

AUG 20 1996

File: 166-2-26681



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

BRUCE A. CORAM

Grievor

and

TREASURY BOARD
(Transport Canada)

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

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

For the Employer: Roger Lafrenière, Counsel

Heard at Winnipeg, Manitoba,
November 28, 1995 and April 10, 1996.

DECISION

On March 30, 1994, Mr. Bruce Coram presented a grievance alleging that "the employer unilaterally assigned 15 days of vacation leave from March 6 to 28, 1994". He requests that 15 days vacation leave credits be reimbursed. This grievance was duly referred to adjudication on July 26, 1995 and heard November 28, 1995 and April 10, 1996.

THE EVIDENCE

Mr. Bruce Coram testified on his own behalf and Mr. Roger Lafrenière called Messrs. David Armishaw and Kenneth Yurick to testify. In addition, the parties filed 20 exhibits and I granted an order to exclude the witnesses.

Mr. Coram has been employed as an operational controller (A1-02) at the St. Andrews Tower in Manitoba since 1972. Mr. Coram has also been, since 1992, the Chair of the local branch of the Canadian Air Traffic Control Association (CATCA). Mr. Coram added that the Chair and Secretary-Treasurer of the local branch are also union stewards. Mr. Coram explained that consultation did take place between the CATCA local and the employer concerning vacation, book and lieu leave selections (Exhibit 4). This consultation took place pursuant to subclause 17.06(b) of the collective agreement between Treasury Board and CATCA (Code: 402/91) (Exhibit 1). By virtue of this consultation, the parties agreed that the leave year would be divided into three periods:

- 1) Spring - February 1 to May 31
- 2) Summer - June 1 to September 30
- 3) Fall - October 1 to January 31

Moreover, according to Mr. Coram the employer directed initially that all leave, annual and lieu, was to be used by December 14. Any unused leave would be scheduled by the Unit Manager (paragraph 12.5 of Exhibit 4). However, clause 17.06(c) of the collective agreement provides that an employee may elect, for vacation periods to be taken after October 2 to carry forward into the next vacation year up to a maximum of ten working days subject to certain conditions.

Prior to December 1, 1993, Mr. Coram provided no information to his employer as to when he was going to use his vacation leave credits. According to Mr. Coram it was only on December 1, 1993 that Mr. Robert Legras, acting supervisor, asked Mr. Coram for his vacation plans. Consequently, Mr. Coram wrote that he planned to use 129.57 hours of leave credits in March 1994 (Exhibit 7). Mr. Coram explained that in January 1994, he carried over 55.32 hours and he did not recall having requested it. In his view, this carry over had been done automatically. The leave record for 1993/1994 shows that Mr. Coram carried over 55.32 hours from the 1992/1993 fiscal year and had an entitlement of 206.25 hours annual leave for the year 1993/1994 (Exhibit 6). He used some of these credits and, by January 1994, Mr. Coram had 123.75 hours vacation credits accrued for 1993/1994 and 5.82 hours carried over from 1992/1993 (Exhibit 6).

Mr. Coram indicated that in January and February 1994, his spouse was ill and was undergoing cancer prevention treatment at the Oncology Department of the St. Boniface Hospital. In December 1993, Mr. Coram learned about his wife's uncertainty concerning her health. On January 13, 1994, she underwent a medical procedure with respect to this cancer. Mrs. Coram's cancer situation caused Mr. Coram to be stressed and to take various days of sick leave. On January 18, 1994, Mr. Coram booked a tour to Palm Springs for his wife, three children and himself (Exhibit 8). When he booked this tour, no payment was yet required. The booking document indicates that the date of travel was March 5 (no year is provided) and it was for a duration of 21 nights (Exhibit 8).

On February 8, 1994, the employer posted the schedule for the month of March 1994. A copy of this schedule was provided to each air traffic controller. It is indicated on this schedule that Mr. Coram would be on annual leave as of Sunday, March 6 until Monday, March 28, 1994 inclusive. He was to return to work on Tuesday, March 29, 1994 (Exhibit 9). Mr. Coram's days off were March 3, 4 and 5, 1994. Mr. Coram declared that he was not surprised to see that he was scheduled on leave in March 1994. He had consented to it.

