

**IN THE MATTER OF THE *CANADA LABOUR CODE***  
**AND IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**NAV CANADA**

(hereinafter referred to as “Nav Can” or the “employer”)

**AND:**

**THE CANADIAN AIR TRAFFIC CONTROL ASSOCIATION**

(hereinafter referred to as “CATCA” or the "association")

**(IAN SPENCER DISCIPLINE GRIEVANCE)**

**BOARD OF ARBITRATION**

Mervin I. Chertkow - Single Arbitrator

**COUNSEL**

Colin Gibson - for the employer  
Peter Barnacle - for the association

**DATE AND PLACE OF HEARINGS**

October 6<sup>th</sup> and 7<sup>th</sup>, 1999 at Vancouver, BC

**DATE OF AWARD**

November 30<sup>th</sup>, 1999

## **AWARD**

### **I**

The grievor is a fully trained and qualified Air Traffic Controller who works out of the Vancouver Area Control Centre. On July 17<sup>th</sup>, 1999 he was working the position of Coordinator when an operating irregularity occurred at approximately 21:46Z.

The incident involved an aircraft departing from Vancouver, Sky West 942, travelling south east through Seattle controlled airspace when, at between 15,000 ft. and 17,000 ft., a hazardous situation occurred with a descending United Airlines Flight 1674 on its approach to the Vancouver Airport. Royal 6153, a flight departing Victoria, BC for Calgary, Alberta, was also peripherally involved in the situation.

A synopsis of the incident appears in the Fact Finding Board Report (Exhibit E-24) as follows;

#### **SYNOPSIS**

SKW942 was southeast bound enroute to Salt Lake City via the Bellingham VOR. ROY6153 was northeast bound enroute to Calgary via the Bellingham VOR. UAL 1674 was northwest bound to Vancouver on the ACORD Arrival via the Bellingham VOR. Seattle ARTCC requested a non standard routing for UAL1674 to resolve a sequencing problem involving aircraft landing Vancouver. The Vancouver Terminal Coordinator approved the request. UAL1674 subsequently proceeded inbound to Vancouver on the departure route SKW942 was flying and conflicted with SKW942. Control action was taken to avoid a conflict between ROY6153 and UAL1674.

The Fact Finding Board came to the following conclusions;

1. A hazardous situation occurred when UAL1674 and SKW942 were permitted to proceed on reciprocal tracks with no form of separation being applied until the aircraft were in such proximity to each other that urgent corrective action was required by the Vancouver South controller to achieve IFR separation.
2. The cause of this hazardous situation is that the Coordinator, after approving a non standard arrival routing for UAL1674, failed to

ensure the Departure South controller and Vancouver South controller were informed of where UAL1674 would enter the Terminal area.

3. A factor contributing to this hazardous situation was the failure of the Data controller to forward a departure message on SKW942 to Seattle ARTCC, who were unaware that SKW942 was approaching their airspace, prior to vectoring UAL1674 towards the planned route of SKW942.

As well as the Fact Finding Board, an Administrative Inquiry was convened to investigate the operating irregularity and it came to the following conclusions (Exhibit E-20);

### **Conclusions**

A hazardous situation was created when the Coordinator Mr. Ian Spencer initiated a deviation from a standard operating procedure. He did so without informing the Vancouver South Controller, Mr. Pat Bolivar or the Vancouver Department Controller, Mr. Jeff Alton in a timely manner. In failing to inform these two controllers, Mr. Spencer violated one of the very basic fundamental rules of Air Traffic Control, which prohibits entry into another controller's airspace without prior permission (MANOPS 512.1 and 512.2). In this sense a breach of directives took place. As such this would be classified as a loss of separation (MANOPS 532.3).

Two aircraft SKW942 and ROY6153 were being routed through an exit gate out of the Vancouver Terminal at the same time as two other aircraft CDN989 and UAL1674 were being routed into the Vancouver Terminal through this same gate. Mr. Spencer was not thorough in carrying out his Coordinator duties. He was not clear in his communication of the problem he had created. Throughout this time he was not aware of SKW942. The problem was resolved at the last minute by the quick action of the Vancouver South Controller, Mr. Pat Bolivar who recognized the problem and took immediate corrective action.

