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

BETWEEN:

DAVID KEITH ANDERSON ET AL,
Grievor,

AND:

TREASURY BOARD
(Ministry of Transport),
Employer.

DECISION

Before: D.H. Kates, Deputy Chairman.

For the grievor: W.J. Robertson, Canadian Air Traffic Control Association.

For the employer: W.H. Corbett, counsel.

Heard at Ottawa, September 9, 1977.

ART 8

NO OF DAYS FOR PAR
CONTROLLERS ON I-PAM FLIGHTS

DECISION

The grievors challenge the employer's interpretation and application of Article 8.03(a) of the collective agreement as it pertains to them. Each grievor claims he is entitled to a three-day annual leave for familiarization flight visits to high density airports. The employer however asserts that his entitlement is limited to a two-day annual leave. The relevant provisions of the collective agreement between Treasury Board ("the employer") and the Canadian Air Traffic Control Association ("CATCA") read as follows:

ARTICLE 8

TRAINING

8.01 Definitions

Familiarization Flights

A flight during which an employee may be permitted to visit the cockpit of the aircraft during flight and following arrival at destination will visit the appropriate air traffic control units.

Five-Year Period

The period commencing January 1, 1969, and each new period commencing at five-year intervals from that date.

High Density U.S.A. Unit

The following are considered as high density U.S.A. units for the purpose of familiarization flights:

- New York - Tower, Centre, Common IFR Room and La Guardia Tower
- Chicago - Tower, Terminal, Centre
- Miami - Metroplex Towers and Centre
- Los Angeles- Tower, Terminal, Centre

8.02
(a) The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction on equipment and procedures prior to their introduction and refresher training where appropriate.

8.03 The Employer shall provide familiarization flights as follows:

(a) IFR Controllers and Shift Supervisors
One return flight each year involving not more than three (3) days' absence from his normal place of duty. These flights will be scheduled to include every five years, a long range navigational flight or a visit to a U.S.A. high density unit.

(b) VFR Controllers and Shift Supervisors and Unit Chiefs
One return flight each year involving not more than two (2) days' absence from his normal place of duty. These flights will be scheduled to include visits to Regional high density towers (Class IV) and to the Area Control Centre with IFR responsibility for his airport. Controllers and Shift Supervisors at Class IV towers will be authorized to visit a U.S.A. high density Control tower every five (5) years.

The grievors were employed at the material time of the events giving rise to this grievance as air traffic controllers at St. Johns, Newfoundland. They were assigned particularly to the "precision approach radar service" facility at Tor Bay, Newfoundland (hereinafter referred to as "PAR"). Each grievor holds a basic training licence which permits him to be classified and to deal with traffic

control of airplanes in accordance with "visual flight rules", (hereinafter referred to as "VFR"). In addition to their basic training, the grievors' licences were appropriately endorsed to indicate their competence with respect to "PAR" flights.

The parties have agreed that the grievors have not been trained nor do their licences indicate that they are competent to deal with the control of airplanes in accordance with what the employer characterizes as "instrument flight rules" (hereinafter referred to as "IFR"). That is to say, the grievors are not classified as area or terminal flight controllers. The normal progression for advancement of the air flight controller holding the basic licence to the more sophisticated flight control positions is to apply for and take the course work necessary to become an area or terminal flight controller.

Evidence was adduced before this Board for the express purpose of explaining the significant distinctions between the numerous classifications of air traffic controllers covered under the terms of the subsisting collective agreement. There was no attempt made in the collective agreement to define these classifications with the view to determining the precise benefits accruing to a specific category of air traffic controller. Article 8.03 is indicative of the ambiguity in that "the PAR air traffic controller" is not mentioned with respect to the nature and extent of his entitlement to annual leave for familiarization flights. The employer claims that the "PAR" controller is only entitled to a two-day absence for his annual familiarization flight in accordance with the benefits extended the visual flight rule controller under Article 8.03(b) of the collective agreement. On the other hand, the grievors submit that they are entitled to the three-day absence extended to controllers classified

as an "instrument flight rule controller" under Article 8.03(a). In this regard, the employer argues that the "PAR" flight controller is not trained in instrument flight rules and is therefore not eligible for the benefits provided under Article 8.03(a). Moreover, the employer asserts that the "IFR" classification is confined to the licenced area and terminal controller.