Mr. Coram testified that in February 1994, it came to his attention that once the trip was booked, its cancellation may be affected because of Mrs. Coram's pre-existing cancer condition. Mr. Coram added that this is the reason why he put no money down

when he booked the trip on January 18, 1994. Thus, on February 25, 1994, Mr. Coram requested in writing that his vacation leave be cancelled. Mr. Coram wrote the following round-trip memorandum to Mr. Kenneth Yurick, Manager, St. Andrews Tower:

Please be advised that due to family related and personal medical reasons I cancelled my March holiday travel plans. As I will not be requesting vacation casual leave in March, please post my March duty schedule.

(Exhibit 10)

That same day, February 25, 1994, Mr. Yurick replied as follows:

Unit records and conversation with the past manager (Bob Roos) indicate that management has attempted to schedule your unused leave credits during the past 93/94 fiscal year. As no viable attempt was evident on your part during the mentioned time period that met unit leave policies, you were asked when you'd like to use up your leave credits. Documentation from you indicated that your plan was to "Use these leave credits in March/94." Hence on mutual consent the March shift was posted accordingly to reflect your written & verbal request. Therefore since the fiscal year is about to terminate in thirty six days I am assigning the requested days off as posted.

(Exhibit 10)

Mr. Coram testified that he was surprised by this reply because he had not been aware "that management had tried to schedule his leave credits". In cross-examination, Mr. Coram recognized that the employer expected him to provide his long range leave plans at the beginning of the fiscal year 1993/1994, and he did not recall preparing a specific or general plan to use the 206.25 hours. Mr. Coram knew that the employer expected him to use his vacation leave credits earned that year.

Mr. Coram explained that his intention in cancelling the leave for March 1994 was to enable him to carry it over to be used in the next fiscal year (1994-1995). However, Mr. Coram did not request the carry over of 55.32 hours because of the leave he wanted cancelled. Mr. Coram added that he did not make a request for carry over because in previous years the carry over had been automatic. However, in cross-examination, Mr. Coram recognized that he carried over zero from 1991 to 1992 (Exhibit 5). Mr. Coram was also aware that the employer frowned on the carry-over of

unused annual leave credits (Exhibit 4). He added that his plans for the 1994-1995 unused 129.57 hours were to have them paid out.

When the leave was assigned in March 1994, Mr. Coram was left with 5.82 hours of unused earned credits and he asked that they be paid out.

Mr. Coram declared that, in March 1994, there were nine air traffic controllers, including himself available to cover the requirements of seven controllers for the various shifts. At the St. Andrews Tower, there were a number of air traffic controllers who had come out of the Cornwall Training Centre. There were no openings at the time for training at the Area Control Centre; these IFR in training were assigned VFR posts at various towers such as St. Andrews Tower. These IFR controllers in training would work at these towers until there were openings for IFR training at the Area Control Centre. They were part of the unit at the St. Andrews Tower.

Mr. Coram testified that the employer could have allowed his request to cancel the leave and put him back on the schedule without moving any of the other controllers. This would have required no change in the shift schedule.

Concerning his written request of February 25, 1994 to cancel the leave in question, Mr. Coram explained that he wrote that this request was "due to family related and personal medical reasons" and that he had cancelled his holiday travel plans. Mr. Coram declared that the reasons concerned both his wife and him. He added that "there were also [his] medical reasons". However, Mr. Coram did not elaborate further and he did not request leave for the period February 25 to March 31, 1994. He recognized that the time off for vacation would have relieved him from stress at work. During this period, Mr. Coram did not tell Mr. Yurick or anyone else that he had cancelled his trip because of possible insurance problems and he offered no other explanation to the employer as to why he wanted the leave cancelled other than what he wrote on Exhibit 10. Mr. Coram declared that he provided no information because "the reason was not asked". Mr. Coram did not work during the leave in question. He added that he did make every reasonable effort to schedule his leave but he did not communicate his leave plans to his employer during the period August to December 1993 (Exhibit 18). Mr. Coram presented his grievance on

March 30, 1994 and his name and signature appear as the representative of the bargaining agent CATCA (Exhibit 11).