The Vancouver Data Controller Mr. Chris Queen did not pass a departure time to the Seattle Controller. He explained how this error happened. The fact that Seattle was not aware of pending traffic through Southgate led them to proceed through there thinking all the required coordination had been done and the area was safe. It is likely that had Seattle been made aware of the SKW942 pending exist that they would have questioned the operation. Mr. Queen's failure to pass the required data to Seattle is a contributing factor to the hazardous situation, which had been created.

As a result of those investigations, Mr. Wayne Heal, Manager, ACC Operations, determined Mr. Spencer was negligent in the performance of his duties when he initiated a deviation from standard operation procedures and failed to coordinate with affected sectors (Exhibit E-22). Mr. Heal also noted that;

By failing to do so you created a situation that your fellow Controllers, through much skill avoided a potential loss of separation between three aircraft.

He then imposed a three shift suspension on Mr. Spencer.

The association filed a grievance on behalf of Mr. Spencer asserting he was disciplined without just cause or alternatively, if there was an employment offence, the penalty of a three shift suspension was excessive and inappropriate in all the circumstances of the case.

I also note for the record that the parties agreed at the outset of these proceedings that evidence adduced in the *Dooling and Schroeter* Arbitration, which preceded the arbitration of Mr. Spencer's grievance, be accepted here save and except where such evidence is specific only to the previous grievances.

## II

There is an agreement between Vancouver Area Control Centre and Seattle A.R.T.C. Centre with respect to traffic flowing to and from the Seattle controlled airspace and aircraft departing the Vancouver Area Control Centre heading east through Seattle airspace (Exhibit E-2). The Vancouver Area Arrival/Departure Procedures appear in that document as Item D5 as follows;

### D.5 Vancouver Area Arrival/Departure Procedures:

- A. Seattle ARTCC shall position all aircraft landing Vancouver on or south of the YVR R-104 degrees thence via the ACORD Arrival as follows:
  - 1. Prop and Turboprop: To maintain 10,000 feet to cross EGRET at 10,000 feet

2. Jet and Turbojet:  
 Runway 08: To maintain 11,000 feet to cross ACORD at 15,000 feet or below
- Runway 26: To maintain 11,000 feet to cross EGRET/BACON at 11,000 feet. Cross EGRET/BACON at 250 kts. or less.

However, if traffic from Seattle airspace destined to the Vancouver Airport builds up to the point where there is a problem managing it, there is a procedure for diverting some of the aircraft in stream off the ACORD path to approach Bellingham VOR from a different direction. That is what happened in this case. It was Mr. Spencer's responsibility to coordinate those aircraft arriving from Seattle airspace with aircraft departing the Vancouver Airport. The conversations between the Seattle Controller and Mr. Spencer were recorded on audio tapes. It is appropriate to set out the same in full as appears in Exhibit A-4;

2138:34	SEATTLE 12	VANCOUVER ARRIVAL SECTOR 12 HANDOFF
2138:35	COORD	RADAR ABL548 HORIZON 32, ZERO BRAVO CHARLIE...AND I'VE GOT BAKER A CANADIAN SOMEBODY
2138:45	SEATTLE 12	CDN989
2138:47	COORD	CDN989 RADAR
2138:47	SEATTLE 12	DO YOU SEE UAL1674 RIGHT OVER AH BRAVO CHARLIE
2138:50	COORD	AH OH YES I DO YEAH
2138:51	SEATTLE 12	OK THANKS OK
2140:43	COORD	SEATTLE 12 COORDINATOR
2140:45	SEATTLE 12	YEAH
2140:47	COORD	WE'LL TAKE CDN989 DIRECT BELLINGHAM VOR
2140:49	SEATTLE 12	OK, WE'LL GIVE IT TO HIM
2140:51	COORD	AND SLOW UAL1674
2140:51	SEATTLE 12	OK, WE'L DO THAT
2142:15	COORD	SEATTLE 12 COORDINATOR
2142:15	SEATTLE 12	GO
2142:16	COORD	QXE32 ON A HEADING OF 315 PLEASE
2142:21	SEATTLE 12	315 I THINK HE MIGHT OF JUST SHIFTED, IF HE DID, YOUR CONTROL
2142:24	COORD	OK
2142:53	SEATTLE 12	COORDINATOR, 12 ONE MORE HANDOFF
2142:55	COORD	RADAR ON CDR2103
2142:59	SEATTLE 12	OK AND UAL1674 WE'RE GONNA TAKE BEHIND CDN989 AND THEN BAC TO BELLINGHAM IF THAT'S ALRIGHT
2143:02	COORD	UM YEAH A LITTLE VECTOR THERE WILL HELP OUT..
2143:06	SEATTLE 12	YEAH WE'RE GOING TODO IT AND THEN BACK TO BELLINGHAM, IF THAT ALRIGHT?