The grievors did not seem to dispute the notion that they, as "PAR" controllers, are not trained to perform in a like manner the instrument control functions of the area or terminal controller. The essence of the latter's duties and responsibilities is to control aircraft through instruments from the ground. In so doing, responsibilities for "separating" aircraft (i.e. for keeping airplanes sufficiently apart from one another) lies exclusively in the instructions given to the pilot by the area or terminal traffic controller. On the other hand, the visual traffic controller normally furnishes the pilot from his perch in the tower of the airport with essential information necessary to maintain a safe distance from other aircraft patrolling the vicinity of the airport. The important distinction between the area controller and the "VFR" controller is that in the latter case the pilot taking instruction from the tower need not necessarily follow the course of action suggested by the controller whereas the instructions given the pilot by the area or terminal controller are imperative.

The air traffic controller assigned to "precision approach radar" service performs a unique function. In the early 1950's the Ministry decided to introduce the "PAR" system to supplement the existing Instrument Land System (ILS). The "PAR" facility takes advantage of radar services in order to provide the pilot with instructions on what particular "heading" or steerage and what

specific altitude the pilot should fly for landing on the runway of the airport. Initially, air traffic controllers who held terminal or area licences manned the radar instruments essential to the "PAR" system and supplied information to the pilots. Nevertheless, this practice was changed in 1967 because of a shortage of area and terminal controllers. Coincidentally with the employer's change of policy a number of experienced airforce personnel, upon their release from the service, were hired to perform "PAR" facility functions. It is clear from the evidence that those hired to perform "PAR" operational duties did not necessarily have to hold the basic air traffic control licence. Nonetheless, those air traffic controllers who have since been assigned "PAR" duties usually have been trained for "VFR" control duties and have taken added course work for the "PAR" facility assignment. It is also clear from the evidence that the "PAR" controller, although he does not exercise instrument control duties in separating aircraft, nevertheless must know in a superficial sense some phases of "the instrument flight rule" operation.

The "PAR" controller is not authorized to deal with more than one aircraft. The description of the "PAR" operation at Tor Bay, Newfoundland was delineated by Mr. John Scammel, the supervisor of radar and radar data processing at the Ottawa headquarters of the Ministry of Transport. Mr. Scammel was principally responsible for introducing "the PAR" system at various airports throughout the country. He indicated that planes making a "PAR" landing at Tor Bay are initially instructed by area or terminal controllers at Gander Bay, Newfoundland. In the event that a number of planes are making a "PAR" landing, the area controller is required to schedule their descents through a process called "stacking". Once the descent commences and within five to ten miles of the Tor Bay airport the "PAR" controller assists the pilot by providing him with information

necessary for maintaining a particular course for landing on the runway. The testimony of Mr. Scammel and Mr. Ralph Laycock, superintendent of systems evaluation operations, suggested that the pilot need not necessarily heed the instruction given by the "PAR" controller. Nevertheless, once the aircraft passes out of "the controllers limits" and approaches the runway, the pilot is under the supervision of the "VFR" controller for completion of landing.

