

IN THE MATTER OF AN ARBITRATION

BETWEEN:

NAV CANADA

(The Employer)

- and -

**CANADIAN AIR TRAFFIC CONTROL ASSOCIATION, CAW-CANADA,
LOCAL 5454**

(The Union)

**AND IN THE MATTER OF A GRIEVANCE RELATING TO ACTING PAY AT
SPRINGBANK TOWER, ALBERTA**

ARBITRATOR: Kenneth P. Swan

APPEARANCES:

For the Employer: Jacques Emond, Counsel
Amanda Sarginson, Articling Student
George Donovan, Assistant General Counsel
Barbara Gagnè, Manager, Labour Relations and
Classification Projects
Warren Anderson, Director, Operational Training Programs
James Strukalo, Project Manager
Paul Moulton, Manager, ATS Evaluations, Investigations
and System Monitoring

For the Union: Ron Smith, Director of Transportation, CAW-Canada
Greg Myles, President, Local 5454

AWARD

A hearing in this matter was held in Ottawa, Ontario, on January 9, 2012. At the outset of the hearing, the parties were agreed that the arbitrator had been properly appointed pursuant to the collective agreement, and that I had jurisdiction to hear and determine the matters at issue between them.

The dispute arises from a grievance filed on March 11, 2010 on behalf of the air traffic controllers employed at Springbank Tower, just west of Calgary, Alberta.

The substance of the grievance is as follows:

Since 1998, the controllers at Springbank Tower have been required to provide control service to aircraft operating in the Springbank Control Zone as well as the airspace surrounding the control zone as designated by an agreement with Calgary Terminal. Service provided in the latter airspace had been previously and normally provided by Calgary Terminal controllers.

On February 11th, 2010, Nav Canada returned the control service of this airspace to Calgary Terminal.

It is submitted that this sequence of events has disclosed that for this entire period, Springbank Air Traffic Controllers were in fact performing the duties of ACC terminal controllers, duties of a higher classification level within the meaning of Article 17.03(a) of the collective agreement. By failing to remunerate the Springbank controllers at the rate of the higher classification level, it is submitted that the employer has been in violation of the provisions of Art.17.03(a) and/or (b).

In the course of the grievance procedure, the Employer provided its response to the allegations set out in the grievance. The final reply was dated November 30, 2010, and served to join issue between the parties. In that reply, the Employer withdrew an objection to the timeliness of the grievance that it had advanced at earlier stages, and responded to the substance of the grievance in these terms:

The classification of Springbank controllers was dealt with extensively in the past, culminating in a March 2006 Deloitte classification appeals report. This report recognized the duties Springbank controllers were performing at the time and concluded they merited an ATC3 rating.

The fact that airspace has now been removed from Springbank and given to Calgary controllers does not warrant an upward change to the classification previously determined for this group. If anything it begs the question of whether or not the removal of this airspace might negatively affect the ATC-3 rating previously assigned to Springbank. In addition, no facts support any entitlement for acting pay as the duties performed by the grievor prior to the return of airspace to Calgary were deemed to be at the ATC-3 level.

Based on the reasons provided above, this grievance is denied.

The provisions of the collective agreement referred to in this correspondence are as follows:

- 17.03 (a) Where an employee is required by NAV CANADA to perform the duties of a higher classification level for a period of at least four (4) consecutive working days, the employee shall be paid the pay of the higher level, calculated from the date on which the employee commenced to perform the duties of the higher level.
- (b) An employee required by NAV CANADA to assume the responsibility for air traffic control duties requiring the possession of a valid air traffic controller licence, or letter of authority, and which duties are the responsibility of a position classified at a higher level, shall be compensated as established in (a) above.

There is essentially no dispute between the parties as to the facts on which this matter is to be determined, which were put before me largely through documentary evidence filed on consent, and by stipulated facts as required to supplement those documents. The dispute, as appears from the correspondence relating to the grievance, is

about the interpretation of paragraphs 17.03(a) and (b), and the application of those provisions to the facts presented by the grievance.

Some of the facts presented in this arbitration are of considerable technical complexity. To the extent possible in the narrative that follows, I have attempted to simplify the description of the factual circumstances, and to limit that description to those facts essential to the resolution of the present dispute.

NAV CANADA operates the civil air navigation system for Canada and surrounding areas in international airspace. In the Calgary area it operates two air traffic control towers, one at Calgary International Airport to the northeast of the city, and one at Springbank Airport, 13 nautical miles immediately west of Calgary International. Calgary International is one of the busiest airports in the country; Springbank is busy in its own right, but is mostly restricted to light aircraft operating on visual flight rules (VFR). Large commercial aircraft, and some smaller aircraft as well, operate on instrument flight rules (IFR), and IFR support for the Calgary area is generally provided by Calgary Terminal, an operational unit located at the Area Control Center (ACC) located in Edmonton, Alberta.