2143:07	COORD	YA THAT'S GREAT
2143:07	SEATTLE 12	ALRIGHT
2143:08	COORD	THANKS
2143:12	CORD	5 MILES WILL BE ENOUGH
2143:14	SEATTLE 12	OKIE DOKIE THANKS
2144:32	COORD	VANCOUVER SOUTH COORDINATOR
2144:40	VR SOUTH	SOUTH
2144:40	COORD	AH BELLINGHAM UM 10 TO THE SOUTHWEST IS UAL1674 DO YOU SEE HIS ALTITUDE?
2144:45	VR SOUTH	AH I SEE HIS ALTITUDE
2144:48	COORD	HE'S FIGHTING TO GET DOWN
2144:48	VR SOUTH	OK
2144:49	COORD	YOU CAN TURN NORTH WITH ROY IF YOU NEED DO
2144:51	VR SOUTH	WHAT WAS THAT?
2144:51	COORD	YOU CAN TURN NORTH WITH ROY IF YOU NEED TO
2144:56	VR SOUTH	OK
2144:56	COORD	YOUR CONTROL
2144:58	VR SOUTH	THANKS
2145:07	V4 SOUTH	COORDINATOR SOUTH
2145:10	COORD	YEAH
2145:10	VR SOUTH	GOT SKW COMING RIGHT AT HIM YOU BETTER STOP HIM AT 17
2145:13	COORD	I'LL STOP HIM AT 17
2145:20	COORD	LEVELING OFF AT 17
2146:20	COORD	LEVEL 17

As well the audio tape for the Coordinator, the audio tape for the Controller sitting in the Vancouver Terminal Departure South position (Exhibit A-6) reveals, with respect to SKW942;

2135:30	SKW942	SKW942 1000 FOR 7000
2135:34	DEP SOUTH	SKW942 VANCOUVER DEPARTURE GOOD DAY RADAR IDENTIFIED MAINTAIN 17000
2135:42	SKW942	17000 942

....

2138:35	SEATTLE 12	VANCOUVER ARRIVAL, SECTOR 12, HANDOFF
213852	DEP SOUTH	SKW942 PROCEED DIRECT TO BELLINGHAM ON COURSE

During his opening remarks, counsel for the employer outlined certain facts which were not challenged by the counsel for the association. Where there was a disagreement, it will be noted. Those facts can be summarized as follows. When aircraft depart the Vancouver Airport they are handed over by the tower to the Departures South Controller. He eliminates any conflicts and hands over aircraft to the next sector. For aircraft travelling east bound they are handed over to the Vancouver South Controller, a different speciality area called Vancouver East Speciality Area. Aircraft arriving

at Vancouver Airport from the south east are controlled initially by Seattle Area Control Centre. Seattle hands aircraft off to the Coordinator, who then hands them off to the Vancouver Arrival Controller and if arrivals is split, to the Vancouver Arrival High Controller. The ACORD 6 Arrival (a geographical point) is a name given to an arrival route to the Vancouver Airport. In airspace around the Vancouver Airport there are established arrival and departure routes. Controllers place aircraft on routes for safe and orderly passage. Aircraft arriving from south and south east are placed in ACORD 6. On the ACORD 6 route there are points EGRET and BACON on the route. There is a point on the ACORD arrival path known as Bellingham VOR immediately above BACON. Vancouver Terminal Coordinator is responsible for coordinating the “big picture” around the Vancouver Terminal; he sits at a radar screen with an 80 mile range.

The incident here occurred on July 17<sup>th</sup>, 1998 at 21:45Z approximately. Runway 026 was in use. Weather was clear and traffic light to medium, according to the employer and according to the union, it was moderate. The events began when Mr. Spencer decided to intervene in the Seattle airspace to resolve what he thought could become a problem; namely, the number of aircraft coming to Vancouver from the United States; too many aircraft could get to the same point at the same time.