The grievors were assigned "PAR" control duties at Tor Bay. They rely upon the employer's descriptions of their duties and responsibilities covered in the handbook "AIR TRAFFIC CONTROL MANUAL OF OPERATIONS" (hereinafter referred to as "MANOPS"). The grievors although not designated or licensed to perform area or terminal control duties nevertheless submit that they ought to be treated as "IFR" controllers for purposes of Article 8.03(a) of the collective agreement having regard to the employer's treatment of their status covered in the manual. There is no dispute that the manual is prepared and distributed by the MINISTRY OF TRANSPORT for use and direction of employees assigned to air traffic control functions. The relevant provision relied upon by the grievors in advancing their case reads as follows:

2114.3 THE CONTROLLER-INSTRUMENT FLIGHT RULES in possession of a valid licence endorsed for the appropriate location and function (Area, Terminal, PAR) is responsible for: control of air traffic; issuing clearances, instructions, messages, and information; co-ordination with appropriate sectors and units; posting of flight data; supervising and training subordinate staff; operating and monitoring electronic equipment; recommending improvements to air traffic services. When designated, the Senior Precision GCA Controller is responsible to the Shift Supervisor or

Unit Chief, as appropriate, for the general operation of the Precision GCA facility.

The employer did not deny the authenticity of the manual. Nevertheless, it was argued that the provisions referred to and relied upon by the grievors are completely outdated and inaccurate. Indeed, after the filing of the instant grievance the Ministry of Transport has taken corrective action. That is to say, all reference to "PAR" instrument flight rules are being deleted from the manual in so far as they relate to the duties and responsibilities of the area and terminal controller.

At the outset of these proceedings there was an agreement between counsel that because the collective agreement lacks a precise definition of the numerous classifications of air traffic controllers entitled to "absent days" for annual flight familiarization leave, the Board should be invited in resolving this dispute to consider extrinsic evidence inclusive of the "MANOPS" manual. The employer, however, requested that the Board although entitled to look at the manual, should not rely upon it exclusively as a vehicle for determining the appropriate status of the "PAR" controller with respect to the number of days he is entitled to for his annual flight familiarization leave. Rather, the employer urged the Board to consider the expert opinion of both Mr. Laycock and Mr. Scammel in so far as they pertain to the "PAR" controllers' status for benefits under Article 8.03(a). Mr. Laycock, for example, testified that Article 2114.3 of the manual was wrong in making reference to the "PAR" controller as an "instrument flight controller". He indicated nonetheless that the only difference in the job description between the "VFR" controller and the "IFR" controller was that the former could not give clearances. Yet in cross-examination, Mr. Laycock's

view was qualified to the extent that he agreed that a "VFR" controller gave clearances for landing and departure but not for "separations" from other aircraft trafficking the vicinity of the airport. Mr. Scammel, on the other hand, indicated that it was accurate to show the "PAR" controller along with the "IFR" controller in the manual. He indicated however that the area and terminal controller would perform functions that the "PAR" controller could not do. For example, in addition to aircraft clearances, the "VFR" controller could neither supervise nor train subordinate staff nor post flight data. Again on cross-examination, Mr. Scammel conceded that some training of "PAR" controllers would be done by other more experienced "PAR" controllers when a new employee was assigned to the operation. Both expert witnesses called by the employer concluded quite emphatically that a "PAR" controller ought not to be classified as having "IFR" status. Only air traffic controllers holding area or terminal licences are perceived by them to hold "IFR" positions. To the extent portions of the "Manops" manual conflicted with their views, the Board was asked to regard as superfluous.

The Board was advised that the "PAR" system is in the process of being phased out of operation. The facilities at Tor Bay and Vancouver are the only airport units that appear to presently apply the "PAR" system to air traffic control.

The grievors submitted that the "PAR" controller having regard to the Manops definition was classified as an "IFR" controller. The fact that they do not involve themselves in instrument separation is no reason to deprive them of their full entitlement under Article 8.03 of the collective agreement. The employer on the other hand, asks the Board to prefer the expert opinion of Messrs Laycock and Scammel and thereby conclude that they are not entitled to the benefits of an "IFR" controller.