Mr. David Armishaw has been employed at Transport Canada since 1988. He was first a controller at the Brandon Tower for one year and at the St. Andrews Tower for three years. From 1990 to 1992, Mr. Armishaw was an operational controller and a manager. In 1992, he was promoted to Unit Operations Specialist. During the period 1992 to 1994, the complement of controllers ranged from eight to eleven.

Mr. Armishaw explained the policy concerning the use of vacation leave credits (Exhibit 4). The employees were expected to request leave and use the vacation leave credits throughout the fiscal year and there would be no carry over unless there was a shortage of staff.

When by early October 1993 Mr. Coram had not requested vacation leave and it appeared that he had a large number of unused vacation leave credits, Mr. Armishaw asked him what his plans were with respect to this leave. Mr. Coram gave him no dates when he planned to use the vacation leave credits. Finally, on December 1, 1993, Mr. Coram requested the leave in question here (Exhibit 7). The fact that he was one day late in requesting the leave did not cause any prejudice to the employer. He should have made his request by November 30.

In Mr. Armishaw's opinion, Mr. Coram acted in a suspicious manner. Mr. Armishaw did not know that Mr. Coram's spouse had been ill and was taking cancer related treatment in December 1993 and January 1994. Mr. Armishaw did not ask Mr. Coram why he had asked to cancel his leave.

On January 16, 1994, Mr. Kenneth Yurick became the Manager of the St. Andrews Tower. He explained how the tower was overstaffed and this was caused by the shortage of training seats at the Area Control Centre. Messrs. Armishaw and Yurick discussed together the employer's plan to eradicate leave credits. Mr. Coram had a wealth of leave credits and some were carried over from the previous year (1992-1993). Furthermore, the end of the fiscal year (31 March 1994) was near and it would have been difficult to use these credits by that date. Mr. Yurick honored Mr. Coram's wish and request to use his vacation leave credits in March 1994. Thus, Mr. Coram was scheduled on leave during three cycles in March 1994 (Exhibit 9). The

schedule was posted on February 8, 1994 and Mr. Coram received a copy of the schedule on or about February 10, 1994.

On February 25, 1994, Mr. Coram came to Mr. Yurick's office and gave him Exhibit 10, the note requesting the cancellation of the three cycles of leave. Mr. Coram told him that he was cancelling his travel plans. Mr. Coram's request to cancel the leave was made six days before he was to be off work. Mr. Yurick was boxed in; he was faced with all these unused vacation leave credits which could not be re-scheduled before the end of the fiscal year. Mr. Yurick could not put Mr. Coram back on the schedule because he had a surplus of employees. Mr. Coram did not ask to carry over the leave.

Mr. Yurick explained the above to Mr. Coram who gave no indication or explanation as to how to get around the problem of using the leave credits before the end of the fiscal year. Mr. Coram was non committal. Mr. Coram did not inform Mr. Yurick of his spouse's health problems and Mr. Yurick was not privy to Mr. Coram's personal family situation. Based on Exhibit 10, Mr. Yurick understood that Mr. Coram was referring to personal medical reasons. In his view, Mr. Coram was referring to himself. However, Mr. Coram did not ask for sick leave. Had he referred to his spouse, he might have been entitled to leave for family related matters. As a Manager, Mr. Yurick was not obliged to inquire into Mr. Coram's personal affairs. In Mr. Yurick's opinion, Mr. Coram had a legal obligation to advise him of the reasons for his request to cancel the leave. On 25 February 1994, when Mr. Yurick saw Mr. Coram, he observed no medical reason requiring the cancellation of the leave. Mr. Coram was at work and did not seem ill.