There is a dispute between the parties as to the exact timing of events that occurred around 2120:44Z and 2142:59. However, where such conflict has occurred, I rely on the transcription of the audio tapes filed as exhibits in these proceedings. What is not in dispute, however, is that at 2142:59Z Seattle Controller asked Mr. Spencer for authorization to place UAL 1674 behind CDN989 direct to the Bellingham VOR and notwithstanding the union’s claim that it was not Mr. Spencer, I find he authorized that change at 2143:02. Seattle asked again for confirmation and Mr. Spencer repeated the same at 2143:07. UAL1674 was then authorized to fly direct Bellingham VOR with no altitude restriction.

It is the position of the employer that Mr. Spencer committed serious errors. He had deviated two aircraft from the ACORD arrival path and sent them direct Bellingham VOR without altitude restriction. A more important error, it is urged, was that he had deviated aircraft from the normal arrival path without coordinating his action with the affected sectors – Vancouver South and Departure South. In the opinion of the employer, which is not shared by the association, that broke a

fundamental rule that requires that any deviation from a normal procedure must be properly and fully coordinated before it is executed. The union says Mr. Spencer did so, the employer says he did not.

The parties are in agreement that CDN989 was able to drop its altitude so that when it passed Bellingham VOR it was at 11,800 ft. UAL1674, because it had been slowed down, had not been able to drop its altitude and its descent was made in excess of 17,000 ft.

Then follow certain facts alleged by the employer which are disputed by the union. The employer says that in the meantime, the Departure South and Vancouver South Controllers were proceeding on the assumption that all arriving aircraft were coming on the ACORD arrival pathway, as usual. They were, therefore, sending departing aircraft east bound through Southgate in accordance with normal procedures. This created a situation where ROY6153 and SKW942 were ascending in potential conflict with UAL1674 descending. Mr. Spencer was unaware of SKW942. At 2145:10, says the employer, the situation was discovered by the Vancouver South Controller. At that point UAL1674 was at 17,800 ft. descending towards Bellingham VOR. SKW942 was at 15,100 ft. ascending towards Bellingham VOR. According to its calculations, the employer says the aircraft were approximately 50 seconds from impact.

It is agreed between the parties that the Vancouver South Controller took immediate action and ordered SKW942 to remain at 15,000 ft. and for UAL1674 to descend no lower than 17,000 ft. Both aircraft complied with those instructions. The Vancouver South Controller also arranged for ROY6153 to make several turns to avoid potential conflict.

The main witness for the employer was Mr. Joe Russo, Shift Manager, Vancouver Air Traffic Control Centre. He commented on “jet 52”. J52, he said, is a departure route, a track in space. It is the principal outbound route through Seattle airspace for east bound traffic. SKW942 was on J52. He noted that Vancouver computers and Seattle computers cannot talk to each other. Communication between Vancouver and Seattle is accomplished through a voice hotline. When Seattle initiates action everyone in the Vancouver Terminal hears that call. The Vancouver Terminal Coordinator, in this case Mr. Spencer, responds. The Coordinator does not talk to aircraft directly, only to other Controllers.



He testified the ACORD 6 is the agreed to path for aircraft destined for the Vancouver Airport. However, there may be deviations from that path and it is the Coordinator's role to keep everyone informed about anything abnormal or a deviation from standard procedures. It is his task to ensure that affected Controllers are informed of such deviations. That is so other Controllers can deal with deviations; e.g., altitude and non-standard routing and it is his task to tell the Controllers what it should be. The information has to be accurate and up-to-date in order to allow others to integrate that problem into their work to avoid any mishaps. It is important that the timing of that information be given as soon as possible. The Coordinator cannot wait until the last minute because Controllers need that information in time in order to process it. The Coordinator cannot go away after initiating a change from normal operating procedures and come back later when "you've got a problem".

