



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CANADIAN AIR TRAFFIC CONTROL ASSOCIATION

Bargaining Agent

and

TREASURY BOARD
(Transport Canada)

Employer

RE: Reference under Section 99 of the
Public Service Staff Relations Act

Before: Yvon Tarte, Chairperson

For the Bargaining Agent: Peter Barnacle, Counsel

For the Employer: Harvey Newman, Counsel

3/3
COPY/BOD
→ Return
VPLR-BINDER
73
Mar 2/97

DECISION

The bargaining agent has filed reference under section 99 of the *Public Service Staff Relations Act* concerning the enforcement of letter of understanding (4-91) (hereinafter referred to as LOU (4-91)) which is part of the collective agreement entered into by the parties and filed as exhibit U-1 (Code 402/91).

LOU (4-91) reads as follows:

This is to confirm an understanding reached during the current negotiations in respect of assignment of controllers' duties.

Functions which are now performed by members of other bargaining groups will not normally be assigned to members of the Air Traffic Control group nor will functions which are presently only performed by members of the Air Traffic Control group be assigned to members of other bargaining groups.

Where because of operational requirements either party deems it desirable to deviate from this understanding, the parties agree to enter into discussions to consider such proposals of either party and may mutually agree to make exceptions to the foregoing.

It is also agreed that this letter will in no way prejudice the positions of either party, or interfere in any way with commitments already made, in relation to the performance by ATC assistants of estimate copying, flight data posting and mission plotting.

It is the bargaining agent's contention as stated in its reference document (exhibit U-2) that the employer has on several occasions "assigned members of the bargaining unit to perform Operational Support Specialist (OSS) functions at Ottawa Tower". The bargaining agent seeks an order (exhibit U-2):

- 1. declaring the employer in violation of the terms of the collective agreement, LOU 4-91;*
- 2. directing the employer to cease and desist further violations; and*
- 3. such other relief as may be requested or necessary to make the bargaining agent and its members whole.*

The parties filed an agreed statement of facts (exhibit U-8) which reads in part as follows:

1. *Ottawa Tower is staffed by two occupational groups: Air Traffic Controllers (controllers and supervisors classified as "AI") AND Operational Support Specialists (known as OSS and classified as "GT").*
2. *AI personnel are in a bargaining group represented by the Canadian Air Traffic Control Association (CATCA). OSS personnel are members of a bargaining group represented by the Public Service Alliance of Canada (PSAC).*
3. *CATCA claims that the employer violated Letter of Understanding 4/91 (LOU 4) of the Collective Agreement (Code 402/91) in assigning OSS functions to AI personnel during the material period.*
4. *The employer acknowledges that it has assigned OSS functions to AI personnel during the material period, but denies any violation of LOU 4.*
5. *PSAC has been provided notice of this proceeding and a representative attended the initial day of hearing.*
6. *During the material period, Ottawa Tower operated 24 hours, seven days a week, with the following required shift/staff complement:*

2245 - 0700	one controller	Midnight shift
0600 - 1445	one OSS	Day shift
0645 - 1500	three controllers, one supervisor	Day shift
1045 - 1900	one controller	Swing Shift (M-F only)
1430 - 2315	one OSS	Evening Shift
1445 - 2300	three controllers, one supervisor	Evening Shift

Staff Memoranda, Tour/Tower 95-75, Tour/Tower 96-06 and Tour/Tower 96-07, setting out the staffing requirements in table form, are attached as Appendices 1, 2 and 3.

7. *The employer acknowledges that OSS functions were carried out during the two OSS shifts throughout the material period, regardless of whether an OSS person was scheduled to work those shifts, or if scheduled, was not present to perform the work during those shifts.*
8. *The Ottawa Tower schedules for December 1995, January and February 1996, are Exhibits U-4, U-5 and U-6. Both AI and OSS personnel are identified by two letter initials*

printed in upper case, while AI trainees on the schedules are identified by two letter initials printed in lower case.

9. *It was the employer's practice during the material period that it was the responsibility of the AI personnel on shift to perform the duties of the vacant OSS position.*
10. *For the purposes of this reference, and without prejudice to any future position in this regard, CATCA is **not** alleging violation of LOU 4 where controllers were assigned OSS functions during the Day and Evening shifts in circumstances where there was an excess of controllers scheduled over what is required under Appendices 1, 2 or 3 for those shifts, **except** where Collective Agreement entitlements were denied in order to use AI personnel to fill a vacant OSS position. CATCA is not alleging at this time any violation of LOU 4 at this time where AI personnel are brought in on overtime to fill a vacant OSS position.*
11. *On certain dates and Day/Evening shifts during the material period, where the complement of controllers and supervisors was present as set out in Appendices 1, 2 and 3, and where overtime was not authorized, the OSS functions were assigned and performed by AI personnel already scheduled. The list of such dates and shifts with reference to Exhibits U-4, U-5 and U-6 is attached as Appendix 4.*
12. *The parties reserve the right to present such other evidence as may be required in the course of the hearing of this matter.*

In addition to the agreed statement of facts, the parties each called one witness.