Beginning in 1997, changes were contemplated to the way in which air traffic control would be administered within the Calgary Terminal Control Area (TCA). That area extended to a circle with a radius of 36 nautical miles, with its centre at Calgary International Airport. Within this large area was a 7 nautical mile control zone with its centre at Calgary International Airport, and a 5 nautical mile control zone with its centre at Springbank Airport. Each of the towers, at Calgary and Springbank, was responsible

for its respective control zone, and until 1997 overall control of all traffic in the TCA was exercised by the Calgary Terminal controllers located at the Edmonton ACC.

For reasons apparently related to the need to ensure safe interaction between aircraft operating into and out of Springbank on VFR, and aircraft operating into and out of Calgary on IFR, it was decided to transfer some portion of the air traffic control duties exercised at the Calgary Terminal to controllers at Springbank. The precise definition of the area over which the control was exercised, and the exact nature of the control required, varied from time to time over the intervening years, but the details are not generally relevant to this arbitration. This assignment of duties from the Calgary Terminal controllers to the Springbank controllers related to an area referred to as the delegated airspace, which extended beyond the Springbank control zone to an area where controllers at Springbank would not normally be exercising control functions. The exercise of those functions over the delegated airspace continued until, as is described in the grievance, those functions were returned to the Calgary Terminal controllers effective February 11, 2010.

In the meantime, the parties to the collective agreement had decided to undertake a classification review of bargaining unit employees across the country with a view to establishing a new classification methodology and a formal classification structure for controllers working at various locations. The review was conducted jointly between the parties, with the assistance of Deloitte Inc., and eventually led to a final report dated September 7, 2005.

This report detailed the development of a job evaluation system based on factor analysis, which resulted in a total point score being assigned to the work of

controllers at each location, and the placement of those controllers in a pay band, called an ATC level, based on the total score. The initial outcome for Springbank Tower controllers was that they were placed in level ATC-2. For comparison purposes, ACC controllers, which included the Calgary Terminal controllers located at Edmonton ACC, were rated at ATC-6.

The classification review included provision for an appeal process, and that process was initiated by the Springbank Tower controllers. The process involved the preparation of a statement of the issues respecting the classification rating, and provided an opportunity for the supervising manager to comment on the assertions included in that statement. For the purposes of this arbitration, the following statement included in the appeal document is of relevance:

Additionally, in the Terminal Control Areas to the north, south and west, Springbank provides the same service as the YYC Terminal VTA position, as per our Tower Radar Plan including vectors, approaches, and secure sequencing to the active runway in the same airspace and altitudes as YYC Terminal and therefore requires the same knowledge as controllers in YYC Terminal as it applies to VTA operations.

YYC is the airport code for Calgary International Airport, and therefore YYC Terminal is equivalent to the Calgary Terminal operation at the Edmonton ACC referred to above. The supervising manager, in his comments, indicated that this statement, as well as others in the appeal form, “appear to be an accurate representation of the situation at Springbank Tower”. The appeal was submitted on October 6, 2005 and the classification appeals committee, which included both Union and Employer representation as well as a representative of Deloitte Inc., issued its decision on May 12, 2006.

The appeals committee altered the knowledge factor rating for the Springbank Tower controllers from degree 2 to degree 3, which had the effect of raising the overall score to fit within pay level ATC-3. While it is clear that the appeals committee had before it the assertion by the Springbank controllers that the assigned duties in the delegated airspace had an impact on the knowledge factor, the notation in the report says that the change in the knowledge factor was “in recognition of the change to airspace in early 2006”. It is undisputed that this is not a reference to the duties which are the subject of the grievance, but rather was a change to the class of the airspace, which occurred quite separately from, and some years after, the assignment of duties over the delegated airspace. The class assigned to airspace, as I understand it, indicates the complexity of providing services to it, the restrictions on the use of the space by aircraft, and the kinds of air traffic control measures available within that airspace.

Based on this documentation, it would be possible to conclude that the classification review process resulted in a level of ATC-2 for Springbank controllers, that the assigned level had been appealed based on, among other issues, the assignment of Calgary Terminal controller duties to Springbank Tower controllers in the delegated airspace, and that the assignment had been subsumed in the final decision by the appeal committee, whether or not it was found to be a critical factor of coming to the conclusion that the ATC-3 level ought instead to be assigned to Springbank Tower controllers. Indeed, that was the position taken by the Employer in its final reply to the grievance, and it was the primary argument made in the hearing before me.