Mr. Russo went on to note that Seattle Controllers have an obligation to comply with the agreement (Exhibit E-2). If the Seattle Controller has an aircraft that is outside the specified envelope, Vancouver Controllers are not obligated to accept it. The Seattle Controller would be required to spin aircraft around or find some other way to get the aircraft into the envelope before handing them over to Vancouver Controllers. They tend to hold descending aircraft and slow them down and then feed them out to Vancouver. Vancouver Controllers, said the witness, look at the screen with "our philosophy" of not holding aircraft. They try to avoid a hold and find some other way to accommodate aircraft outside the envelope. It is the Coordinator's responsibility to deal with that situation and to reach into Seattle airspace and attempt other ways although he is not obligated to do so under the agreement. He should not be trying to solve Seattle's problem, but is not prohibited from doing so. Any procedure can be deviated from but what cannot be deviated from is separation standards. When a Coordinator reaches into Seattle's airspace he is not talking to aircraft. He can instruct and has authority on behalf of the Arrival High Controller to change predetermined procedures and to accomplish his needs by slowing aircraft to a given speed and accepting aircraft at a given altitude.

Mr. Russo then analyzed the incident in question in detail making reference to the transcripts of the audio tapes. I have carefully considered that testimony, but for the purposes of my Award, I need only comment on the following. Mr. Russo said that Mr. Spencer failed to tell the Vancouver South

Controller that UAL1674 was outside the vertical envelope and outside the route envelope. More importantly, he failed to inform the Vancouver South Controller about SKW942. Both SKW942 and ROY6153 were controlled by Vancouver South. However, Vancouver South Controller determined in a short time that he had a big problem because SKW942 and UAL1674 were coming right at him. At 2144:40 SKW942 was at 14,500 ft. and climbing while UAL1674 was at 18,700 ft. descending with a potential collision course. At 2145:10 the two aircraft were 50 seconds apart and coming together at 750 knots per hour. Mr. Spencer was not aware of SKW942. He had an obligation to ensure traffic outside the pre-determined envelope (UAL1674) would not be in conflict with other aircraft. He was responsible to check available data. He missed SKW942 and that, said the witness, was a “no-no” – that aircraft was on the radar screen.

Mr. Russo noted that at the Administrative Inquiry, Mr. Spencer took the position that he was coordinating only known aircraft and was released of responsibility. However, Mr. Russo observed, “known traffic” is the traffic in the system, not his traffic. Coordination is required for all traffic and all Controllers know that is their responsibility.

Next, he commented on the Administrative Inquiry Report (Exhibit E-20). He was the Chair of the three person board. He discussed in detail the error made by the Data Controller. Data is exchanged with Seattle and the Data Controller is committed to making a telephone call to inform them when an aircraft has departed Vancouver with the intention of entering their airspace. In this case, he failed to do so with respect to SKW942. Because he did not do so, Seattle control was not prepared to receive that aircraft into its airspace. His computer had not been asked to start generating a “data tag” on the Controller’s screen with the radar target. When CDN989 was sent direct to Bellingham, Seattle was relying on Vancouver to ensure that the outbound route was clear. It was not. When UAL1674 was placed behind CDN989, Seattle was also relying on Vancouver that the route was clear. It was a contributing factor. However, Mr. Spencer simply did not see SKW942 on his radar screen and missed the data strip.

Mr. Russo was taken through a lengthy cross-examination by counsel for the association, including the audio tapes previously mentioned. I have carefully considered that evidence and for the purposes of this Award the following testimony is probative and relevant to the issues in dispute.

In response to questioning, Mr. Russo said that it was Mr. Spencer that initiated CDN989 direct Bellingham VOR. He had the authority to do that even though it was Seattle's problem to solve. When he did it, however, his actions were incomplete. If that aircraft and UAL1674 had not been diverted from ACORD 6, the incident would not have happened. If Seattle had known that SKW942 was approaching its airspace it would not have moved UAL1674 off the ACORD 6 path.

Mr. Barnacle asked Mr. Russo the following question; had Mr. Queen, the Data Controller, forgotten to advise Seattle about SKW942, as he did, and had aircraft destined for Vancouver entered as required, would his error have caused a conflict? To that Mr. Russo responded in the negative. If both aircraft had not been taken off the ACORD pathway, the hazardous situation would never have occurred.

Mr. Wayne Heal, General Manager, IFR Vancouver Control Centre, also testified on behalf of the employer. He was notified by the Shift Manager shortly after the incident occurred and was told that a "fairly serious" operating irregularity affecting multi-sectors and possibly United States traffic had occurred. He immediately investigated the situation by talking to Controllers on duty and he listened to the tapes. He did not speak to Mr. Spencer, the Shift Manager did so. His preliminary conclusion was that an operating irregularity had occurred and an Administrative Inquiry was the appropriate action to take. The purpose of the inquiry was to determine what had gone wrong and if proper procedures had been followed. If not, then discipline was appropriate, he said.