Michel Courcy works as an air traffic controller at the Ottawa Tower. He is a branch chair of CATCA. Air traffic controllers at the Ottawa Tower generally occupy one of three stations referred to as tower, ground and clearance delivery. The OSS position is a support position to assist air traffic controllers in their work. The OSS positions are staffed by employees who belong to another bargaining unit and a different bargaining agent.

Mr. Courcy, using the various exhibits, identified instances where an OSS shift was covered by an air traffic controller even though the controllers were at minimum required staffing level.

He also identified situations where leave requests by air traffic controllers were denied so that available extra controllers could be used to staff OSS positions (see exhibits U-9 to U-14).

The witness then referred to appendices 1, 2 and 3 of exhibit U-8, the agreed statement of facts. These three staff memoranda, dated respectively 23 October 1995, 31 January 1996 and 1 February 1996 contain the following:

Appendix 1:

For overtime purposes the OSS position shall only be staffed by GT-1s.

Appendix 2:

Unless deemed necessary for operational reasons, the staffing of the OSS position, for overtime purposes, should normally be restricted to GT personnel.

Appendix 3:

The OSS position shall not normally be staffed with overtime except for operational reasons or if two consecutive OSS shifts would be left vacant. This must be considered by the Supervisor prior to the decision to staff the position on overtime being reached.

Once the decision to staff the vacant OSS position with overtime is reached by the Supervisor or his designate, all attempts (sic) will be made to staff the position with OSS personnel. Failing to find available OSS personnel, staffing of the position with AI personnel will be approved.

If there is more than the normal number of AI personnel available, they may be used to staff a vacant OSS position. AD-HOC leave shall not be approved if it results in the staffing of the vacant OSS position with overtime. In other words, if AD-HOC leave is approved with the OSS position vacant, the AI personnel on shift will be responsible for completing the duties of the OSS position.

Using exhibits U-4 to U-7, Mr. Courcy then showed that the Ottawa Tower was short-staffed in OSS personnel from 7 December 1995 to 16 March 1996. According to the witness the normal complement of OSS staff at the Ottawa Tower is four. During the December 1995 to March 1996 period referred to above only two or three OSS staff

were available. After mid-March, two new OSS trainees checked out so that four GTs were again available for OSS work.

Bob Gould then testified for the employer. Although he now works for NAVCAN, he was the Transport Canada manager of the Ottawa Tower starting in January 1996. Mr. Gould confirmed that the normal OSS complement at the Ottawa Tower in the period from December 1995 to March 1996 would have been four. During that period there was an OSS position to be staffed on all shifts except the midnight shift. In normal circumstances air traffic controllers were therefore expected to perform OSS duties during the midnight shift and during the temporary absence of the GT (for breaks etc...) on other shifts.

In December 1995 the Ottawa Tower lost one OSS staff who went to Cornwall for training as a controller. During his absence on training, his position had to be protected. Also in December 1995, another OSS staff was moved temporarily to a new program away from the Tower.

Mr. Gould soon realized in January 1996 that there was an OSS staffing problem at the Ottawa Tower. The witness was assured by his operational manager that Mr. Courcy had been consulted on this problem.

Mr. Eid, a CATCA representative, approached him to express his dissatisfaction with the policy expressed in appendix 1 of exhibit U-8 (*supra*). Mr. Gould agreed there was a problem. He was left with the impression that the matter had been resolved when appendices 2 and 3 of exhibit U-8 were drafted. A couple of days later he was advised that the section 99 reference had been filed.

Mr. Gould agreed that, except for a few months, the Ottawa Tower was short at least one OSS staff between June 1995 and December 1996.

The witness then indicated that his reluctance to use overtime to cover a vacant OSS position had less to do with cost than with the fact the OSS function was so underutilized that it was not necessary to staff.

ARGUMENTS

For the Bargaining Agent

The evidence clearly shows that the employer was engaged in the practice of assigning air traffic controllers to OSS positions on a regular basis in contravention of the collective agreement.

The bargaining agent is concerned with two particular circumstances of such violations: first, where the tower was staffed with the normal complement of AI personnel who were nevertheless assigned OSS functions for all or part of a shift and second, where the tower was staffed with more than the normal complement of AI personnel but leave was denied to ensure that the "extra" controller would cover the OSS position.

The bargaining agent is not arguing that an air traffic controller can never perform OSS functions, nor is it, at the hearing, arguing that the use of an air traffic controller in an overtime situation to perform OSS function is improper.

The parties have agreed in exhibit U-8 that OSS functions belong to the members of another bargaining unit and that those functions were performed by air traffic controllers on several occasions listed in the agreed statement of facts.

