in the air. The grievor immediately contacted the pilot of the plane and admonished him for taking off without permission. The pilot acknowledged his error and said that he was "sorry" -- it appears that this pilot most often flew in and out of airfields in the North where there are no traffic controllers located; he had made an error in this case, as he should have asked for clearance before take-off.

The grievor did not consider this "incident" significant, as the pilot's error could not have resulted in a safety hazard because there was no other traffic on the ground or in the air at the time and the pilot had recognized his error and had apologized. His admonishment of the pilot was, however, recorded on the compressed audio tape which, in the normal course, came to the attention of the manager of the Tower, Mr. Robert Roos, who is also the grievor's immediate supervisor.

Mr. Robert Roos, the unit manager and also the grievor's immediate supervisor, testified that he first became aware of the "incident" at the time of listening to the compressed audio tape at around 2:00 p.m. on the day of the incident. The incident had not been reported to him by the grievor or by anyone else. He immediately attended upon the grievor in the Tower, located upstairs from his office, and spoke to the grievor about the incident, upon the latter's return from a "break". He reminded him that there was a requirement to report all such incidents, in the interests of safety and in order to allow for the investigation of the incident by air navigation inspectors, as it was a prohibited manoeuvre under air navigation rules and regulations (exhibit E-7).

The witness, Mr. Roos, stated that the grievor had qualified as an air traffic controller in 1988 and so had about three years experience as such before the incident in question. The grievor was fully qualified when he arrived in the Thompson Tower. Instructions on how to do his job in the Tower were provided to the grievor through the Manual of Operations, known as MANOPS, supplemented by "operational letters", bulletins, etc. Through the witness was filed as exhibit E-3, an extract from MANOPS, showing section 123.1, entitled "Handling and Reporting Incidents", which was referred to in the letter of discipline to the grievor on 19 November 1991. Section 123.1 requires air traffic controllers to report to the unit manager, as soon as practicable, any incident that may require investigation. In addition, there were operational bulletins issued relating to section 123.1 and these took the form of minutes of monthly operation meetings. Employees who were not present at these meetings were required to initial these minutes. The witness referred in particular to Staff Memo 91-05, issued on February 1, 1991, and initialed by the grievor, which requires controllers who are not in attendance at a "Monthly Operations Meeting" to initial the minutes of the meeting. The minutes of the Monthly Operations Meeting held on May 1, 1990 (exhibit E-5), at which

the grievor was not present, stress the importance of reporting "incidents/occurrences" and adds "when in doubt, report it. Failure to report will result in disciplinary action".

The minutes of the Monthly Operations Meeting of November 5, 1991 (exhibit E-6), address the issue of "Reportable Occurrences" and stated that "....A log entry should be made for any unusual situation... of an operational nature". The purpose of addressing this item, the witness stated, was to ensure that everyone was aware of "changes going on in the unit".

Through the witness was filed, as exhibit E-7, "Air Navigation Order, Series V, No. 23", which was applicable at the time of the incident in question. Item 5 of this document entitled "Airport Traffic Control" states:

Notwithstanding anything in this Order, no person shall, at an airport with an operating airport control tower, taxi on the manoeuvring area, take-off or land an aircraft without first obtaining, either by radio or visual signal, an air traffic control clearance to taxi, take-off or land, as applicable, from that airport control tower.

Air traffic controllers must be knowledgeable of this "Order" and they receive instructions on it during their training in Cornwall, Ontario.

The witness stated that, after listening to the compressed audio tape, he realized that the air navigation regulations had been violated and that the incident had not been reported to him. When incidents are reported, inspectors are informed so that they may check into violations of air navigation regulations.

The witness met with the grievor and brought the matter to his attention. The grievor had told him that he had not reported the incident because he did not think it was significant. The witness had replied that he himself saw it as being significant and that it should have been reported. He then told the grievor to come to his office the next day with his union representative to talk about disciplinary action. He also told the grievor to complete the form and entries that hadn't been made. The witness then spoke

separately to the trainee and told him that the incident should have been reported and that "this is not the way we do business". The grievor completed the necessary forms and entries (exhibit E-8).