On 25 February 1994, Mr. Coram did not object to Mr. Yurick's decision not to grant the request to cancel the leave. He was non committal and said nothing further until he presented his grievance on March 30, 1994. Mr. Coram did go on the leave and Mr. Yurick was not aware that there was a problem until the grievance was presented. Thus, Mr. Yurick was not aware that Mr. Coram was contesting his decision to deny the request for cancellation of his leave until Mr. Yurick received the grievance.

ARGUMENTS

Mr. Peter Barnacle, counsel for the grievor, argued that Mr. Coram should have been entitled to retain the leave credits for the 1993-1994 fiscal year. He was entitled to carry over subject to any pay-out of credits already carried over from the 1992-1993 fiscal year. Pursuant to clause 17.06(c)(iv) of the collective agreement, the employer correctly paid out 55.32 hours which were carried over from the 1992-1993 fiscal year. Mr. Coram had to use up all his annual leave for 1993-1994 before he could use the 55.32 hours from the previous year. This is provided for under clause 17.06(c)(iii). Had his request to cancel the March leave been granted, he would have carried over into the 1994-1995 fiscal year 74.25 hours pursuant to clause 17.04 and clauses 17.06(b) and (c).

Mr. Barnacle explained that clause 17.04 provides that the unused portion of vacation leave shall be carried over. There is no choice in this regard and no election required. According to Mr. Barnacle, the unused portion must be carried over and there is no request required by the employee. Therefore, the employer had no choice but to carry over the 74.25 hours into the next fiscal year.

According to Mr. Barnacle, the employer relied on the wording of clause 17.04 to unilaterally assign or schedule the vacation leave leaving no unused vacation leave credits to carry over. It is the position of the grievor that the employer's rights under clause 17.04 are subject to clause 17.06(b) which obliges the employer to schedule vacation in a manner acceptable to the employee. Mr. Barnacle explained that this applies also when the employee cancels his request for vacation leave. Mr. Coram had an entitlement to carry over 74.25 hours under clause 17.06(c). This carry over was automatic; no election was required and this was the case for the 55.32 hours the grievor had carried over from the 1992-1993 fiscal year. Mr. Coram could have insisted on carrying over up to ten days under clause 17.06(c). Mr. Coram did not need to go through a convoluted process to request vacation leave and then cancel it because he could have simply requested the carry over of his credits. An amount of unused credits (138.8 hours) was automatically carried over under clause 17.04. Moreover, under clause 17.06, the grievor could have elected to carry over up to ten days. He had a right to do so.

Pursuant to clause 17.04, the employer had an obligation to accommodate Mr. Coram's request for vacation in a manner acceptable to him. The employer could not rely on its own policy requiring that the vacation leave credits be used in the year they are earned (Exhibits 13 and 14). Such a desire may have some strong administrative rationale and may be a desirable goal but it is subject to the obligations of the provisions of the collective agreement. The employer had an obligation to respect Mr. Coram's wishes. There was no operational reason not to accommodate his request to cancel the vacation leave in question. There was a surplus of air traffic controllers and putting Mr. Coram back on the shift schedule would have created no difficulty. Moreover, the obligation to accommodate under clause 17.06(b) is not time limited. Mr. Coram could have cancelled his leave the day before he was to go on vacation.

In support of his argument, Mr. Barnacle cited the following decisions: Low and Duggan (Board file 168-2-56); Grant and Stoykewich (Board files 166-2-3323 and 3324); Stoykewich (Board file 166-2-14983); Darrien et al (Board files 166-2-13805 to 13807); Bourne (Board files 166-2-15136 and 15138); Anderson (Board files 166-2-9005 to 9008 and [1982] 1 F.C. 714); Jodozi (Board files 166-2-1584 to 1597, 1599 and 1602, overturned by 168-2-101); Richard (Board file 166-2-25897).

Mr. Barnacle submitted that the grievor was requesting the reinstatement of 74.25 hours of credits and the pay-out of 55.32 hours, recognizing that he has already received payment for 5.82 hours he had carried over from the previous fiscal year. Mr. Barnacle requested further that I reserve jurisdiction on the remedy to allow the parties to conclude this aspect of the corrective action.

