

IN THE MATTER OF AN ARBITRATION

BETWEEN: NAV CANADA

AND CANADIAN AIR TRAFFIC CONTROL
ASSOCIATION CATCA CAW LOCAL 5454

AND IN THE MATTER OF AN ARBITRATION RELATING TO THE INTERPRETATION AND
APPLICATION OF ARTICLE 16.03(e).

SOLE ARBITRATOR: J.F.W. Weatherill

A hearing in this matter was held at Ottawa on September 20, 2006.

A. Rosner, for the union.

J. Emond, for the company.

AWARD

The parties agreed to the submission of the following question, which is common to a number of grievances, the agreed facts of which are submitted as examples:

An operating Air Traffic Controller's shift cycle has been changed in accordance with Article 16.03(e)(1) or Article 16.03(e)(2). Is the Company entitled to require the Controller to perform control duties on a non-overtime basis while such changed shift cycle is in place?

The agreed facts submitted by way of examples are the following:

RE 2003-867 (Dan Walker):

1. *Grievor Dan Walker was an operating Air Traffic Controller in the North High specialty at Edmonton ACC. He was assigned to a shift cycle in accordance with Article 16.02(a)(ii).*
2. *The grievor was properly notified by management that he was required to perform non-control duties in the IFR Training Unit (ITU), and that his shift cycle would be modified, effective October 28, 2003, in accordance with the provisions of Article 16.03(e).*
3. *On October 28, the grievor performed non-control duties in the ITU.*
4. *On October 29, 30 and 31, the grievor was required to work in his operational position in the North High specialty, on a straight-time basis. Management stated that the reason for doing so was staffing shortage.*

It is to be noted that the days on which the grievor was required to work in his operational position were days which came within the cycle to which he had been assigned pursuant to Article 16.03(e). That is, they were regular working days according to the schedule he was on at the time.

Re 2004-014 (Jeff Tilling)

1. *Grievor Jeff Tilling was an operating Air Traffic Controller in the North Low specialty at Edmonton ACC. He was assigned to a shift cycle in accordance with Article 16.02(a)(ii).*
2. *The grievor was properly notified in early September 2003 by management that he was required to perform non-control duties in the IFR Training Unit (ITU), and his shift cycle was modified, in accordance with the provisions of Article 16.03(e).*
3. *On November 20, 2003, the grievor's assignment for December 15 was changed to a requirement to work in an operational air traffic control position for that day.*

4. *Further, on December 5, 2003, the 56-day schedule covering the period from December 22, 2003 to February 15, 2004 was published [in the normal course]. That schedule indicated that the grievor would be required to work in an operational air traffic control position on January 1, 2004. [The grievor was paid for that day at straight time, together with statutory holiday pay].*

Re 2005-064 (Toronto ACC)

1. *Grievors Shawn Hill, Steve Doherty and Grant Pritchett(?) [sic] were operating Air Traffic Controllers in the West High specialty at Toronto ACC. They were assigned to a shift cycle in accordance with Article 16.02(a)(ii).*
2. *The grievors were properly notified by management that they were required to perform non-control duties in the IFR Training Unit (ITU), and that their shift cycle would be modified in accordance with the provisions of Article 16.03(e).*
3. *On March 16, 2005, the grievors were required to work in the operational positions in the West High specialty, on a straight-time basis for a few hours. Management stated that the reason for doing so was staffing shortage. Two of the grievors complied with management direction, one (Shawn Hill) did not.*
4. *On March 17, 2005, the grievors were required to work in their operational positions in the West High specialty, on a straight-time basis for a few hours. Management stated that the reason for doing so was staffing shortage. All grievors complied with management direction.*

Again, the days or hours on which the grievors were required to revert to their operational duties - control duties - were days or hours which fell within the amended cycle to which they had been assigned pursuant to Article 16.03(e), that is, the shift cycle on which they were working at the time.

