

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

11/4/78
copy Bel of Directors
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BETWEEN:

ROBERT J. SLADE,

grievor,

AND:

TREASURY BOARD
(Department of Transport),

employer.

now LTR 3/85
~~*now LTR 3/85*~~

DECISION

LTR 5/74
CONF 402/74

Before: Edward B. Jolliffe, Q.C., Deputy Chairman.

For the Grievor: John P. Nelligan, counsel.

For the Employer: Harvey A. Newman, counsel.

NOTE - discussed with legal counsel on 10/4/78 and they will file an appeal with Federal Court with particular regard to ~~page~~ page 17 second paragraph and first line of third paragraph.

Heard at Ottawa May 7, 1976 and January 11, 1977.

J.

DECISION

The grievance of Mr. R.J. Slade relates to pay entitlement during a period when he was unable to perform his duties as an Air Traffic Controller by reason of having been denied medical endorsement of his licence.

The grievor relied on Articles 10 and 14 of the agreement between the Treasury Board and the Canadian Air Traffic Control Association (Code 402/74) made on August 22, 1974, and also on "Letter of Understanding 5/74," exchanged on the same date.

The letter, written by Mr. W.H. Oliver on behalf of the employer, and accepted by Mr. J.M. Livingston, president of the bargaining agent, was as follows:

This is to confirm an understanding reached during the current negotiations in respect of loss of license for medical reasons.

Provided a controller has performed active control duties for a period of five (5) years and subsequently has been removed from active control duties for medical reasons, it was agreed that the individual involved would suffer no loss of his basic salary for a minimum period of one year from time of removal from active control duties.

We trust that this assurance will satisfy your requirements.

Article 10 of the collective agreement provided for the accumulation of "special leave credits" and set out those circumstances in which special leave shall be or may be granted, The relevant language was as follows:

10.01 An employee shall earn special leave credits up to a maximum of twenty-five (25) days at the following rates:

- (a) One-half ($\frac{1}{2}$)-day for each calendar month in which he received pay for at least ten (10) days,

or

- (b) One-quarter ($\frac{1}{4}$)-day for each calendar month in which he received pay, but for less than ten (10) days.

As credits are used, they may continue to be earned up to the maximum.

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10.05 Leave for Other Reasons

At the discretion of the Employer, special leave with pay may be granted when circumstances not directly attributable to the employee, including illness in the immediate family as defined in clause 10.03, prevent his reporting for duty.

10.06 Where an employee has insufficient or no credits to cover the granting of special leave within the meaning of clauses 10.03, 10.04 and 10.05, leave up to a maximum of five (5) days may, at the discretion of the Employer, be granted, subject to the deduction of such advanced leave from any special leave credits subsequently earned or from the employee's salary upon termination of his employment.

Article 14 merely made the usual provisions for pay at rates set out in Appendix "A" to the agreement.

Although not mentioned in the original grievance, certain other provisions of the agreement must be mentioned.

In "Definitions" immediately preceding Article 1, it was stated as follows:

- (1) For the purpose of this Agreement the following shall be considered as operating employees:
 - (a) all shift supervisors and controllers in Area Control Centres and Terminal Control Units;
 - (b) all shift supervisors and controllers including Unit Chiefs who are required to perform Control duties in Control Towers;

- (c) all shift supervisors and co-ordinators in the Airspace Reservation Co-ordination Office;
- (d) all Air Traffic Controllers-in-Training in Area Control Centres, Terminal Control Units or Control Towers.

All employees other than those listed above shall be considered non-operating employees.

Further, in Article 13 the following words appeared under the heading: "Change in Employee Status:"

It is understood that certain employees, because of the nature of their duties, may be required to change from an operating employee to a non-operating employee for varying periods of time. No change in such an employee's status will be made unless the requirement to change is consistent for thirty (30) consecutive calendar days or more. Advance notice of such requirement which will involve a change in the employee's status should be given at the earliest possible date but in any case no less than 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 has not received fifteen (15) calendar days' notice. Such notice shall not be required nor is the premium payable when the employee concerned is promoted, is acting in a higher level position or the change is in response to the employee's request.

This clause does not apply to an Air Traffic Controller-in-Training prior to the completion of his ab-initio training at ASTS.