During the meeting with the grievor the next day, the grievor stated that he had not reported the incident because "I didn't feel it was significant". Mr. Roos had replied that it was significant - it was a violation of air navigation orders. It appeared to the witness that the grievor thought that because nothing happened as a result of the violation it wasn't significant. The witness had repeated that because the grievor was involved in training a trainee, he was teaching him bad habits. The issue had been covered a few times in unit documents. As the grievor did not advance any reason to "mitigate", the witness gave him the disciplinary letter (exhibit E-2) which imposes a one-day suspension without pay. The witness added that "it was extremely important that managers are made aware of these events. The controllers are not the ones to make the decision as to which violations of the air regulations are the ones which should be investigated. We can't allow pilots to break air regulations. It is very important that when one is responsible for training a trainee that the trainee be trained correctly".

In cross-examination, the witness stated that the grievor's name is not listed as having attended the Monthly Operational Meeting held on May 1, 1990. The grievor, was at the time, he believed, away in Winnipeg on a training course. The minutes of that meeting (exhibit E-5) were posted on a clip-board on the bulletin board. The requirement to initial the minutes was set out later in the minutes of the meeting of February 1, 1991 (exhibit E-4).

With regard to the Air Navigational Order, exhibit E-7, the witness stated that the obligations therein are on the pilot of an aircraft. When a pilot is reported for violating air navigation rules, there is no problem for the controller. He just has to make a report. If the controller doesn't report, then he is subject to disciplinary action. The reason for the report is to promote the safe operation of the air traffic system, which is of primary concern. The witness acknowledged that at the time of the incident there was no other traffic on the runway and that the pilot had acknowledged his own mistake and had apologized for taking off without a clearance to do so. The pilot had "got away with it"

because, as reflected in exhibit E-8, there was "no impact on operations". The fact that the aircraft took off without a clearance is a safety violation, the witness stated. There was a compromise on safety. The fact that there were no other aircraft mitigated the unsafe situation.

The witness agreed that the grievor may have told him that he didn't report the incident because he didn't think it was significant. The witness was referred to the wording of MANOPS 123.1, which is the rule the grievor is alleged to have violated, and the explanation of what is an "incident" found in the right hand column opposite section 123.1. That explanation is that an "incident" is any abnormal occurrence that is "significant". The witness was asked who determines whether an incident is "significant" and replied that it was not up to the air traffic controller but to "others" - the determination of whether it is "significant" is made after it is reported. The controller in the instant case is not to determine whether the incident is significant - he told one person but not his manager. There was a violation of air navigation orders which is a reportable occurrence that will require investigation but it was not reported by the grievor, the witness insisted. A violation of air navigation orders is significant and the grievor is wrong if he says otherwise, the witness stated. The grievor is not in a position to make the judgement of whether the incident was significant. He would be in error if he decided it wasn't significant. Even though the grievor had no previous disciplinary record, a failure to report a violation of the air navigation order was considered by the witness to be a serious infraction which warranted a one-day suspension without pay. The disciplinary action was meted out because the grievor had failed to report the incident. If the incident is not reported it can't be investigated. The witness characterized the grievor's failure to follow the rules as insubordination.

With regard to another similar incident in the same year but prior to the incident before us, the witness had given a one-day suspension to another air traffic controller for his failure to report the incident which involved a more serious situation than the present one - there was a clearance given for take-off when at the time there was an incursion into the runway by another vehicle. The witness emphasized that had the controller in that situation reported the incident he would not have been disciplined. It was his failure to report the incident for which he was disciplined and not the incident itself. As in the

instant case, it was the controller's failure to report which attracted the discipline. The grievor, Mr. Caruana, had made the conscious decision not to report the incident. If the grievor states that he looked at a quick-reference manual in the tower just after the incident, then, the witness stated, it was as a result of looking into the matter that he decided that it was not a reportable matter.

The grievor, Vince Caruana, stated that on the day in question, the pilot of the aircraft belonging to Perimeter Airlines, at around 11:30 a.m., was in his aircraft on the runway and called for a taxi clearance. The trainee, Tony Michaels, made all the radio transmissions to the aircraft. He gave the pilot permission to taxi on to the runway and to go to the far end of the runway to have all of the runway available for take-off. A vehicle was then operating on the runway. The trainee instructed the vehicle to exit the runway. Prior to the aircraft being ready for departure - it was still taxiing, the other vehicle left the runway. The aircraft, after arriving at the end of the runway, turned around and started his run without having received permission to do so. The grievor stated that he could have prevented the take-off by ordering the pilot to stop but believes that this is a dangerous operation and, in this instance, was not called for - aborting take-offs can lead to safety problems because the pilot is called upon to undo all his actions.

