

AUG 22 1977

File No. 166-2-3046
166-2-3062

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

BETWEEN:

DOUGLAS ELKINS ET AL
ROSS KAY

Grievors,

AND:

THE TREASURY BOARD
(Ministry of Transport)

Employer.

DECISION

Before: J.D. O'Shea, Q.C. Board Member and Adjudicator.

For the Grievors: Ms. C. Maclean, counsel, and E.G. Staples.

For the Employer: P. Delage, counsel.

Heard at Ottawa, July 27, 1977.

CHANGE IN SHIFT CYCLE
FOR REFRESHER TRAINING

ART 13
Code 402/76

DECISION

These matters arose and came on for hearing under the provisions of the Collective Agreement between the Canadian Air Traffic Control Association and the Treasury Board, signed the 29th of July, 1976, code 402/76. The relevant provisions of the Collective Agreement read:

"ARTICLE 3 - MANAGEMENT

3.01 The Association recognizes and acknowledges that the Employer has and shall retain the exclusive right and responsibility to manage and operate the Air Traffic Control Service in all respects including, but not limited to, the following:

. . . .
(b) To direct the working forces including the right to decide on the number of employees, to organize and assign work, to schedule shifts and maintain order and efficiency, to discipline employees including suspension and discharge,

and it is expressly understood that all such rights and responsibilities not specifically covered or modified by this Agreement shall remain the exclusive rights and responsibilities of the Employer.

ARTICLE 8 - TRAINING

8.02 (b) In addition to the training referred to in 8.02 (a), controllers shall be provided refresher training as follows:

(i) IFR Controllers, VFR Controllers, Performance Development Officers and Shift Supervisors - five (5) working days each year

(ii) An additional five (5) days of job-related training each year providing staff permits and such training will not

require the payment of overtime.

ARTICLE 13 - HOURS OF WORK

13.03 Shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee with reasonable notice as to the shift he will be covering. The shift as indicated in this schedule shall be the employee's scheduled hours of work. If it is necessary to amend the posted schedule, the Employer will make every reasonable effort to contact the employee affected by the amendment to advise him of the change at the earliest possible opportunity. If the employee has serious objections to the amendment, the Employer shall make every reasonable effort to accomodate the employee.

13.05 Every reasonable effort shall be made by the Employer:

(c) To advise employees affected by changes in their shift schedule as soon as practicable.

ARTICLE 15 - OVERTIME

15.01 Time worked by an employee in excess or outside of his scheduled hours of work shall be considered as overtime.

LETTER OF UNDERSTANDING NO. 10/76

This letter will confirm the understanding reached during the current Air Traffic Control negotiations in respect to the introduction of a standard shift cycle for the life of the resulting Collective Agreement on a trial basis at all units, except those who advertised hours of operation are less than 15 hours per day.

It was agreed that effective thirty days following the signing of this Collective Agreement that where through local consultation between management and the Association, agreement cannot be reached on the appropriate shift cycle to be worked at that facility, or portion thereof, then the following standard shift cycle will be used: five days on, four days off, five days on, and three days off.

This letter is entered into without prejudice and neither party is obligated to its renewal."

Mr. Elkins and ten other Air Traffic Controllers who were employed in the Control Tower at Halifax International Airport filed a grievance on October 30th, 1976 wherein they alleged that because their shift schedule for the period between November 4th, 1976 to November 30th, 1976 deviated from that which was set out in the previously published Standard Shift Schedule, they should be paid at overtime rates for any shifts worked on days which would have been their regular days off under the Standard Shift

Schedule.

Mr. Kay, an Air Traffic Controller at the Halifax Terminal Control Unit filed a grievance concerning the same matter on November 19th, 1976, wherein he claimed similar relief.

The grievors took the position that the deviations from the standard shift cycle were contrary to the Letter of Understanding No. 10/76 which formed part of the Collective Agreement between the parties.

The facts of these cases are not in dispute. Although the shift cycle and the deviations implemented by the employer differed in the two grievances, the cause of the deviations was the same. The parties agreed that both grievances concerned the same issue, i.e. the effect of Letter of Understanding No. 10/76.

Accordingly, for purposes of brevity I will only refer to the facts of the Kay grievance. The Halifax Terminal was a 17 hour a day operation. Mr. Kay's shift cycle which had been agreed upon by the parties and was

therefore a standard shift cycle within the meaning of Letter of Understanding No. 10/76 was as follows: 5 days on - 4 days off; 5 days on - 4 days off; 5 days on - 4 days off; 6 days on - 3 days off. The shift cycle covered a period of 36 days of which Mr. Kay was scheduled to work 21 days.

Mr. Kay was required, pursuant to the provisions of Article 8.02 (b) (i) of the Collective Agreement to take refresher training for 5 days between the December 13th and December 17th inclusive. The training time had to be arranged to accommodate the working hours of the trainers who worked between 8:30 a.m. and 5:00 p.m. Monday to Friday. Since the shift cycle under which Mr. Kay was scheduled to work provided that he would have the first 3 days of the refresher course as his regular days off, the Employer deviated from the shift cycle and rescheduled Mr. Kay to work on those days. Indeed, Mr. Kay was required to work 8 days in a row at that time. His days off were also rescheduled so that in the end result, Mr. Kay was only scheduled to work 21 shifts during the 36 days period of the shift cycle. Notice of the change in the shift schedule was posted more than 15 days prior to the implementation of the change.