Article 20, "Licensing", is of importance and must be quoted in full:

- (a) The Employer shall reimburse an employee for his payment of fees incurred in obtaining an annual medical examination, including but not limited to electrocardiograms, specialists results and X-Rays as may be required to maintain the validity of his Air Traffic Controller-Licence.
- (b) Operational requirements permitting, an employee will be protected against any loss of normal pay in order to undergo such examinations including reasonable expenses for necessary travel outside of his Headquarters area, as normally defined by the Employer.

The Employer will continue past practice in giving all reasonable consideration to continued employment in the Public Service of a Controller who loses his licence for medical reasons.

If a Controller who has lost his licence for medical reasons is offered alternate employment in the Public Service at another geographic location, the Employer shall bear the cost of removal expenses in accordance with then current Employer Regulations.

On May 7, 1976, a scheduled hearing of this reference was adjourned sine die at the request of the parties. When again brought on for hearing January 11, 1977, counsel tendered an "Agreed Statement of Facts," accompanied by a series of "annexes" referred to therein. Counsel agreed also that the grievor could not have functioned as an "operating employee" without a medically-endorsed licence, but that not all AI-5 controllers are "operating employees."

The "Agreed Statement of Facts", signed by counsel, Mr. John P. Nelligan and Mr. H.A. Newman, was as follows:

1. The Grievor is employed in Transport Canada as an Air Traffic Controller, level 5 (AI-5).

2. The Grievor commenced employment as an Air Traffic Controller on April 14, 1959, and performed active control duties at the Air Traffic Control Centre at Toronto until July, 1973.

3. On July 4, 1973, the Grievor was assigned to the Air Services Training School in Ottawa. The reasons for the transfer are set out in a report dated June 25, 1973, from Dr. A.R. Kempton, Regional Aviation Medical Officer to O.C.A.T., (Annex 1) and a memorandum dated July 9, 1973, from J.P. Walmsley (signed by W.J. Ellwood) of the Toronto area control centre to O.A.T. (Annex 2).

4. The Grievor was returned to the Toronto Region effective August 27, 1973. See memo dated August 21, 1973, from P.A.S.S. to O.C.A.I. (Annex 3).

5. On August 14, 1973, the medical validity of the Grievor's Air Traffic Controller licence lapsed. The Grievor received a medical examination on September 4, 1973, but the Regional Aviation Medical Officer, Dr. A.R. Kempton, did not renew the medical validity of the licence. See memorandum dated September 19, 1973, from H.J. Varley, Regional Training Officer, Air Traffic Services, to C.R. Brereton, Regional Manager, Air Traffic Services (Annex 4). The licence was renewed on Oct. 9, 1973, for a period expiring Sept. 4, 1974.

On October 22, 1973, the Grievor was assigned to temporary duty in the Regional Office. See memorandum dated October 23, 1973, from K.R. Riseborough, Superintendent Training and Career Development, Air Traffic Services (O.A.T.T.) to Unit Chief, Toronto Area Control Centre (Annex 5). The Grievor, during this period worked under the supervision of J. Kidston, Superintendent, Equipment Air Traffic Services. This assignment was terminated in February, 1974, and effective March 11, 1974, the Grievor was assigned duties at the Ontario Regional Air Traffic Services School. See memorandum dated May 21, 1976, from O.A.T.E. to O.A.T.T. (Annex 6).

6. The Grievor, at his own request, returned to the Toronto Air Traffic Control Centre on August 2, 1974. On September 4, 1974, the Grievor met with W.J. Ellwood, Unit Chief, A.I.C.C., Toronto, and was placed on an indefinite period of sick leave.

7. On September 7, 1974, the Grievor was examined by the Medical Examiner and by letter dated September 18, 1974, Dr. A.R. Kempton informed the Grievor that he would require a further report from Dr. Rapp at Sunnybrook Hospital (Annex 7). See also letter dated September 23, 1974, from Dr. A.R. Kempton to Dr. M.S. Rapp (Annex 8).

8. On November 27, 1974, Dr. A.R. Kempton wrote to Mr. Slade informing him that he would have to be considered medically unfit for control duties (Annex 9). See also memorandum dated November 29, 1974, from Dr. Kempton to O.C.A.R. - Toronto (Annex 10).