Mr. Heal said he reviewed the findings of the Administrative Inquiry Board and he reached the same conclusion as the board did with respect to Mr. Spencer's actions. Mr. Spencer failed to follow the fundamental rule to control inbound aircraft effectively so departure control understood what was happening. His failure to do so put two aircraft in an unsafe or hazardous condition.

Mr. Heal testified as to briefings held in early July, 1998 with respect to the necessity for Controllers to follow the "three P's". In this case, Mr. Spencer failed to follow procedures as set out in MANOPS in respect to the Coordinators' responsibilities. He recalled that at one of the early July briefings Mr. Spencer was present.

In cross-examination, Mr. Heal was asked if the Seattle Controller would not have put two aircraft in conflict if he knew about SKW942? Mr. Heal responded that it was difficult to answer that question. He could have assumed that coordination had been effected when he said “okay, we’ll do that”, referring to taking CDN989 direct Bellingham VOR and off the ACORD 6 pathway. Further, he said, Vancouver Departure Control did not know UAL1674 was off the ACORD 6 path. Had Mr. Spencer told him so, succinctly and clearly, that would have provided the checks and balances required in these circumstances. Mr. Spencer failed to do that on a timely basis.

I now turn to the evidence adduced by the association. The first witness called was Mr. Robert Thurgur, who is a Controller and Vice-President of the association. He discussed Coordinators’ duties and reviewed certain exhibits filed in these proceedings. I have carefully considered his testimony and the cross-examination by counsel for the employer but I do not find it necessary to comment further on his evidence.

Mr. Spencer testified at some length. He gave his version of the evidence surrounding the incident that is the subject of these proceedings. Again, I have carefully considered all his testimony but I do not find it necessary to comment on it at any great length. It was Mr. Spencer’s view that it was the duty of the Departure Controller to bring SKW942 to his attention. Further, if the Data Controller had passed on that information to Seattle, the incident would not have happened. Alternatively, it would not have happened if Data Control had brought it to his attention when he vectored CDN989 and after he had advised Vancouver South Controller that UAL1674 was at 17,000 ft. However, they caught the problem and levelled the two aircraft to prevent a loss of separation, something he would have done under the same circumstances.

As to the imposition of the three day suspension by the employer, Mr. Spencer said the discipline was punitive and he was aggrieved at the employer’s decision.

The cross-examination of Mr. Spencer was also extensive and detailed but for my purposes and after carefully considering that evidence, I find it necessary only to note the following.

He agreed with counsel for the employer that the ACORD arrival path has built into it an automatic height restriction of 11,000 ft. He agreed that as soon as aircraft are sent direct Bellingham VOR it breaks that clearance. However, he said that when an aircraft is deviated from the ACORD there is no obligation for restrictions on altitude. He conceded, he would have to tell Seattle in this case that UAL1674 was at 11,000 ft., which he did not do. However, he replied, Seattle did not give any restriction on altitude either. That being so, Mr. Spencer agreed both aircraft were sent to Bellingham VOR without being subject to any altitude restrictions. Mr. Spencer agreed that the Seattle Controller would have had the right to assume he was on the lookout for conflicting traffic departing Vancouver. By authorizing the deviation from ACORD 6 path he conceded Seattle would assume there was no conflict with departing traffic out of Vancouver because that would be taken care of by Vancouver Controllers. He agreed further, that it would have been reasonable for the Departure South Controller to expect that both CDN989 and UAL1674 were on the ACORD. He agreed nothing was said otherwise to the Vancouver South Controller.

Mr. Spencer's attention was drawn to the audio tape Exhibit A-4 where at 2144:32 he contacted the Vancouver South Controller and told him about UAL1674 and asked if he saw his altitude to which Vancouver South responded that he did and he then remarked to the Controller "he's fighting to get down". It was put to Mr. Spencer that he failed to tell Vancouver South that UAL1674 was off the ACORD and trailing CDN989. Nothing was said to the Vancouver South Controller about UAL1674 going direct Bellingham VOR and he failed to advise him that that aircraft had no altitude restriction. To that Mr. Spencer replied "he didn't want a big story". He agreed, however, that it was his obligation to give complete information about the deviation to the Vancouver South Controller.