There was no evidence adduced before this Board with respect to the past practice of the parties in their treatment of the "PAR" controller's entitlement to benefits under Article 8.03. Both parties nonetheless argue that they ought to be treated as being entitled to familiarization flight leave under either Article 8.03(a) or (b) of the agreement which seem to restrict benefits to "IFR" and "VFR" controllers respectively. In dealing with this particular dispute it should be emphasized that the Board's view of the issue is whether the "PAR" controller is entitled to benefits under Article 8.03(a) of the collective agreement. Whether he occupies the "IFR" classification as perceived by the functions performed by the area or terminal controller although relevant is not overriding in the determination of the "PAR" controller's status for benefits under the terms of the agreement.

The Board does not doubt (nor was it challenged) that the "PAR" controller is not employed in the sophisticated instrumental direction of pilots in the separation process. This quite clearly is the domain and jurisdiction of the area and terminal licensed controller. It was not disputed, however, that the "PAR" controller performs his duties as an integral phase of an "IFR" operation in guiding the course of the descent of an aircraft. Indeed, when the operation was initially introduced only area and terminal controllers were assigned the "PAR" controller functions. Moreover, the Board is convinced that the duties of Instrument Flight Controller as described in the "Manops" manual was inserted principally because of the Ministry's procedure of assigning area and terminal controllers the "PAR" controller's assignments. Nonetheless, when the policy of the employer changed and the area and terminal controller ceased to perform the "PAR" assignment no correlative amendment was made to the manual. As a result, employees as well as other interested persons engaged in the Ministry's flight control operation continued to

rely upon information prepared by the employer with respect to the designated functions of the "PAR" controller. In fact, the Board was advised at the close of the hearing that the "Manops" provisions had been amended in 1970 without any change being made in the definition of the "IFR" classification referred to us by the grievors. The instant collective agreement became effective on June 1, 1976.

The Board is of the opinion that, although it may very well be that the "PAR" controller is not a "IFR" controller within the strict and technical meaning ascribed to that term by the Ministry's expert witnesses, the employer nonetheless seems to have treated the "PAR" controller as such for other purposes. Or, in another sense, the employer has never taken any steps to disabuse its employees of the notion that the "PAR" controller is to be treated on the same footing as an "IFR" controller. And, indeed, at the time the relevant terms of the collective agreement were negotiated, it was reasonable for the affected employees and their bargaining agent to view its contents as pertaining to both the air and terminal controller and the "PAR" controller. Moreover, the Board is of the opinion that the efforts of the Ministry of Transport to amend the "Manops" manual to accord with the particular opinion shared by its expert witnesses was simply too late and therefore irrelevant to the disposition of this case.

The Board is mindful of Mr. Scammel's testimony that the "PAR" air traffic control function presently is being phased out of existence. Nevertheless the Board notes that save for the area/terminal controller's duties of issuing clearance directives for the benefit of pilots in the "separation" process of avoiding other aircraft, the functions of the "PAR" controller differed slightly from those exercised and set out in the "Manops" manual. Indeed,

it was clear to this Board that in a field of endeavour where precision is essential to the air flight controllers' operation, the manual clearly failed to make the sophisticated distinctions emphasized by the employer's witnesses. Indeed, it became quite clear during the course of the testimony of both Messrs Laycock and Scammel that they too were not in total accord with each other in distinguishing the functions of an "IFR" controller from those of the "PAR" controller.

The Board finds that if it was intended that the "PAR" controller be restricted in his entitlement to benefits under the collective agreement the employer, in the circumstances, was in the best possible position to clarify its perception of their status under the collective agreement to the parties concerned. In other words, the Board does not propose to allow the employer to reject the notion that the "PAR" employer is to be treated as an "IFR" controller for purposes of conducting its affairs and then deprive that same employee of benefits reasonably anticipated under the terms of the collective agreement. The Board therefore is satisfied that for the purposes of Section 8.03(a) of the collective agreement the "PAR" air traffic controller holds the status of an "IFR" controller.

Accordingly, the grievances are sustained.

The employer is therefore directed to abide by Article 8.03(a) of the collective agreement in according the grievors leave for familiarization flights.

For the Board,

D.H. Kates,
Deputy Chairman.

OTTAWA, September 20, 1977.