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THE PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

R.M. LISKE,

Grievor,

AND:

THE TREASURY BOARD
(Ministry of Transport)

Employer.

DECISION

Before: R.D. Abbott, Board Member and Adjudicator

For the grievor: Donald L. Brenner, Counsel,
Canadian Air Traffic Control Association

For the employer: Wm. Corbett, Counsel

Heard on March 7 and 8, 1977 in Kamloops, B.C. and on
May 12 and 13, 1977 in Vancouver, B.C.

5 DAYS DISCIPLINE

ART 7
CDR 402/76

DECISION

On June 22, 1976, the grievor was on duty as an air traffic controller (airport controller) in the control tower at the Kamloops, B.C. airport. At the same time he was acting as tower chief. In the course of his work that day the grievor handled the arrival and departure of an aircraft of Pacific Western Airlines. It is alleged that the grievor transmitted incorrect information to the aircraft, otherwise endangered the aircraft in its approach to Kamloops airport, and contributed to the delay and inconvenience of that aircraft. It was concluded by the employer that the grievor's actions and omissions demonstrated negligent disregard for the proper performance of his duties and as a result the grievor was suspended for five working days. The grievance in this case attacks both the justness of the imposition of the disciplinary penalty and its severity.

A preliminary objection was made on behalf of the grievor that he had been improperly denied a right, secured to him by the pertinent collective agreement, to bargaining agent representation during the employer's investigation of this matter. It was asserted that, as a result of this denial, the suspension was rendered null and void, or at least that any statements made by the grievor in the course of the investigation were rendered inadmissible. My decision rejecting this preliminary objection is dated March 31, 1977.

The testimony and other evidence constituting the employer's case, which included testimony of the captain of the PWA aircraft

(Capt. R.B. Mackie) and the Superintendent of Operations, Air Traffic Control, Pacific Region (Mr. J.N. Dyck), was of a detailed and technical nature. As well, there were submitted in evidence tape recordings of all radio and ground line transmissions to and from the Kamloops tower at the material times together with a written transcription of those recordings. No evidence was submitted on behalf of the grievor on the merits nor did he testify on the merits. In the absence of any reason to doubt the reliability of the employer's evidence, I am prepared to accept it. What remains in issue are the inferences to be drawn from the employer's evidence and a determination whether the employer's case satisfies me that on a balance of probabilities there was just cause for the imposition of a five-day suspension on the grievor.

I have just alluded to the detailed and technical nature of the evidence in this case. For this reason, I cannot set down in full the nature of that evidence. The most that can be done is to state the findings of fact I am prepared to make from the evidence and to indicate in a general way how the evidence supports those findings.

The Facts of the Case

On June 22, 1976, air traffic in British Columbia was seriously disrupted by a withdrawal of services by the commercial airline pilots. This withdrawal was sparked by the pilots' alleged doubts as to the safety of air operations due to the dissatisfaction

of the air traffic controllers over the Federal Government's handling of the issue of bilingualism in air traffic control. On June 22 only one Pacific Western Airlines aircraft operated, performing Flight 373 (Vancouver to Kamloops to Kelowna) and Flight No. 374 (Kelowna back to Vancouver). The airline had called in a crew to man this aircraft and passengers were present at Vancouver airport to board the aircraft. However, the called-in crew refused to fly and booked off. Thereupon the airline arranged for the aircraft to be manned by a crew drawn from management personnel, which crew included Capt. Mackie.

While there is no direct evidence on the question, I am prepared to infer, from the tape recording transcript and from statements made by the grievor in the course of the investigation, that the grievor knew that Flight 373, scheduled to arrive at and depart from Kamloops airport, was manned by management personnel in the face of the pilots' withdrawal of services. In the course of an interview between the grievor and Mr. Dyck, the grievor referred to the PWA crew as "scabs who were hurting the pilots", and he admitted that he had not been "overly accommodating" as far as the PWA flight was concerned. I am therefore prepared to infer that the grievor had a motive for any acts or omissions amounting to misconduct in relation to that flight.