Mr. Roger Lafrenière, counsel for the employer, referred to the evidence. He argued that there had been an attempt to set up the employer and try to make a case before me. Therefore, even if there is a case, this should disentitle Mr. Coram to a remedy. He added that the evidence demonstrates that the employer did observe the requirements under Article 17. Article 17 must be read in its entirety. The general principles provided under Article 17 are that employees are entitled to receive certain credits during a fiscal year and to insist that the employer schedule their vacation leave in that fiscal year. The intent of clause 17.06(c) is that the vacation leave earned be used in that fiscal year. At the end of the fiscal year, circumstances could be such

that the employee has less choice or even no choice as to the scheduling of the unused vacation leave credits. Mr. Coram was the author of his situation. He frustrated the employer in providing no details on how he was going to use his vacation leave until the employer had no choice but to ask him in November 1993 to give his vacation leave plans. Mr. Coram provided these on December 1, 1993.

The grievance alleges that the employer unilaterally assigned 15 days of vacation leave (Exhibit 11). However, this is not the issue. The case to be decided is did the employer act properly in refusing the request to cancel the vacation leave. On December 1, 1993, Mr. Coram requested vacation leave for March, 1994 (Exhibit 11). This request was granted. On January 18, 1994, Mr. Coram made arrangements to go on a trip (Exhibit 8) which was done before the posting of the February 8, 1994 schedule (Exhibit 9). Thus, Mr. Coram knew when he was to be scheduled on leave. Mr. Coram was aware of the specific dates he was to be on leave. However, he waited until February 25, 1994, six days before the start of his vacation leave, to request that it be cancelled (Exhibit 10). Moreover, he provided very little detail for this request. At this time, the employer was caught; the schedule had already been posted and the end of the fiscal year was close. Mr. Coram offered no details for his request to cancel. No reasons were given as to why he could not enjoy his vacation at home and there is no provision in the collective agreement to provide leave just for a trip.

Mr. Lafrenière pointed out that we must take into account the work of an air traffic controller which causes stress. Thus, this is the reason why vacations are very important.

The burden of proof rested with the grievor to demonstrate a violation of the collective agreement. However, the evidence demonstrates that the employer fully complied with the provisions of the collective agreement. The employer was faced with the end of the fiscal year and the employer did schedule the vacation leave in accordance with Mr. Coram's wishes.

Moreover, and in the alternative, the grievor presented his grievance on March 30, 1994, after he had enjoyed his vacation. Clause 5.03 of the collective agreement is a limit on when the employee can present a grievance but is not an entitlement to wait the full 25 days. Mr. Coram should have presented his grievance

forthwith in order for the employer to mitigate its losses. Therefore, at best, Mr. Coram is entitled to a declaration because the employer was ambushed with the grievance when Mr. Coram had already enjoyed his vacation. Mr. Lafrenière cited Stoykewich (supra) which in his view is strangely similar and he distinguished Richard (supra) because in that case the grievor became ill before the vacation began and adjudicator M.-M. Galipeau found that once the vacation leave was granted, the grievor did not have an absolute right to postponement of the leave.

Mr. Lafrenière added that the Burchill decision of the Federal Court of Appeal [1981] 1 FC 109, applies here. The grievor cannot change the substance of his grievance. This is not a case of carry over because he alleges unilateral scheduling by the employer. Moreover, clause 17.06(c) does in fact require that an election be made by the employee and that election was absent in this case.

Mr. Barnacle replied that there is no evidence that this was a set up. Mr. Coram intended to use his vacation leave and he did request it on December 1, 1993. The 25 days under clause 5.03 cannot be held against Mr. Coram. Furthermore, the issue of carry over is very much part of the grievance. The result of this grievance is the carry over. It would be unfair not to grant the remedy.

DETERMINATION

Mr. Coram alleges that the employer unilaterally assigned 15 days of vacation leave. I accept that what he meant is that the employer refused his request to cancel the approved vacation leave. Thus, if his grievance is granted, Mr. Coram would be entitled to the reinstatement of his vacation leave and, as a result, some of these credits would be carried over pursuant to Article 17 of the collective agreement whereas some would be paid out. Mr. Coram explained that he is requesting the reinstatement of 74.25 hours of leave credits and the pay-off of 55.32 hours.