I now turn to a brief synopsis of the arguments advanced by counsel on behalf of their respective clients.

Mr. Gibson commenced his argument by noting that he had no case law to tender relying on the cases cited by the employer in the *Dooling and Schroeter Grievances*. The principles enunciated in those cases are applicable to the arbitration of Mr. Spencer's grievance.

He then reviewed the facts adduced in evidence. Mr. Spencer anticipated the problem and reached into Seattle airspace to try and resolve it. There was nothing wrong with that decision. When CDN989 was taken off the ACORD path the effect was that it no longer was subject to the 11,000 ft. altitude restriction on the ACORD and the clearance was broken. Mr. Spencer told Seattle to slow UAL 1674 at 2140:51 and that created two problems for the Seattle Controller; spacing and altitude. Seattle then asked Mr. Spencer for permission to take UAL1674 off the ACORD and send it direct to Bellingham VOR. On the evidence, he suggested, taking aircraft off the ACORD without an altitude restriction can create a complication with departing traffic out of Vancouver. Seattle asked Mr. Spencer twice if it was “okay” to take UAL1674 off the ACORD and Mr. Spencer agreed. Given the departure traffic in the system out of Vancouver; namely, ROY6153 and SKW942, the deviation of aircraft off the ACORD had a direct effect on the Departure South and Vancouver South Controllers. Having authorized the deviation, Mr. Spencer knew or ought to have known a potential problem existed.

That being the case, argued counsel for the employer, it was Mr. Spencer’s obligation as a Coordinator to contact the potential affected sectors as soon as possible and give them complete information as to what he had done. That is specifically provided in MANOPS (Exhibit A-3). That obligation is consistent with common sense and Mr. Spencer ought to have, in clear and simple terms, advised Departure South and Vancouver South Controllers that the aircraft coming to Vancouver were off the ACORD and had been sent direct Bellingham VOR and that UAL1674 was not subject to altitude restrictions. Had that been done, both Departure South and Vancouver South Controllers would have known what traffic was coming. They could then have assessed the departing traffic out of Vancouver and could have advised Mr. Spencer about any potential conflicts; e.g., SKW942 and ROY6153 or any other departing Vancouver traffic.

The Vancouver Departure Controller had not reason to anticipate a problem. He was told at 2138:10 that UAL1674 was high *while on the ACORD*. He had no reason to think UAL1674 would not be down to 11,000 ft. by the EGRET beacon. Nor, in the following five minutes did Mr. Spencer give the Vancouver Departure Controller any reason to think otherwise. Vancouver Departures handed off ROY6153 to Vancouver South in accordance with normal practice. At 2144:40 Mr. Spencer talks to Vancouver South and tells him about UAL1674 and asks if he can see its altitude. He said nothing

about CND989. One and one-half minutes after he took UAL1674 off the ACORD, Mr. Spencer did not give Vancouver South any details. All Mr. Spencer said about that aircraft was “he’s fighting to get down”. At that point Vancouver South Controller was still entitled to assume UAL1674 was on the ACORD path and would be down to 11,000 ft. or if not, Seattle Control could “spin him” around. In the meantime, ROY6153 and SKW942 are ascending in Seattle airspace and all of a sudden there is a conflict because Mr. Spencer did not, in a timely fashion, fully coordinate the deviation of the aircraft off the ACORD 6 pathway with the affected Controllers in accordance with his authorization. That was a very serious error. UAL1674 and SKW942 were only 50 seconds from a head-on collision. Counsel suggested on a severity scale of 10, this was a 9.

Turning to the penalty of a three day suspension, counsel suggested that under the *Wm. Scott* principles, there was an employment offence and the penalty of a three day suspension is at the low end of the scale given the very serious safety infraction that had occurred. There were no mitigating factors in this case. Weather was not a problem, traffic was moderate, and the Coordinator had been fully trained in his duties.

Counsel noted Mr. Heal’s evidence about the meetings that were held in early July of 1998 with the Controllers with respect to the “three P’s”. Mr. Spencer attended at least one of those meetings. It was at those meetings that Controllers were advised that if operational irregularities occurred discipline could be imposed for breaches of the three P’s.

Mr. Barnacle, on behalf of the association, adopted the case law that he presented in the *Schroeter and Dooling Grievances*.