Pacific Western Airlines Flight 373 approached the Kamloops airport on a previously filed standard instrument flight

plan which utilized navigation beacons. After establishing radio contact with the Kamloops tower the flight requested but was denied a "straight-in" approach, which would involve a more direct approach than that depending on the navigation beacons. However, the flight was granted a visual (rather than instrument) landing. For the purposes of the flight's visual landing, the airport controller, Mr. Liske, informed Flight 373 that the runway in use was number 08. The numbering of runways coincides with the compass bearing of the runways. Thus, the main runway at Kamloops is designated "08" when it is approached on a bearing of 80 degrees and designated "26" when approached at its opposite end on a bearing of 260 degrees. In other words, the runway is roughly aligned east and west. It is designated "08" when approached from the west and "26" when approached from the east.

It is highly significant that no other aircraft landing on or taking off from Kamloops airport during the time spanning Flight 373's arrival and departure was informed that the runway in use was 08. All landings and takeoffs were from east to west on runway 26 not runway 08. Clearly the "runway in use" was not runway 08.

As well as informing Flight 373 that the runway in use was 08, Mr. Liske informed the flight that the wind was "light and variable". This information has considerable importance. As a matter of law, practice and practical operation aircraft landings

are normally made into the wind. The fact that all other aircraft were landing on runway 26, on a bearing of 260 degrees, strongly suggests that whatever wind there was was from the west. If indeed the wind was "light and variable" then the request made by Flight 373 to land on runway 26 (i.e. from the east to the west) could have been granted readily in the absence of other factors. But the request was initially denied and there is no apparent explanation for that denial. Furthermore, all other aircraft landing at or taking off from Kamloops airport at the time in question were informed that the wind direction was, variously, from a direction of 240 to 260 degrees (i.e. generally from the west) and that the wind speed was, variously, 10 to 20 knots. Capt. Mackie observed that smoke from a high smokestack and the airport wind sock were being blown from the west, by a fairly strong wind. Finally, meteorological records and observations made within a few minutes of the arrival of Flight 373 indicated a wind of 12 knots at 271 degrees and the winds had been generally from the west throughout the day. Taking account of all this evidence I am convinced that Mr. Liske misinformed Flight 373 as to the runway in use and as to wind speed and direction.

After receiving the wrong information from Mr. Liske, Capt. Mackie twice requested a landing on runway 26. The first request was refused. The second request received as a response an instruction to "remain clear of the zone". The import of this was that Flight 373 should stay out of a wide area centred on the

airport. However, the aircraft was already within the zone and the instruction was ignored. An instruction to "remain clear of the zone" is unusual. No reason was transmitted by Mr. Liske to Flight 373 for requiring the aircraft to remain clear of the zone and none is apparent in the transcript of transmissions to other aircraft (e.g. that traffic was too heavy or that an emergency had arisen).

By this time, the aircraft had joined a circuit, as instructed, which was a clockwise circuit south of the airport. The normal circuit for that airport is north of the airport. A transmission from the aircraft informed Mr. Liske that the aircraft was now on the circuit which would lead to a landing on runway 08 ("PW 373 is on right downwind for 08"). This transmission was acknowledged by Mr. Liske ("Call turning final, please, for runway 08") which clearly demonstrates that he intended the aircraft to continue in its clockwise approach to runway 08. Flight 373 then pointed out to Mr. Liske the smoke which would indicate a westerly wind, a tailwind for a landing on runway 08, which was the reason for asking earlier for runway 26. After transmissions to other aircraft, Mr. Liske informed Flight 373 that the wind was now at 250 degrees at 15 to 20 knots and he asked if the flight still wanted to land on runway 08. The flight then stated that it did not want runway 08, it wanted runway 26. Thereupon Mr. Liske granted the request for runway 26 and gave instructions for a left

turn which would take Flight 373 out of its clockwise circuit for runway 08 and place it on a counterclockwise circuit for runway 26.

The significance of this change of circuit and runway is that by the time it took place, the aircraft had its landing gear down and was otherwise "configured" for a landing on runway 08. The change of circuit and runway required the retraction of landing gear, reconfiguration, and increase in power to climb. While this manoeuvre was accomplished successfully, it had to be done within the confines of the narrow mountainous valley in which the airport is situated. As instructed by Mr. Liske, reaching the new approach required a left turn which took the aircraft toward high ground. In the opinion of the pilot, Capt. Mackie, the manoeuvre was a factor which, in conjunction with other factors, could have led to an accident. It was not, in itself, dangerous according to Capt. Mackie. But if conjoined with other factors, that unusual manoeuvre could have been dangerous.