By letter dated December 4, 1974, D.R. Sinclair, Regional Superintendent, Air Regulations, Ontario Region, informed the Grievor that he had been assessed as "UNFIT" and that a Licence Renewal Certificate would not be issued (Annex 11).

9. The Grievor has not performed duties as an air traffic controller since September 4, 1974. The Employer considered the Grievor on sick leave until December 17, 1974, and by letter dated February 11, 1975, Mr. F.E. Dorey, Regional Manager, Air Traffic Services informed the Grievor that, pursuant to the terms of a Letter of Understanding attached to the current Agreement between the Employer and the Canadian Air Traffic Control Association, the Grievor's salary would be maintained for a minimum period of one year, i.e. from December 4, 1974 to December 5, 1975 (Annex 12).

10. In November, 1975, the Grievor had a further medical assessment by the Medical Examiner. (Annex 12A).

11. On December 4, 1975, the Grievor reported for duty and was advised that he was on Leave Without Pay as of December 4, 1975, pending receipt of the report on his medical status. See memorandum dated December 4, 1975, from O.A.T.O. to Mr. R.J. Slade (Annex 13).

12. The Aviation Medical Review Board reported on December 23, 1975, that the Grievor was still unfit for Air Traffic Control duties. See memo dated December 23, 1975, from Dr.

I.H. Anderson to Regional Aviation Medical Officer, Toronto (Annex 14). By letter dated February 20, 1976, from D.A. Cather, the Grievor was informed that as a result of his medical assessment his licence could not be renewed (Annex 15).

13. To this date the Grievor's licence has not been renewed.

14. At all material times, the Grievor was subject to a collective agreement between the Treasury Board and The Canadian Air Traffic Control Association, 402/74, signed on August 22, 1974.

15. It is agreed that the above statement of facts is accurate and relevant for the purpose of this adjudication and that neither party is precluded from adducing further evidence.

Mr. Nelligan relied on the statement quoted above, and also filed on consent Exhibits 3, 4 and 5, being copies of the grievor's licence, dated September 22, 1959, its renewal for one year, dated October 9, 1973, the denial of a medical endorsement of renewal dated September 7, 1974, and a series of renewals given in 1959, 1961 and 1972.

Mr. Newman, counsel for the employer, adduced evidence by way of two witnesses, Messrs. W.J. Elwood and S.R. McCormack.

Mr. Elwood, now retired, had more than 30 years' experience in Air Traffic Control, latterly as unit chief at Toronto. In July, 1973, he had been assistant to the unit chief, and in that capacity wrote a report recommending Mr. Slade's transfer from Toronto to the Air Services Training School at Ottawa, supported by a letter from Dr. A.R. Kempton, Regional Aviation Medical Officer. In brief, these reports were to the effect that although Mr. Slade was a controller of high technical competence who had given excellent service for some years, his personal and emotional problems were such as to jeopardize relations with fellow-employees. It was not until more than a year

later that Mr. Slade failed to gain medical endorsement for renewal of his licence. However, an unfavourable medical report had been made in September, 1973, as a result of which the grievor was assigned to temporary duty in the Regional Office.

Mr. Elwood conceded that there were some "non-operating" Al-5 positions, but said it was not his responsibility to find such a position for Mr. Slade.

Mr. McCormack, regional personnel administrator, did not arrive in that position until April, 1976. He said repeated efforts had been made to arrange alternate employment for the grievor, particularly by circulating information "on a national basis," which brought "no positive response," by arranging an appointment with supervisors responsible for control at Sault Ste. Marie, and by communicating with the Coast Guard and with the Public Service Commission. However, said Mr. McCormack, "nothing happened."

Mr. McCormack also testified that "in effect we offered him a demotion twice --- to ARCO and the Soo." This was a reference to the availability of positions at the Al-4 level, which Mr. Slade was unwilling to accept. However, Mr. McCormack did not know of any "written offer" of any position in 1975, and admitted there had been a "considerable number" of vacancies in non-operating positions. He said: "I believe we've exhausted every avenue; Mr. Slade has not cooperated with us." There had been a period when salary cheques had been "sent to the Bank" and the Department "did not know where he was." According to Mr. McCormack, the grievor said he "could not return to the Toronto environment --- he ruled out Toronto, but we did not."