Article 16 of the collective agreement deals with hours of work. Articles 16.01 to 16.07 deal with hours of work for Operating Employees; Articles 16.08 and 16.09 deal with hours of work for Non-Operating Employees. The grievors were at all times Operating Employees. Their regular shift cycles, on which they had bid, and for which they were selected in order of seniority, were established pursuant to Article 16.02 of the collective agreement. In each of the examples given, the grievors' shift cycles were amended pursuant to Article 16.03 of the collective agreement, which provides for "Changes to an Employee's Shift Cycle", and it is not suggested that such amendments were not properly made. Nor is there a question of any change in employee status, as contemplated by Article 16.06. As noted above, the grievors retained the status of Operational Employees at all times. The substantial question is whether or not the requirement that the grievors, while on an amended shift cycle for the purpose of performing non-control work (in these cases, training) could be directed to perform operational work while remaining on their amended cycle, that is, without reverting (which would require a period of notice under the shift cycle provisions) to their regular shift cycles on which they had bid and to which their seniority entitled them.

It is agreed that the employer could make the assignments it did, and require the employees in question to interrupt their periods of training in order to perform their regular control duties. The question is rather whether or not, having properly been assigned to an amended shift cycle for the purpose of performing non-control duties, an employee may then be required temporarily to perform control duties (in accordance with the hours of the amended cycle) without actually being re-assigned to his or her "regular" shift cycle.

The material portions of Article 16.03(e) of the collective agreement are as follows:

It is understood that certain employees, may be required to change their shift cycle for varying periods of time in order to carry out non control duties. When such change is required, the cycle shall be determined by NAV CANADA and shall be either:

- 1. Four (4) days on three (3) days off - - - or*
- 2. Four (4) days on - - -*

- (i) *No change in such an employee's cycle will be made unless the requirement to change is consistent for thirty (30) consecutive calendar days or more.*
- (ii) *Advance notice of such requirement which will involve a change in the employee's cycle should be given at least fifteen (15) calendar days prior to the earliest date that the changed circumstances may commence. If notice of the change is less than fifteen (15) calendar days, the employee shall be paid a premium of four (4) hours' pay at the straight-time hourly rate for each shift or day worked during the period of the change for which he or she had not received fifteen (15) calendar days' notice.*
- (iii) *The provisions of this clause shall not be applied to an employee for a period or periods in excess of an aggregate of eight (8) months in any twelve (12) month period.*

It was argued that to permit employees working on an amended schedule to revert to control duties would open the way to abuse of Article 16.03, and would deprive employees of the schedule which they had won by the exercise of seniority. There is no doubt, of course, that that schedule was subject to amendment in the circumstances contemplated by article 16.03, and subject to its limitations. The possibility of "abusive" exercise of a right given under a collective agreement should not lead to the conclusion that the right may not be exercised at all, just in case it were to be exercised in some abusive manner. In any event, Article 16.03 sets out limits to the periods of time for which an amended cycle may be in effect; first, it must be for a period of at least thirty consecutive calendar days. There is no suggestion that the amended cycles here did not meet that requirement at the time they were established. Article 16.03(e)(2)(i) does not prohibit changes in assignment during the course of a properly-established amended shift cycle. Second, the aggregate time during which amended cycles may be in effect during a twelve-month period is limited by Article 16.03(e)(2)(iii). Thus, potential abuse of the power to establish amended cycles has been addressed, at least to some extent, in Article 16.

In the instant case, there is no suggestion that at the time the amended cycles were established, the “requirement” - in this case training - would not be consistent for thirty consecutive calendar days. Since training is typically given on a five-day-per-week basis, a change in the regular shift cycle would be called for, and that is what article 16.03 contemplates. There is no suggestion that interruptions in the training for the purpose of carrying out necessary control duties were specifically contemplated at the time of the amendments to the cycles in question, although the possibility of unpredicted requirements that periods of training or other non-control work be interrupted briefly to meet operational needs arising would, I should think, always be present.

For all of the foregoing reasons, it is my conclusion that the answer to the question put before me is “yes” (although the reference to a “non-overtime basis” of course applies only to the regular hours of the amended shift cycle). I find that there was no violation of the collective agreement in the circumstances put before me, and that the grievances must be dismissed.

DATED AT OTTAWA this 17th day of October, 2006,

Arbitrator