The evidence demonstrates that Mr. Coram, as an employee, union steward and Chair of the local branch of CATCA since 1992, was aware that, at the beginning of the fiscal year, the employer expected him to provide his long range leave plans. However, Mr. Coram did not recall preparing a specific or general plan in this regard even though he had 206.25 hours to his credit. He knew that the employer expected him to use his vacation leave credits earned that year. He only recalled being asked

for his vacation leave plan on December 1, 1993 and this is the day when he requested the three weeks for March 1994.

He learned that his wife's cancer might affect the cancellation of the trip he had booked on January 18 1994 and for which he had not made any payments yet. Thus, he wrote the February 25, 1994 memorandum (Exhibit 10) requesting the cancellation of the vacation leave. This memorandum is ambiguous and misleading. It mentions family related and personal medical reasons for the request. However, the truth is different, according to Mr. Coram's testimony. In his testimony, he alleges that he requested the cancellation of the vacation because he had decided not to go on the trip due to possible insurance problems if they had to cancel the trip as a result of Mrs. Coram's health situation. This was never communicated to the employer or Mr. Yurick. In Richard (supra), the grievor fell ill, went to see his doctor and was diagnosed with a prostate infection. The employer was informed of this condition and a physician's certificate of disability for duty was provided in support. This is not the case here. Mr. Coram provided no details and proper information in support of his request.

Labour relations and, in particular, the interpretation and application of the provisions of the collective agreement constitute a two-way street. There are rights and obligations on all three parties to the collective agreement: the employer, bargaining agent and the employees. Moreover, honest and frank communications are expected between the parties.

The relevant provisions of the collective agreement are:

17.04 Subject to operational requirements the Employer shall make every reasonable effort to schedule an employee's vacation leave during the fiscal year it is earned. Where in any fiscal year the Employer has not scheduled all of the vacation leave credited to an employee, the unused portion of the employee's vacation leave shall be carried over into the following fiscal year.

17.06

(a) The vacation year extends from April 1 to March 31 and vacation may be scheduled by the Employer at any time during this period.

- (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.*
- (c) *It is agreed by the parties, in accordance with the intent of Article 17 that it is both appropriate and desirable that each employee utilize his or her full vacation entitlement during the vacation year in which such vacation entitlement is earned. However, an employee may elect, for vacation periods scheduled to be taken after October 1, to carry forward into the next vacation year unused vacation up to a maximum of ten (10) working days subject to the following conditions:*
- (i) *that any vacation period carried forward from the previous vacation year and utilized by any employee does not disrupt vacation schedules in the current vacation year nor prevent another employee from taking his or her regularly scheduled vacation for that year;*
 - (ii) *that the days which are carried over from the previous vacation year are taken at a time which is acceptable to both the Employer and the employee;*
 - (iii) *that an employee's vacation earned in the vacation will be utilized before days carried forward from the previous vacation year;*
 - (iv) *that in cases where vacation credits from the previous vacation year have not been fully utilized by the end of the next vacation year any outstanding carry-over vacation credits will be paid off at the employee's straight-time rate of pay in effect at that time. This provision does not apply to vacation leave accumulated prior to April 1, 1976.*

The employer has the obligation to make every reasonable effort to schedule an employee's vacation leave during the fiscal year it is earned. This implies that vacation leave is to be used during the fiscal year it is earned. The purpose of vacation leave is to remove the employee from the work place so that he may be relieved of stress and relax. Mr. Coram requested vacation leave and was granted three weeks in March as requested. Thus, the employer did observe clause 17.04.

Clause 17.06(c) provides that the parties agree that it is both appropriate and desirable that each employee utilize his full vacation leave entitlement during the year it is earned. However, the employee may elect to carry forward into the next vacation year up to 10 days of unused vacation leave credits. This implies that the employee must inform the employer of his intention to elect to carry over the unused vacation leave credits.