The aircraft lifted off and proceeded on course. The other vehicle which had been on the runway was now on another runway. There was no other traffic. After the plane had lifted off, the grievor informed the pilot that he had departed without take-off clearance and that in future he should obtain a clearance first. The grievor emphasized to the pilot that there had been a vehicle on the runway prior to his run and there could have been a problem if the vehicle had still been there. The pilot replied that he realized he had forgotten to get a clearance and apologized. The grievor believed that Perimeter Airlines aircraft seldom fly into the Thompson airport and fly mostly into uncontrolled airfields.

The grievor stated that he recalls "flipping through" a manual in the Tower after the "incident" occurred and "I didn't feel warranted to report it to my supervisor". He explained that when an aircraft has taken off without a clearance "although I would call it an abnormal occurrence, in this case I do not consider it significant because it had no

impact on other aircraft for safety". "If the pilot's action had impacted on any other aircraft, for example, or had caused an unsafe situation, if there had been any other traffic, then I would have considered it a significant situation", he added.

The grievor stated that he had not received any specific instructions with regard to MANOPS 123.1. He did not, he believed, ever see the minutes of the Monthly Operations Meeting held on May 1, 1990 (exhibit E-5), as he was away at a training course in Winnipeg from September, 1989, to September, 1990.

The grievor stated that at some time prior to November 18, 1991, he had requested that an audio tape be made of his training of a trainee controller for the latter's benefit. As it happened, it was November 18, 1991 which was being taped. His supervisor, Mr. Roos, on that day called him and told him that he wanted the grievor to listen to the tape and asked him why he had not reported the fact that the Perimeter Airlines aircraft had taken off without receiving take-off clearance. The grievor replied: "I didn't think we had to". Mr. Roos informed the grievor that he had to and told him to "get started on the paper work and I did", the grievor stated. He doesn't recall Mr. Roos mentioning at that point that he was going to be disciplined but he was told to meet with Mr. Roos the next day. At that next meeting the grievor was informed that because he had not reported the aircraft departing without a clearance "I would be serving a one-day suspension without pay and he gave a letter to that effect (exhibit E-2)", the grievor added. Mr. Roos had told the grievor during this second meeting that simply failing to report the incident was insubordination. The grievor stated that his own position was: "...I didn't think it was required because I didn't think it was significant". To a question asked, the grievor stated that he first became aware of the employer's different view of what the requirements were under MANOPS 123.1 on November 18, 1991 during his discussions with his supervisor, Mr. Roos.

The grievor stated that he had no prior disciplinary record and that his performance evaluations were at the "fully satisfactory" level. He added that he did not believe his actions on November 18, 1991, were insubordinate and "I characterized this event as being similar, for example, to instructing an aircraft to taxi on one runway and the pilot taxis on another runway. This is pilot error. My job is to identify error. In the

example given the pilot has not followed my directions. I would not report to my supervisor if a pilot taxied onto the wrong runway - unless a safety factor was involved. These are normal incidents during the course of a day that you have to ensure that pilots do things safely, for example, turning left instead of right. These are things which happen during the course of the day which are not significant. If I thought it was, I would have no problem in informing my supervisor. It costs me nothing to report an error by a pilot. I am called upon to report significant error".

In cross-examination, the grievor stated that it would be non-productive to report every little happening: "I would not say that a pilot taking off without permission is minor. I would not say so. Pilots are obligated to obtain permission before taking off". The grievor could not remember whether in the refresher course he had followed he had been made aware of the requirement to make reports concerning aircraft occurrences. He could not remember what was covered in the refresher course. He stated: "I am aware that there is a general rule to report aviation occurrences. I was aware on that day, November 18, that the pilot contravened air regulations". The grievor stated that he would now report a take-off by a pilot done without permission.