It will be noted that the decision to change runways was that of Flight 373's crew. It was not established in evidence that the flight could not have completed a landing on runway 08 safely and conveniently. There was evidence that an aircraft was prepared to take off at the same time on runway 26, on a bearing directly opposite to the direction that Flight 373 would take on its final approach to land on runway 08. But I think it must be assumed that Mr. Liske could have and would have maintained adequate separation

between the two aircraft to avoid a collision. The source of criticism of Mr. Liske's conduct is, therefore, not that he agreed to the request for a change of runway, but rather that the change would not have been necessary had he granted the initial request to land on runway 26. In the circumstances, had there been a reasonable explanation for Mr. Liske's directing Flight 373 to runway 08, I would have been prepared to disregard the potential danger created by the change in runway since that change was requested by the flight's crew and not initiated by Mr. Liske. But no satisfactory explanation has been forthcoming for initially directing Flight 373 to runway 08, a matter requiring explanation in the light of the facts that all other aircraft were using runway 26 and the wind direction was uniformly westerly. In his interview with Mr. Dyck, Mr. Liske offered an explanation, namely, that "the wind does unusual things at Kamloops, is quite changeable, and PWA usually prefer runway 08 when arriving from Vancouver". Mr. Dyck could not accept this as a satisfactory explanation and in the light of the evidence I agree with him.

Pacific Western Flight 373 landed at Kamloops airport at 1704 hours on June 22, 1976. By 1725 it was able to inform the Kamloops tower that it was standing by, ready to fly to Kelowna, and it referred the tower to its pre-filed flight plan. After other irrelevant transmissions the flight asked if the tower had requested clearance for the flight from the Area Control Centre in Vancouver.

(The tower has a direct line to that Centre). The response from the tower was to indicate that the clearance had been requested and to ask if Flight 373 had started its engines. While the evidence was somewhat confused on the matter, it can be concluded that there is no invariable rule or practice that aircraft engines must be started before clearance can be requested from, or granted by, the Area Control Centre. The reply from the aircraft was that it would not start its engines until clearance had been received. Capt. Mackie indicated that this way of proceeding had the objective of conserving fuel. A long pause ensued, during which a light aircraft (QRX) was permitted to file its flight plan by radio with the tower. This was not the usual practice and appears to have taken up about three minutes of air time.

At 1734 hours Flight 373 enquired about its requested clearance. As pointed out in argument, the reasonable expectation would be to receive a clearance from the Area Control Centre fairly quickly, since there was little or no airline traffic at the time (due to the widespread withdrawal of services by the airline pilots). At 1735 the tower informed the aircraft that it would not receive a clearance until its engines were started (this being information previously given to the tower by the Area Control Centre). Thereupon the aircraft's engines were started and the tower was informed accordingly. It is not clear from the transcript when the tower informed the Area Control Centre that Flight 373's engines had been

started. This is regrettable, since this renders it impossible to know whether the tower personnel were acting in a manner which would expedite or would hinder the departure of the flight. In any event, at 1739 hours the Area Control Centre informed the tower that it cleared the flight. At that same time the tower permitted a light aircraft, QRX (the same one that had filed its flight plan by radio with the tower), to taxi across the airport to get gas. It apparently ran into difficulty with the wind and spun around in front of Flight 373 on the taxi strip.

At 1741 hours Flight 373 reminded the tower of its request for clearance, and received in reply instructions and information regarding takeoff, but no clearance. It is to be noted that by now the clearance from the Area Control Centre had been known to the tower personnel for some three minutes. It can be concluded from listening to the relevant tape recording that there were many silent periods, free of radio transmissions, when Flight 373 could have been informed of its clearance. However, it took another reminder from the flight, at 1742 hours, to obtain from the tower the previously received clearance from the Area Control Centre.