In argument, Mr. Nelligan asserted that the evidence of the two witnesses did not "go to the issue." Although the employer had a full year in which to find other duties for Mr. Slade, it had failed

to do so. The medical reports all showed him as "healthy" but found he was "subject to stress." It had been admitted that there were a considerable number of A1 non-operating positions, but the record indicated that either "they didn't want him" or offered him work he could not do. Mr. Nelligan then suggested that the employer now says the grievor was not satisfactory in non-operating positions because "they've made up their minds, but in such a way as to be not reviewable."

Mr. Nelligan submitted that the grievor has "tenure" and is entitled to be paid --- from December 4, 1975, to May 7, 1976 (when an adjournment was requested) and from January 11, 1977, until termination of employment.

For the employer, Mr. Newman contended that the grievor had not proved medical fitness to perform his duties and that, having regard to section 27 of the Financial Administration Act, he was not entitled to be paid for any of the period since September, 1974, during which he rendered no service.

Mr. Newman referred to Norden (166-2-2422) at page 10, the cases cited therein, and also Brill (166-2-2382). He said that on the day of the hearing the grievor had been served with a notice of termination, dated January 6, 1977, by reason of "incompetence or incapacity" pursuant to section 31 of the Public Service Employment Act.

In reply, Mr. Nelligan said the employer has now "switched" its position from allegations of incapacity to allegations of incompetence, an afterthought.

The employer's notice of termination has not been put before me. That matter is of course one to be decided by the Public Service Commission on an appeal, if any, under subsection (3) of section 31

in the Public Service Employment Act. Thus, that issue, namely, the release, does not arise here.

Before giving reasons for this decision, it seems necessary to recapitulate the material facts.

The grievor served as a controller in various capacities from April, 1959, to September, 1974, a period of 15 years and five months. He therefore met the five-year requirement in the "Letter of Understanding."

As of September 4, 1974, the grievor ceased to hold a medically-endorsed licence and consequently was "removed from active control duties for medical reasons."

From September 4 until December 17, 1974, the grievor was "considered" to be on sick leave with pay, apparently pursuant to the sick leave provisions in Article 9 of the applicable collective agreement, Exhibit 1.

However, on February 11, 1975, the grievor was notified (Annex 12, Statement of Facts) that, having been assessed as "unfit," his basic salary would be continued as and from December 4, 1974, to December 5, 1975, being the "minimum period of one year" contemplated by the "Letter of Understanding, 5/74," which is Exhibit 1A.

In writing the grievor on February 11, 1975, Regional Manager Darey also said:

You will, of course, realize that your continued employment in your present position (T.ACT. 3381, AI-5, Air Traffic Controller, Toronto Area Control Centre) is dependent upon you, providing proof of satisfactory physical condition as described in the approved standards.

May we suggest that you consider the prospect of being unemployable in your present position as of December 4, 1975. We are prepared to assist you in seeking other employment but feel that the initiative must be yours. Please feel free to contact this office to seek advice or assistance in this matter.

Following further examinations, the disqualification of the grievor was confirmed by the Aviation Medical Review Board on December 23, 1975, and the grievor was so notified on February 20, 1976. He had been on "leave without pay" as and from December 4, 1975. From that date until the hearing on January 11, 1977, he received no salary.

Until 1973 supervisors regarded the grievor's performance as "excellent", and said he was particularly strong in his knowledge of "equipment." Early in 1973, however, there were complaints of instability due to emotional and other problems, as a result of which he was interviewed by the Regional Aviation Medical Officer.

Of the subsequent medical reports none specified any physical or physiological ground for disqualification. It seems clear that Mr. Slade was certified "unfit" on purely psychological grounds. In any event, he was denied a medical endorsement in 1974 and again in 1975, a result upheld by the Aviation Medical Review Board, which is said (Annex 14, Statement of Facts) to have been "convinced that he was unable to cope with stressand unfit for Air Traffic Control duties." Strictly speaking, the Board's concluding statement that Mr. Slade was "physically unfit" is not supported by other evidence, and it is inconsistent with the reports of the examining doctors that he was "healthy." Apparently the Board used the term "physically unfit" in a very broad sense.