ARGUMENT FOR THE EMPLOYER

Counsel for the employer referred to the text Canadian Labour Arbitration by Messrs. Brown & Beatty, at paragraph 7:3610, dealing with the subject of insubordination, where it is stated that insubordination includes the element of the refusal to follow instructions. The grievor, as has been demonstrated, had received clear instructions that a violation of the Air Navigation Order, exhibit E-7, dealing with the Classification of Canadian Airspace, must be reported by him to his supervisor. There was no room for the grievor to use his discretion on whether or not to report the incident in question, which involved a pilot of an aircraft effecting a take-off without first obtaining a clearance to take off from the grievor. The grievor had attempted to hide behind the wording of the "Note" found in MANOPS 123.1 (Exhibit E-3) opposite the instruction by the employer to all traffic controllers to report to the unit manager any incident that may require investigation. This instruction is very clear and unambiguous. There is no question but that the infraction committed by the pilot would require an investigation.

What the grievor has done by failing to report is to substitute his own opinion as to whether the violation by the pilot required investigation. This discretion was not given to him by the employer. The facts in this case are not at issue. The question is: Was there misconduct? Counsel submitted that there was misconduct on the part of the grievor. The misconduct was the grievor's failure to report. The failure to report had occurred at the time that the grievor chose not to report. It was only by chance that the unit manager discovered the pilot's infraction. A clear message must be sent that even if an employee disagrees with the instruction of the employer, he or she must comply or the whole system, which is designed to ensure public safety, will be put in jeopardy. He emphasized the potential danger which would arise should employees decide according to their own standards what should or should not be reported. In this case, a one-day suspension without pay was imposed. We have heard that a one-day suspension had been imposed on another employee where he also failed to report. The fact that in the grievor's case there were no negative consequences in no way reduces the seriousness of the offence. The employer asks that the grievance be dismissed, bearing in mind that I must assess whether the penalty was unreasonable in the circumstances before intervening. There is no evidence that the penalty is other than reasonable, counsel argued.

ARGUMENT FOR THE GRIEVOR

Counsel for the grievor argued that there are three elements that the employer must establish to discharge the burden on it to demonstrate that the discipline meted out to the grievor was for cause. Firstly, the employer has to establish that there was a clear rule that was violated, that is, that the rule found in MANOPS 123.1 (Exhibit E-3) was clear. Secondly, if the employer succeeds in establishing that the rule violated was clear, then it must show that the grievor was insubordinate in failing to comply with that rule. Finally, in the event that the employer meets the first two criteria, then I must decide whether the level of discipline applied was in all of the circumstances appropriate.

Counsel submitted that the employer has not in fact discharged the onus on it for any of these three elements.

Counsel stated that we should first turn to the "clear rule" issue. The letter of discipline to the grievor (Exhibit E-2) states that the basis for discipline is the grievor's failure to report the "incident" to the unit manager "... as you are required to pursuant to ATC MANOPS section 123.1". Counsel referred to the text by Brown & Beatty at paragraph 4:1500, which refers to the leading decision KVP Co. Ltd. (1965), 16 L.A.C. 73, which sets out that in order to discipline an employee for a violation of a rule which it has put in place the employer must, among other things, base itself on a rule which is clear and unequivocal and such a rule must be brought to the attention of the employee. Counsel argued that it is clear from the evidence that the grievor in the instant case was not aware of the employer's interpretation of MANOPS section 123.1 until it was brought to his attention after the "incident" on 18 November, 1991. Even if the minutes of the monthly meeting held in May of 1990 (Exhibit E-5) do imply that the employer is going to take a strict interpretation, there is no evidence that the grievor saw those minutes, as he was away at the time on training in Winnipeg, for a full year, and there was no obligation on him to review any past minutes or even to review any future minutes. It was only when the Staff Memo of May, 1991 (Exhibit E-4) was handed out that controllers were advised that they had to read minutes of monthly meetings which they had not themselves attended and initial those minutes. That obligation came some ten months after exhibit E-5 was issued. Exhibit E-6, the minutes of the monthly meeting held on November 5, 1991, does not mention the need to refer "incidents" but refers to "occurrences", counsel pointed out, and the requirement to make a log entry. Hence, at the time the grievor was made aware that discipline was to apply to him and at the time the event in question occurred he did not know that the employer was going to take a strict interpretation of section 123.1. Therefore, contrary to the principles laid down by the KVP decision (supra), the rule, as the employer interpreted it, had not been brought to the attention of the grievor before the employer acted upon it.