By the time Flight 373 had been informed of its clearance (1742 hours) the aircraft (QRX) cleared to taxi across the airport had run into difficulty in front of Flight 373. Apparently this problem was cleared up in one or two minutes and did not contribute significantly to the delay of Flight 373. At 1747 hours the

tower transmitted to Flight 373, still waiting for its takeoff, an amendment to its clearance information and instructed it to switch its radio frequency to that used by the airport controller. (This is standard practice. Takeoffs and landings are handled by the airport controller while ground movement is handled by the ground controller).

At 1748 hours Flight 373 made radio contact with the airport controller, indicating its readiness for takeoff. It will be noted that twenty-three minutes had elapsed since Flight 373 was ready to take off for Kelowna. During that time radio contact had been maintained between the aircraft and the ground controller. Mr. Liske was not the ground controller. He was the airport controller at a nearby but separate position in the tower. He may or may not have known of the receipt of clearance for Flight 373 from the Area Control Centre. At the time he was engaged in his control functions and may well not have known. As acting chief of the tower, he would have had a duty to ensure that Flight 373 was informed of its clearance as soon as possible. Clearly he cannot be held responsible for the delay from about 1729 hours to 1739 hours, a delay caused by the failure of the Area Control Centre to grant clearance promptly. As far as the delay from 1739 hours (when the clearance was received from the Area Control Centre) to 1742 hours, when Flight 373 was informed of its clearance, Mr. Liske's responsibility, as acting tower chief, would depend on his knowledge that the clearance had been received, and that knowledge has not been

established. The delay from 1742 hours to 1748 hours seems to have resulted from the taxi difficulties of aircraft QRX and the necessity to transmit the clearance amendment to Flight 373. While the delay seems overly long and no explanation has been offered for it, Mr. Liske cannot bear the responsibility for it.

As just noted, Flight 373 informed the Kamloops tower at 1748 hours that it was ready for takeoff. This transmission and all others relating to its takeoff were on the airport controller's frequency and were transmissions to and from Mr. Liske as airport controller. For the next eight minutes, all Mr. Liske's radio contacts were with light aircraft, controlling takeoffs, landings and "touch-and-goes". Then Flight 373 contacted Mr. Liske to ask when he anticipated its takeoff and reminded him that it had been awaiting takeoff for some time with its engines running. Further reminders were transmitted at 1758, 1759, and 1802 hours.

It clearly appears from the tape recording transcript and from the testimony of a passenger on Flight 373, Mr. M. Chertkow, that during the long period after the flight was prepared for takeoff, while it waited with its engines running, a number of light aircraft were taking off, landing, and performing "touch-and-goes". It was within the capacity of Mr. Liske, as airport controller, to provide a break in the use of the runway sufficient for the takeoff of Flight 373. For example, he could have lengthened the circuit of one or more aircraft performing "touch-and-goes" so that they would not

be taking off and landing in rapid succession as they were. However, on the contrary, he instructed at least one aircraft to maintain a close-in, shortened circuit. On the whole I am satisfied that it was practically possible to arrange for an earlier takeoff for Flight 373 than that which actually occurred. Whether Mr. Liske misconducted himself in not so arranging will be considered later in this decision.

Between 1802 and 1804 hours there took place unexplained transmissions between Mr. Liske and Flight 373, which according to the transcript related to the filing of a "complaint". I have listened carefully to the relevant part of the tape recording (which is of very poor decipherability) and would interpret the transmissions as dealing with the filing of the aircraft's flight "plan". Nothing hinges on this, but it contributed to the continued delay in the takeoff of Flight 373.

Between 1804 and 1805 hours Mr. Liske finally cleared Flight 373 for takeoff. However, probably in view of the long delay, Flight 373 asked if its [Area Control Centre] clearance was still valid. Mr. Liske instructed the aircraft to stand by while he checked with the Centre. At 1805:30 he informed the flight that its clearance was valid and it was cleared for takeoff. Thereupon the aircraft took off without further incident. It had been on the ground, ready for takeoff, for more than forty minutes. This delay was described by several witnesses as unusual. Considering

the evidence, I am prepared to conclude that, of this period, Mr. Liske was in a position to shorten or eliminate the delay for about seventeen and one-half minutes (from 1748 hours when Flight 373 contacted Mr. Liske as airport controller, informing him that it was ready for takeoff, to 1805:30 hours when it actually took off). I cannot estimate by how much Mr. Liske could have shortened this delay, but it is quite clear that he could have arranged the flight's takeoff much earlier than he did.