Turning to the evidence, counsel for the association argued that certain of the facts adduced have turned out to be irrelevant to the issue at hand. First, he said, there is no need to be concerned about CND989 descending to the Vancouver Airport. It was operating under its clearance and there was no conflict. The relevance is five miles of separation. Nor, he argued, is Southgate a factor. Arrivals and departures can come to the same geographical point and be separated only by altitude. As to the altitude restrictions when an aircraft is moved off the ACORD path, that aircraft is not free to do what it wants. It is still subject to its clearance.

Counsel then analyzed the evidence from the audio tapes and suggested that Mr. Spencer's communications with the Controllers were not untimely.

Mr. Barnacle argued further that what happened here was not a "near miss". There was no loss of separation and neither of the aircraft involved had to take evasive action. At the very best, there was only a potentially hazardous situation; it would have become hazardous had the problem not been caught.

Finally, Mr. Barnacle urged there was no employment offence committed by Mr. Spencer but alternatively, if I were to hold otherwise, then the three day suspension was excessive and inappropriate in all the circumstances of the case. He ought to have received no more than a written reprimand, the same penalty handed out to the Data Controller for his error in the incident in question.

### III

I now turn to my decision. For the reasons set forth below, I have concluded the grievance of Mr. Spencer is not well-founded and must be dismissed. I say so for the following reasons.

First, I have concluded on the evidence that Mr. Spencer was negligent in the performance of his duties as Coordinator. Simply put, he failed to observe SKW942 on his radar screen when it departed the Vancouver Airport. That failure started the chain of events that both the Fact Finding Board and the Administrative Inquiry concluded was a hazardous situation when SKW942 was ascending out of Vancouver and UAL1674 was descending after having been routed off ACORD 6 as a result of the grievor's actions.

In my judgment, Mr. Spencer was in breach of his obligations to pay attention, which, had he done so, he would have observed SKW942 on his radar screen. Further, he failed to communicate to the affected Controllers that he had taken two aircraft off the standard ACORD pathway for aircraft arriving from the south to land at Vancouver Airport. That failure to communicate that information in



a timely fashion placed the Vancouver Controllers in a position where they could not carry out their obligations. It was only the quick action of the Vancouver South Controller that avoided a potential disaster resulting from the hazardous situation created in the main, in my view, by Mr. Spencer.

Much was made by the association about the failure of the Data Controller to inform Seattle of the departure of SKW942. However, that failure, a negligent error in itself, was not the proximate cause of the hazardous situation that was created in the circumstances surrounding this incident. While, no doubt, it was a contributing factor it did not, in my view, mitigate against Mr. Spencer's failure to observe SKW942 on his radar screen.

Having come to the above conclusions of fact on the evidence, I find Mr. Spencer, in answer to the first question in *Wm. Scott & Co. Ltd.* (1977) 1 Can L.R.B.R. 1 (Weiler), committed an employment offence worthy of discipline. It is then necessary to examine the second question posed in *Wm. Scott* and that is whether the penalty of a three day suspension was excessive or inappropriate in all the circumstances of this case. I incorporate the views expressed by me in *Schroeter and Dooling* (at pages 30-32) in that regard. Further, I expressed the view there that each case must be examined on its own merits as to the issue of the extent to which mitigating factors may or may not impact on the answer to that question.

First, I have concluded, given the serious nature of the grievor's negligence, that the employer was entitled to bypass the principles of progressive discipline. This is in contrast to my decision in *Schroeter and Dooling* where no hazardous situation occurred. Further, I cannot find in this case any mitigating factors, again in contrast to *Schroeter and Dooling*, which would persuade me that the three day penalty was excessive and ought to be reduced. None of the many contributing factors which are set out in detail in *Schroeter and Dooling* are present in this case.

Counsel for the association urged that there was unfair or discriminatory treatment handed out to Mr. Spencer when compared to the written warning that was given to the Data Controller. With respect, I do not agree. While the Data Controller's negligence was a contributing factor, as I have said previously, it was Mr. Spencer's failure in the first instance to observe SKW942 on his radar screen that started the chain of events that led to the hazardous situation that subsequently occurred between

SKW942 and UAL1674. For all the above reasons, the grievance of Mr. Spencer is dismissed and it is so awarded.

DATED at Kamloops, British Columbia, this 30<sup>th</sup> day of November, A.D., 1999.

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MERVIN I. CHERTKOW  
Arbitrator