According to the KVP decision (supra) the rule must be clear and unequivocal. Counsel referred to Exhibit E-3, which is an extract from the employer's Manual of operations, known as ATV MANOPS, and upon which document the employer relied to establish that there was a rule at section 123.1, which the grievor allegedly infringed. Counsel pointed out that opposite rule 123.1 is an explanatory note, which is part of the MANOPS rule 123.1. It is not open to the employer to say that the rule is only that part

of the rule found on the left hand side of the page. The word "incident" is explained in the note opposite the rule to mean an "abnormal occurrence that is significant". If it is just any occurrence, then that is what it should say, but it does not, counsel stated. If it is not significant then it is not an "incident" counsel argued. What we have here is a difference in interpretation over what is "significant". That is the nature of the dispute. Was the incident "significant" and so should be reported? The rule is not clear and unequivocal. It requires a judgment call. If it said an incident is any abnormal occurrence, it would be clear. However, when it adds the word "significant", it requires a judgment call by the controller. If it is not significant, there is no obligation to report it, counsel reiterated. Because the rule is unclear, the employer cannot rely in law on the strict interpretation of the rule before bringing it to the attention of the employee.

Counsel argued that it is the definition of the word "significant" which is in dispute here. He referred to the definitions of "significant" found in various dictionaries, namely The Oxford Encyclopedic English Dictionary; Webster's New Collegiate Dictionary; The Senior Dictionary - Dictionary of Canadian English and Langmen New Universal Dictionary and pointed out that all such definitions signify that "significant" means something of consequence, important.

The testimony of the grievor was that he turned his mind to the issue of whether the incident was reportable. He considered that there was no safety compromise, given that no conflict with ground or airborne aircraft was present. He had spoken to the pilot. The pilot had acknowledged his error and had apologized. The grievor referred to a quick reference guide in the tower and satisfied himself that it was not a type of incident to report. He did not blindly ignore a violation, nor did he refuse to report a violation. He made a judgment call as to whether the event was significant and, hence, reportable, and he was making that judgment in the context of a rule which was not clear and unequivocal on that issue; he had no reason prior to that date to know that the employer was taking a different interpretation of the rule. We, essentially, have a disagreement about a professional judgment call made by an air traffic controller and, even if he was wrong about the call, he was not insubordinate in failing to carry out the reporting procedure.

Counsel referred to paragraph 7:3610 of the text by Messrs. Brown & Beatty where there is reference to a refusal to follow instructions and that the "obey now, grieve later" rule applies. That rule is not in dispute here, counsel stated. The grievor did not refuse to obey an instruction. He may have been in error but that is not insubordination. Counsel referred me to the same text at paragraph 7:3612, dealing with the refusal to obey orders and insubordination. There are several elements which must be present for an action to constitute insubordination and, if those elements are not established, then there cannot be insubordination present. There must be the subjective intention to defy. In other words, while the state of mind does not determine whether there has been insubordinate conduct, the employer must show that there was an order given, which was clearly communicated to the employee and the employee refused to comply.

The letter of discipline to the grievor (Exhibit E-2) states in its second paragraph that the grievor's failure to report constitutes insubordination and that he will be given a one-day suspension. None of the evidence before me, counsel argued, even remotely establishes that the grievor was insubordinate. The essential ingredients, for there to be insubordination, are not present. The order was not clear and the employee did not refuse to comply with it. The grievor's supervisor, Mr. Roos, had said to the grievor after the incident that he thought it to be significant and to go fill out the necessary documents. If the grievor had said no to such an instruction, on the basis that he still did not think it was significant, then he would be insubordinate in refusing that order. However, the grievor did not refuse anything. He made a judgment call. He did not defy the employer. Counsel referred to the decisions in Moxham (Board file 166-2-13617) and in Alleyne et al. (Board files 166-2-10475 to 10489) in support of his submission that insubordination is only present when there is a refusal to obey an order. In the instant case, there was no direct challenge to the employer's orders. We do not have insubordination here and that is the basis for the discipline in the instant case.