Submissions for the Parties

The submissions on behalf of both the employer and the grievor dealt mainly with the evidence and with the inferences therefrom. In the preceding section of this decision I have considered the evidence and set out my findings and it would accomplish little now to detail the parties' counsel's submissions relating to the evidence. However, a number of additional submissions must be taken into account.

(a) For the Employer

Mr. Corbett pointed to the reasons given by Mr. Liske for his handling of Flight 373 when he was interviewed by Mr. Dyck. As to directing the flight to runway 08, and stating that the wind was "light and variable", Mr. Liske provided the explanation noted earlier, that the wind at Kamloops is changeable and that PWA flights prefer runway 08. The evidence is to the contrary on both of these

matters, and in particular it is clear that this particular flight preferred runway 26. Mr. Liske's explanation of why he instructed the flight to remain clear of the zone was that this was a matter for the tower's prerogative. But, Mr. Corbett argued, the governing Manual of Operations for Air Traffic Control ("Man Ops") in its section 251.1 requires that the reason be given to the aircraft for restricting the number of aircraft in the zone. This was not done in this case, nor is there any other apparent reason.

Mr. Liske had been asked by Mr. Dyck why he gave Flight 373 a left turn to take it to runway 26, when the standard traffic pattern and circling procedures are to the north of the airport (i.e. requiring a right turn). Mr. Liske's explanation was that this was a matter of the controller's discretion, the flight was still high and no safety hazard was presented. Mr. Corbett pointed out that the left turn was probably required because of the other aircraft ready for takeoff on runway 26 (i.e. in a direction opposite to Flight 373's approach). This conflicting position had been brought about by Mr. Liske himself (by directing Flight 373 to runway 08), and the result was an unnecessary manoeuvre taking the aircraft toward high ground. Anyway, Mr. Liske had not suggested that his reason for the left turn was to avoid conflict.

Questioned about the delay in Flight 373's departure, Mr. Liske had pointed to the delay in obtaining a clearance from the Area Control Centre, and also referred to the rule of "first come,

first served". But, Mr. Corbett submitted, there had been a number of takeoffs, landings, and "touch-and-goes" by other aircraft even after Flight 373 was ready for takeoff. (In cross-examination, Mr. Dyck agreed that adequate separation has to be maintained between the takeoffs of light and heavy aircraft due to the turbulence created by the latter. However, he said, such separation should not be achieved at the expense of undue delay to the heavy aircraft. He pointed to section 235.4 of "Man Ops" where that condition is imposed.)

Mr. Corbett finally placed the alleged misconduct of Mr. Liske in the context of the provisions of "Man Ops". First, he had given false wind and runway information, contrary to section 202.1. The new information as to wind direction and speed ("the wind is now 250, 15 to 20") was given too late, after the flight was well into its landing procedure for runway 08, contrary to section 241.1. Secondly, Mr. Liske had required Flight 373 to circuit south of the airport contrary to the normal pattern. Section 242.3 reads "Traffic permitting, a controller may approve a full or partial circuit opposite to the designated circuit". This implies that the initiative must come from the aircraft and such was not the case here. Thirdly, the aircraft had not been advised why it was instructed to remain clear of the zone, contrary to section 251.1.

Fourthly, Flight 373 had been required to manoeuvre

unnecessarily. It should have been given a "straight-in" approach as it requested, in accordance with section 242.2. Fifthly, the aircraft, by being directed to runway 08, may have been placed on a collision course with the aircraft ready for takeoff on runway 26, contrary to the requirement to safely expedite and separate air traffic imposed by section 113.2.

Sixthly, the flight was delayed on the ground and not permitted to take off in sequence, contrary to sections 112.2 and 113.2. The flight was not informed of the reason for delay when the delay exceeded three minutes, contrary to section 235.5. (The reason was not apparent to the aircraft, namely, delay in obtaining clearance from the Area Control Centre). Finally, the flight was harassed by other aircraft, doing "touch-and-goes", something which Mr. Liske could have corrected, e.g. by lengthening the circuits of the other aircraft. He did not expedite this flight, contrary to section 113.2.