While Mr. Elkins and his fellow grievors were on a 34 day shift cycle during which they were scheduled to work 20 days, the deviation in their shift cycle to accommodate their refresher training did not require that they be scheduled to work more than the regular 20 shifts during the 34 day shift cycle.

It was argued on behalf of the grievors that in view of the provisions of Letter of Understanding No. 10/76, the Employer no longer has the prerogative to depart from the standard shift cycle which was introduced pursuant to the provisions of Letter of Understanding No. 10/76. If the Employer elects to depart from the standard shift cycle, it was the grievors' position that any shifts which they are scheduled to work which fall on days which they would otherwise have off pursuant to the standard shift cycle, must be paid for at overtime rates in accordance with the provisions of Article 15.01 since such shifts are outside of the scheduled hours of work under the standard shift cycle.

It was the grievors' position that the Employer is limited to scheduling the actual hours of work for the

shifts which fall within the framework of the standard shift cycle.

The grievors also pointed out that the additional training referred to in Article 8.02 (b) (ii) specifically contemplates that overtime payments will not be required. Since that proviso is not contained in Article 8.02 (b) (i), it was the grievors' position that they were therefore entitled to receive overtime payment.

Having considered all the evidence and the representations of the parties, I find that the Employer's argument is more persuasive than the very able argument which was advanced on behalf of the grievors. It was acknowledged by counsel for the grievors that, apart from the provisions of Letter of Understanding No. 10/76, there was nothing in the Collective Agreement which prevented the Employer from making the shift changes referred to above. Indeed, it is clear from the provisions of Article 3.01 (b) of the Collective Agreement that the Employer has retained the exclusive right to schedule shifts and maintain efficiency. It is also apparent from the provisions of Article 13.03, as well as Article 13.05 (c) that the

parties have contemplated that there may be changes in the shift schedules of employees. No restriction is placed on the Employer's right to make the changes except that the Employer must notify the employee of the contemplated change in his shift as soon as possible and must attempt to accommodate the employee if the employee has a serious objection to the change.

Although the Letter of Understanding No. 10/76 confirms the understanding of the parties with respect to the introduction of a standard shift cycle for the life of the Collective Agreement, the standard shift cycle is to be introduced on a trial basis only. Indeed, in the concluding sentence of the Letter of Understanding, the parties have agreed that the Letter was "entered into without prejudice and neither party is obligated to its renewal". When this latter condition is interpreted in light of the fact that the parties have agreed that the standard shift cycle is to be implemented on a trial basis only, it is clear that the parties did not intend that Letter of Understanding No. 10/76 should vitiate or alter the rights of the parties which have been established in the main body of the Collective Agreement. The imple-

mentation of the standard work cycle is merely for experimentation. Indeed, it would take the clearest language in a Letter of Understanding to justify a finding that the parties intended that the right of the Employer to schedule or reschedule shifts which is preserved by Article 3.01, 13.03 and 13.05 (c) has been restricted to the extent claimed by the grievors.

However that may be, it is clear that the Employer has satisfied the purpose and intent of Letter of Understanding No. 10/76 since it has introduced a standard shift cycle for each of the grievors. Although deviations in the standard shift cycle were required for the purpose of providing refresher training, once the training was completed the Employer again applied the standard shift cycle. Nothing in Letter of Understanding No. 10/76 or in the Collective Agreement would justify a finding that a shift schedule which forms part of a shift cycle is immutable and is not subject to change. The provisions of the Collective Agreement referred to above clearly demonstrate the contrary to be true.

I find that the deviations from the standard shift

cycle were required in order to give effect to the contractual obligation of Article 8.02 (b) (i) in order to provide refresher training. I further find that Article 8.02 (b) (i) contemplates that such refresher training be given during "five working days". I construe the phrase "five working days" to mean five scheduled working days. It may be that if the Employer had scheduled overtime in order to provide the refresher training, the employees might have had a valid complaint. However, in order to give effect to Article 8.02 (b) (i) the Employer was required to reschedule the grievors' shifts so that they would coincide with the working day of the trainers who had to provide the refresher training programme. Since the grievors had been rescheduled by the Employer pursuant to its authority under Article 3.01 (b) and since the Employer gave effect to the provisions of Article 13.03 and 13.05 (c) in the manner in which it effected the change in the shift schedules, I find that all the disputed work was performed during properly scheduled shifts and was not "in excess or outside" the scheduled hours of work of the grievors so as to entitle them to overtime pay under Article 15.01 of the Collective Agreement. Even though the rescheduled shifts constituted a deviation from the

standard shift cycle, there is nothing in the Collective Agreement to prevent such deviation or which would cause the deviation to be considered overtime work.

My award therefore is that the grievances are dismissed.

For the Board,

J.D. O'Shea,
Board Member and Adjudicator.

TORONTO, August 3, 1977.