Counsel turned to the disciplinary measure meted out to the grievor in this matter, a one-day suspension without pay, and argued that the penalty was not appropriate in the circumstances. He referred to the text by Messrs. Brown & Beatty, at paragraph 7:442, dealing with progressive discipline and pointed out there was no progressive discipline applied to the grievor in this case. The grievor had a clean disciplinary record and

counsel argued that the employer should not have jumped to a one-day suspension but, in the circumstances, should have, at most, given the grievor a reprimand -- that would have been sufficient. Counsel referred to the following decisions where progressive discipline was applied and where adjudicators under the *Public Service Staff Relations Act* have recognized that disciplinary action must be corrective in nature and, hence, progressive, to sustain a particular penalty: Azeroual (Board file 166-2-17549); Alexander (Board files 155-2-17365 to 17367 and 166-2-17496) and Canning (Board file 166-2-12477).

Counsel submitted that in the instant case the discipline was not progressive. If there was any reason at all to apply discipline, then the employer could have achieved the same ends by giving a lesser penalty -- there is no magic in a one-day suspension! A further ground for intervening in the one-day suspension is the mitigating factor that the same discipline was meted out to another controller for a much more serious incident, where the consequences of the employee's actions entailed more serious consequences. Here there were no potential consequences, as there was no other ground or air traffic at the time. Counsel suggested that, in the circumstances of the grievor's error and where there was no compromise of safety, an oral or written reprimand would have been sufficient, particularly because of the grievor's clear disciplinary record and the fact that he was not acting out of wilfulness or even bad faith.

REBUTTAL ARGUMENT BY THE EMPLOYER

Counsel for the employer pointed out as being a "red herring" counsel for the grievor's attempt to identify the issue in this matter as being that of the interpretation of the word "significant". The grievor had admitted during this hearing that he knew he was required to report contraventions of air regulations or air navigation orders. That is not contradicted, he asserted. The grievor had failed to do so. The employer, by requiring this reporting, made it significant.

REASONS FOR DECISION

As set out above, the facts surrounding the incident which the grievor failed to report to his supervisor are not in dispute. The grievor simply did not consider the incident significant enough to report, although he had an obligation to do so to allow for the investigation of the aircraft pilot who had failed to seek permission to take off and took off without obtaining a prior clearance. At the time there was no traffic on the ground or in the air. The grievor, in the circumstances, considered that it was sufficient for him to admonish the pilot for failing to seek or obtain clearance for his take off. The pilot acknowledged his error and said that he was "sorry". There was no record made of this incident by the grievor, although he should have. He had thought of doing so but, because of the absence of other ground or air traffic, he considered that there was no present danger to safety and additionally, because the pilot had acknowledged his error, he consciously decided that there was no need to make anything further of the incident by reporting it.

There was indeed a strict requirement that the grievor bring to the attention of his supervisor this breach of regulations by the pilot, the whole as set out in the ATC MANOPS at section 123.1 (Exhibit E-3). The grievor, however, for whatever reason, was not conscious of this strict requirement and did not deliberately defy standing instructions of which he should have been aware. It was not as if he had taken on as his own the discretion to determine whether the "incident" was significant or not and should have been reported. He simply, in error, I find, considered and decided that the "incident" was not one which required reporting. In the circumstances, he cannot be seen as having deliberately defied an instruction which required him to report all incidents where a pilot has taken off without obtaining prior clearance. He cannot be seen as having been insubordinate in the sense of consciously going against existing instructions that such happenings needed to be reported.

The grievor, on the other hand, was negligent to the extent that he did not familiarize himself well enough with standing instructions regarding the need to report a pilot's failure to receive clearance prior to take off. Had he been conscious of this stringent rule to report and the rationale behind it, which is to allow for an investigation

of the pilot's actions and thus ensure that, for the safety of all, it does not happen again, and had decided, nevertheless, on his own that in spite of the rule the incident was not "significant" enough to report, I would have found that he was in fact insubordinate.

In the circumstances of this error or negligence by the grievor, the fact that he brought the matter to the attention of the pilot, who acknowledged his error and expressed regret for his error, and also because there was no danger from other vehicles on the ground or aircraft in the air, I believe that an oral reprimand would be a more appropriate penalty, the whole having regard to the fact that the grievor did not have any prior disciplinary record.

Accordingly, the one-day suspension without pay meted out to the grievor is set aside and an oral reprimand is substituted therefor. This grievance is thus partially sustained.

**Thomas W. Brown,
Board Member**

OTTAWA, January 26, 1995.