Mr. Corbett concluded by referring to the decision of Adjudicator Martin in Gartner (166-2-42) as authority for the propositions that a breach of "Man Ops" is a ground for discipline, and that misconduct by a controller warrants severe punishment due to the jeopardizing of human life and property. In that case, he pointed out, the misconduct was not wilful whereas here it was.

(b) For the Grievor

Mr. Brenner, counsel for the grievor, began by reminding me that the burden is on the employer to establish grounds to justify disciplinary action. Here, while a number of breaches of "Man Ops" have been alleged, the essence of the case against the grievor is that he gave false information regarding runway in use and wind, and that he delayed and inconvenienced Flight 373. The provisions of "Man Ops", according to Mr. Brenner, are not hard and fast rules, appropriate for all circumstances. They are far too general to define required conduct, and on the evidence there has been no clear breach of the "Man Ops".

As to the alleged misinforming as to wind, Mr. Brenner asserted that there is no conclusive evidence that Mr. Liske did not give the wind speed and direction as he observed them. The meteorological information cannot be relied on since it was recorded after Flight 373 had arrived. It was not observed at the very time of the arrival. The other evidence, that smoke from a smokestack was being blown from the west, is also faulty since the top of the smokestack in question is many hundreds of feet above the airport and at a distance from it. On a balance of probabilities the employer's case has not been established.

As to the delay in Flight 373's takeoff, this was mainly the fault of others. It should be considered in the light of the disturbed labour conditions then prevailing. This may explain the

slow response of the Area Control Centre with the flight's clearance. Furthermore, the delay was caused or contributed to by the ground controller and by the heavy traffic of light aircraft. Mr. Liske cannot be responsible for these causes. As far as his handling landings and takeoffs in sequence is concerned, the grievor properly gave priority to landing aircraft, a matter of common sense.

While Mr. Brenner conceded that Mr. Liske did not "cut corners" or give specially favourable treatment to Flight 373, he was not under a duty to be "overly accommodating". He was careful and cautious, in the disturbed labour conditions of the time.

Mr. Brenner next criticized the employer's motivation in this case. It had been embarrassed in its mishandling of the bilingual air control issue, had received Capt. Mackie's complaint, and had felt it had to make an example of someone. No one else, e.g. personnel in the Area Control Centre, or the ground controller, had been disciplined. It is significant that the employer had not called the grievor as a witness, even though it had the power to do so.

Finally, it was submitted for the grievor that the penalty was too harsh. If only one or a few of the grounds of discipline were established, then the penalty should be reduced proportionately. Likewise, here as in Gartner, other persons contributed to the problem, by increasing the delay of Flight 373, and as in that case a

reduction of penalty was warranted. As a further mitigating circumstance, the whole situation was heavily influenced by the labour strike caused by the employer's inept handling of the bilingualism issue, and it is unfair to single out this one controller for discipline.

(c) For the Employer, in Reply

Mr. Corbett pointed out that it is not the practice for the employer to call a grievor as a witness and the circumstances here obliged Mr. Liske to offer some explanation. As far as the troubled times were concerned, it should be remembered that Mr. Liske showed up for work, was acting chief of the tower, and was under a duty to do his job properly. Finally, as to the delay being the responsibility of others, e.g. the pilots of the light aircraft, it was still within Mr. Liske's power to exercise his good judgment, to interrupt the operations of the light aircraft to fit in the takeoff of Flight 373.

Decision on the Grievance

In a case of this sort, in which there is brought into question the way in which a technical and highly skilled task was carried out, an adjudicator is warranted in placing considerable reliance on the opinions of experts. As asserted by the grievor's counsel in cross-examination and in argument, many of the wrongs

allegedly committed by the grievor were matters of judgment, not subject to governance by hard and fast rules. However, on the surface, certain matters raise serious doubts. For example, it is easy to conclude that the "runway in use" was number 26, not 08 as reported by Mr. Liske to Flight 373, and that the wind direction and speed were westerly at something over ten knots. These were not matters of discretion but of fact. If in fact the "runway in use" was considered by Mr. Liske to be number 08, and if indeed the wind was "light and variable" it was up to him to assert that as a fact, in testimony before me and in his interview with Mr. Dyck. This he did not do, and there is sufficient evidence for me to conclude, as I have done, that he transmitted false information.