LOU (4-91) restricts the general rights of the employer to manage its operations. LOU (4-91) prohibits the "normal" assignment of OSS functions to air traffic controllers. The Collins Dictionary of the English language (second edition 1986) defines "normally" in the following terms: "1. as a rule, usually, ordinarily 2. in a normal manner". The word "normally" in LOU (4-91) therefore implies regularity or policy. The evidence shows both.

The simple numbers show that the assignment of OSS functions to air traffic controllers was a usual, normal, typical occurrence. Furthermore, the employer's written policies (contained in exhibits U-8, appendix 3, U-15, E-2 and E-3) clearly demonstrate that these violations of the collective agreement were made according to rule. The fact that the employer denied leave requests on several occasions when extra air traffic controllers had been assigned to work also reinforces the view that

these violations of LOU (4-91) were the direct result of the application of the employer's policies.

The only thing Mr. Gould discussed with Mr. Eid was the use of air traffic controllers in overtime situations to cover OSS functions. There was in fact no agreement between CATCA and the employer pursuant to LOU (4-91) whereby the violations which have been identified were sanctioned.

The evidence establishes the existence of a shortage of OSS personnel over a long period of time. The evidence also shows that during this period of time the employer improperly used air traffic controllers to carry out OSS function without the agreement of the bargaining agent.

Since clear and repeated violations of LOU (4-91) have been shown, the bargaining agent is entitled to an order declaring that violations have occurred and a cease and desist order to prevent continuing violations.

The decisions of the Board in Rollins (Board file 161-2-648) and CATCA (Board file 169-2-525) as well as extracts from chapters 6 and 7 of *Labour Relations Board Remedies in Canada* (Canada Law Book, October 1986) clearly show that the Public Service Staff Relations Board has the authority to issue a cease and desist order.

A simple declaration in this case would only state the obvious and force the bargaining agent to come back in case of future violations. The Board's discretion should be exercised in this case to provide to the bargaining agent a full and complete remedy in this case.

For the Employer

CATCA's application under section 99 of the *Public Service Staff Relations Act* provides a lesson on how to sabotage good labour relations. No emergency situation required this unilateral drastic action on the part of the bargaining agent.

This section 99 reference was brought on by greed and not by any honourable concern that air traffic controllers should not be performing OSS duties.

Air traffic and OSS duties are not discretely different. There are several instances where an air traffic controller will perform OSS duties. Those would include the night staff and occasions during other shifts when an OSS employee must leave the workplace.

This case is not about air traffic controllers being demeaned by performing OSS functions; it is about overtime. It is not improper or shameful for the employer to try and run its operations in a cost effective manner. The air traffic controllers want to control the employer's leave policies and perform OSS work on their terms, preferably with overtime. Leave denials are matters that can and must be dealt with by individual grievances.

The employer recognizes that for a period of time, for various reasons, it was short of OSS staff. This was an unusual period during which the employer made proper attempts to correct the situation. During this period the staffing situation was not normal. Consequently, the practices the employer was forced to adopt were not normal. The decision of adjudicator Abbott in Michener (Board file 166-2-26489) supports this view.

The employer did not deliberately reduce its staff to create this situation, nor did it fail to act when the situation arose. In the end some OSS functions were performed by air traffic controllers. All in all not much time was involved when this happened considering the great number of shifts during the period in question.

The employer contends there was no violation of LOU (4-91) and that if there was, it was done in good faith. The matter should be dismissed. In the event a violation of LOU (4-91) is found to have occurred the remedy granted should be limited to a declaration. This case is not appropriate for anything other than a declaratory order.

Reply

The allegations made by the employer about the bargaining agent's ulterior motives are without foundation. All the evidence adduced is consistent with CATCA's claim that LOU (4-91) has been violated.

The evidence shows that the problems have continued even after the date of this section 99 reference. How can a simple declaration of violation be a remedy to a situation which persists to this day.

REASONS FOR DECISION

Over a period of several months, the employer has assigned on a regular basis the functions normally performed by OSS employees to air traffic controllers. This situation arose because of a chronic shortage of OSS personnel during that period of time. Furthermore, the assignment of OSS functions to air traffic controllers as detailed in the agreed statement of facts was not made pursuant to an agreement between the parties to make exceptions to the clear provisions of LOU (4-91).

I am satisfied on the evidence presented that the employer made serious efforts to correct the OSS shortage situation in a timely manner. The parties did not however engage in the discussions which are contemplated by the LOU (4-91). Had they done so, matters might not have gone this far. I note that the parties have agreed in LOU (4-91) to enter into discussions where operational requirements force either side to deviate from the understanding. There is an obligation on both the employer and the bargaining agent to discuss these matters when they arise. Both sides, I believe, were remiss in their duties under LOU (4-91).

In the circumstances, I hereby declare that the employer has, during the period referred to in the bargaining agent's reference failed to abide by the obligation imposed upon it by LOU (4-91). The facts of this case do not convince me that it would be appropriate in this matter to go beyond a declaratory order.

Yvon Tarte
Chairperson

OTTAWA, February 26, 1997