On the other hand, and in the alternative, the Employer also argues that a review of the nature of the assignment of duties over the delegated airspace indicates that

the assignment was not of such a nature as to satisfy the requirements established in the arbitral jurisprudence to justify payment to employees of the pay level of a higher classification.

The Employer relies on four arbitration awards: *Craven et al. and Treasury Board (Department of Transport)*, PSSRB File No. 161-2-11958, Public Service Staff Relations Board, SJ Frankel, Adjudicator, April 8, 1982; *Re City of Yellowknife and Public Service Alliance of Canada (Young Grievance)*, [1997] C.L.A.D. No. 58 (Ready); *Re National Art Centre and Public Service Alliance of Canada, Local 70291 (Hurtibis Grievance)*, [1994] C.L.A.D. No. 1044 (Frumkin); and *Bradbury and Treasury Board (Department of Transport)*, (2011) 107 C.L.A.S. 314 (Paquet).

Perhaps the most succinct description of the test established by the arbitral jurisprudence is found quoted in the *City of Yellowknife* case from *Re Canada Valve and International Molders and Allied Workers' Union*, (1977) 16 L.A.C. (2d) 258 (Burkett):

The burden is one which requires a grievor to establish that the work in question is beyond his classification, that it falls within the "central core" of the higher classification and that he has the skill and "ability" to perform it.

Does this mean that the grievor in this case is required to establish that he can do the full range of the lathe operator's job? We think not. We are dealing in this case with an alleged temporary transfer to a skilled position. The grievor is not claiming that his regular duties bring him within the higher classification, nor is he claiming that he is qualified to be a lathe operator and perform all of the tasks required of the lathe operator. Indeed, the evidence establishes that the grievor does not have the skill or ability to perform the full range of tasks which may be required of a lathe operator....

The Board must decide if the grievor was assigned a job which fell within the lathe operator's classification and if he satisfied all the requirements directly related to the particular job in question and not to the full range of jobs which a lathe operator is required to perform.

The question therefore to be determined is what constitutes the “central core” of the higher classification sought by the grievance, a concept which is explained in another arbitral award quoted in the *City of Yellowknife case, Re DeHavilland Aircraft Canada Co. and United Automobile Workers*, January 1970 (Adell):

I accept the burden is on the grievor in cases of this sort to prove to the civil standard that the grievor is performing the significant job duties of a higher classification a majority of his time, and I also accept that the character of the work actually performed is the essential matter to be evaluated in any grievance of this nature.

The evidence indicates that the controllers employed in the Calgary Terminal specialty at the Edmonton ACC are required to work in, and be qualified to work in, four distinct positions: Arrivals, Departures, Coordination, and VTA (VFR Terminal Area). The Calgary Terminal controllers are required to rotate through those positions, and to remain qualified to perform all of them, and from time to time are required to perform all of them at the same time when the duties are combined into one position at quiet times. They are also required to carry out their responsibilities using both radar procedures and non-radar procedures.

The Springbank controllers, up to February 11, 2010, did not perform any duties in the Arrivals, Departures, and Coordination divisions of work. For the most part, they worked as tower controllers but performed, for the delegated airspace, VTA duties as required, as described in the excerpt from the classification appeal quoted above.

While the Employer concedes that VTA duties which would otherwise be assigned to the Calgary Terminal controllers were assigned until 2010 to the Springbank controllers, it is obvious from the evidence that those duties related only to aircraft within

a limited airspace covered by the various delegation agreements. Moreover, those duties did not occupy more than a portion of the time of the Springbank controllers, and were not performed at all in non-radar procedure situations.

Without attempting to quantify the VTA duties performed as a fraction of the total duties assigned to an ACC controller in the Calgary terminal specialty, it is obvious on a qualitative basis that the Union has failed to prove that the work in question constituted the “central core” of the higher classification, or that it constituted “the significant job duties of a higher classification the majority of [the] time”. , Therefore, the assignment did not constitute the kind of assignment that could justify acting pay for the higher classification of the ACC controller.

In my view, the Employer has amply demonstrated that the VTA work in question was either accounted for in the appeal committee’s decision to increase the ATC level at Springbank Tower, or if it was not taken into account, cannot be used as a justification for claiming that the Springbank Tower controllers were performing the work of the higher classification of ACC controllers, of whose duties they performed only a much smaller part, limited by the nature of duties, the size of the airspace over which those duties were performed, and the extent of time required to perform those duties.

The grievance is therefore denied.

DATED AT TORONTO this 16th day of January, 2012.



Kenneth P. Swan, Arbitrator