Mr. Liske's acceding to the request to change to a landing on runway 26, and his instructing the aircraft to reach its approach to that runway by way of a left turn, are matters of judgment and discretion. However, on these matters, the opinions expressed by Capt. Mackie and Mr. Dyck were to the effect that the discretionary decisions placed the aircraft in a position of danger. Again, it was up to Mr. Liske to defend his actions and he has not done so. I am therefore forced to accept and rely on the opinions expressed, which objectively appear to me to be justified by the evidence.

The direction given, to "stay clear of the zone", was said to be unusual, and the failure to give a reason for it to the aircraft may have been, technically, a breach of "Man Ops" as

asserted by Mr. Corbett. Again, it was a discretionary action for which some explanation was required but not offered.

I am not satisfied that the grievor endangered Flight 373 because another aircraft was about to take off in a westerly direction while Flight 373 was in the process of approaching from the west. Such an allegation is so serious, involving an accusation of deliberately risking a collision, that I would require much more conclusive evidence on the matter. However, the existence of the situation reinforces the conclusion that Mr. Liske misinformed Flight 373 that the runway in use was 08 and wrongly maintained the flight on an approach to that runway.

As noted earlier, I cannot hold Mr. Liske responsible for part of the delay suffered by Flight 373. However, he unquestionably did contribute considerably to that delay, and his failure to expedite the takeoff of that flight was serious misconduct and probably a breach of "Man Ops".

Whether or not Mr. Liske's acts and omissions amounted to breaches of "Man Ops", I am satisfied that he was guilty of "negligent and careless disregard for the proper performance of [his] duties", as alleged by the employer, and that he was properly disciplined. I have considered the factors put forward on the grievor's behalf as grounds for reducing the severity of the penalty. The ground for discipline here was "negligent and careless disregard for the proper performance of [the grievor's]

duties". That single ground has been amply established, although I have placed little or no weight on certain aspects of the evidence from which to infer negligence, e.g. the alleged placing of Flight 373 in a collision situation and the alleged responsibility for the entire period of the delay in takeoff. In essence, I am not prepared to reduce the penalty simply because the alleged negligence and improper performance rests upon some acts and omissions but not on others. Likewise, although part of the takeoff delay may have been caused by others, e.g. the personnel of the Air Control Centre, the ground controller, or the pilots of the light aircraft, I am satisfied that the grievor did contribute substantially to the delay, and the degree of his culpability is not reduced. Finally, I would totally disregard the assertion that the disturbed labour situation excused or mitigated the grievor's wrongdoing. As argued by counsel for the employer, once the grievor chose to take up his duties on June 22, 1976, as airport controller and acting tower chief, he came under a duty to perform those duties in a proper manner. I can find no other reason for varying the penalty imposed, and in upholding the imposition of the five-day suspension I adopt the opinion of Adjudicator Martin in his Gartner decision at page 16:

The highest standard of conduct must be exercised by all those engaged in air traffic control. Even minor breaches of the prescribed regulations should be punished severely, in light of the

jeopardy of human life and property that may occur, when the mandatory safety standards are not strictly complied with.

To sum up, I have found that Mr. Liske on June 22, 1976 misinformed PWA Flight 373 as to the runway in use and the wind direction and speed; he thereby created a situation leading to the unnecessary manoeuvring and hazarding of Flight 373 in its new approach to runway 26; he probably committed technical breaches of sections 242.3 and 251.1 of the Manual of Operations for Air Traffic Control, by placing the flight in an abnormal circuit on his own initiative and by failing to indicate to the flight why he instructed it to remain clear of the zone; and he contributed substantially to the delay of the takeoff of Flight 373. I would be satisfied that in all of this Mr. Liske acted deliberately. But I am only called upon to find that he acted negligently and carelessly and I have so found. Overall I am quite satisfied that the grievor's "negligent and careless disregard for the proper performance of [his] duties" has been established. I find no reason to reduce the five-day suspension imposed on the grievor and therefore this grievance must fail.

For the Board,

R.D. Abbott,
Board Member and Adjudicator.

OTTAWA, June 29, 1977.