In the case of Mr. Coram, he was granted the vacation leave requested and he never asked to carry over the vacation leave credits when he decided to cancel his trip.

I find that Mr. Coram was the author of his situation. He provided no proper and truthful reasons to his employer as to why he wanted the leave cancelled. The change of plans with respect to the trip is not in itself a reasonable ground to cancel a vacation. Not all persons go on vacation on the sole ground that they go on a trip. A request for vacation is not solely grounded on a trip. Therefore, a request for cancellation of the vacation leave does not necessarily result because there is a change of plans and the employee decided not to go on a trip. The cancer of Mrs. Coram might have been a reasonable ground for a request to cancel the vacation leave in certain circumstances. However, Mr. Coram did not ask to cancel his vacation because of his spouse's cancer. His testimony is to the effect that he decided not to go on the trip he had planned on January 18, 1994 and for which he had put no money down because the cancellation insurance might be affected by Mrs. Coram's pre-existing cancer condition.

The employer was not aware of Mrs. Coram's cancer and Mr. Coram never told his employer the real reasons why he had decided not to go on vacation.

The employer cannot be faulted for refusing to grant Mr. Coram's request to cancel the vacation leave. Mr. Coram should have been candid with his employer. In the circumstances of this case, I cannot find that the employer acted unreasonably in refusing to cancel the leave or that it violated Article 17 of the collective agreement.

The purpose of Article 17 is to ensure that employees have the right to use their vacation leave credits during the fiscal year in which they are earned and not to lose earned credits because they have not been fully utilized. Employees are entitled to carry over into the next fiscal year up to 10 days or to be paid off for these unused

vacation leave credits. Clause 17.04 must be read with clause 17.06. The carry over resulting under clause 17.04 is caused by the employer's failure to schedule an employee's vacation leave in the year in which it was earned and this clause ensures that the employee does not lose the unused vacation leave credits when the employer has not scheduled the earned vacation leave credits. On the other hand, clause 17.06 gives the right and places on the employee the obligation to elect to carry forward into the next fiscal year unused vacation leave credits up to a maximum of 10 working days.

In the case of Mr. Coram, clause 17.04 was respected by the employer. His request for vacation was granted. Moreover, Article 17 makes no mention of a right to request cancellation of the already approved vacation leave when the employee has a change of plans. Mr. Coram never asked to carry over up to 10 days; thus clause 17.06 has no application. For the employer to make every reasonable effort to schedule vacations in a manner acceptable to employees, it has to know the wishes of the employee. Mr. Coram first requested leave and then, a few days before his leave was to start, he requested that it be cancelled. Any reasonable person would expect the employee to explain why he wanted to cancel the leave in light of the fact that the work schedule had already been prepared and posted. Article 17 obliges the employer to be reasonable but this also means that it must receive proper information to enable it to render an informed decision concerning the request for leave or even a request for the cancellation of already approved leave.

Furthermore, Mr. Coram did go on vacation leave and he only presented his grievance upon his return from leave. I notice that he signed the grievance as grievor and union representative or steward. Even though, Mr. Coram was entitled to wait 25 days to present his grievance, he gave no opportunity to the employer to try to discuss or even settle the issue. Mr. Coram left me with the impression that even though he is a union officer and a union steward, he communicates very little with his employer. He never approached Mr. Yurick to explain the real reasons why he wanted the vacation leave cancelled and he did not try to discuss the matter with his employer. I notice also that clause 5.05 of the collective agreement under Article 5 - Grievance Procedure - provides:

5.05 Procedure

Complaints - An employee who has a complaint should attempt to resolve the same through discussion with his or her immediate supervisor.

Mr. Coram did not attempt to resolve his "problem" with Mr. Yurick. Instead, he went on the already approved vacation leave and, on his return to work, he presented his grievance.

For all the above reasons, I find that the employer did not violate the provisions of the collective agreement. Mr. Coram was the author of his own situation. Therefore, the grievance of Mr. Coram is hereby dismissed.

**Muriel Korngold Wexler,
Deputy Chairperson**

OTTAWA, August 19, 1996.