However, it is not open to question that the grievor's functions in 1973 demanded satisfactory mental health as well as good physical health, that the duties performed are often subject to stress or tension, and that team-work is an essential requirement of air traffic control.

In his grievance dated December 8, 1975, Mr. Slade asserted:

I have been certified medically fit by Dr. J.R. Carroll a qualified Civil Aviation Medical Examiner as of November 3, 1975 and have been ready, willing, and able to work and have reported for work following my last medical examination. On my last attempt to report for duty at Toronto Area Control Centre on December 4, 1975 I was given the previously mentioned notice of involuntary leave without pay by Mr. W. Morris and at the same time forced to surrender my security identification card, thereby effectively barring me from further attempts to report for duty, as I now no longer have access to my place of employment.

It is true that no negative findings can be identified in Dr. Carroll's report (Annex 12A, Statement of Facts) and there are many positive findings, including the word "healthy" under heading (H) "Assessment (Medical Examiner)." Moreover the report was countersigned by Dr. H.S.G. Keeler under heading (I) "Assessment (Regional Medical Officer)."

No reference whatever to a psychological assessment appears in the above-mentioned report, which seems to have been signed by Mr. Slade and Dr. Carroll on November 3, 1975, and by Dr. Keefer on December 29.

Strangely, there is no evidence of any psychological assessment in 1975. On September 23, 1974, Dr. Kempton wrote Dr. M.S. Rapp of Sunnybrook Hospital (Annex 8 of the Agreed Statement) as follows:

This Air Traffic Controller has previously been seen by yourself and a copy of your Consultation Note at that time is enclosed. He presents once again to the Medical Examiner with "marked emotional instability" and the Medical Examiner considers him to be "unfit" at this time. We would appreciate your expertise in determining his fitness to continue as an Air Traffic Controller. We will look forward to receiving your report with great interest.

Dr. Rapp's reply is not in evidence, but on November 27, 1974, Dr. Kempton sent the following letter to Mr. Slade (Annex 9):

We have today received a follow-up letter from Dr. Rapp. This indicates, as you have said, that he feels that you should be taking the Imipramine for another two months. Unfortunately, as I indicated to you on Monday, because of the necessity of continuing this medication and because of your own admitted unfitness for controlling at the present time, it is not possible to give you a favourable medical assessment at this time. Accordingly, you will have to be considered "unfit". However, please realize that we will be very glad to consider any further medical evidence at any time in the future.

No document filed mentions any psychological assessment between November, 1974, and December 23, 1975, when the Aviation Medical Review Board concluded that Mr. Slade was unfit and so informed the Regional Aviation Medical Officer over the signature of Dr. I.H. Anderson. Perhaps the Board had before it a recent psychological assessment, a report or recommendation or other evidence, but no such material has been placed before me. Thus there exists a remarkable gap in the grievor's history between November, 1974, and November, 1975, left unfilled by both the employer and the grievor. Indeed, the employer's evidence discloses very little about what was happening in 1975.

Mr. McCormack's testimony related to his own efforts to find a job for the grievor after April, 1976, (when he arrived in Toronto) and other information gleaned by him from the file.

Mr. Ellwood was Unit Chief at Toronto throughout 1975. On January 13 he wrote to Regional Headquarters (Exhibit 6) pointing out that Mr. Slade had been "absent from the Toronto Centre since September, 1974." He went on to say:

We had occasion to speak to Mr. Slade on January 8, 1975 when he came to the Unit to pick up his cheque. He advised that he would be seeing Dr. Kempton shortly, that the recommended period for his taking a certain drug was approaching its end, and that he was hopeful of getting his license back. He also said that if he did not get it back he was not prepared to go through an ordeal of any kind. He appeared much more relaxed than previously and at least in my opinion is probably at the point where gainful employment, of some kind, would be useful. I have advised Dr. Kempton of the foregoing, he is very doubtful regarding return of license.

We would appreciate a decision of Mr. Slade's status at this time. He has not been given formal notice of one year salary prior to termination and has not been offered alternative employment.

Provided the medical authorities agree it may be possible to offer him a position at ARCO.

In his testimony, Mr. Ellwood drew attention to a handwritten note at the lower left corner of the above-mentioned letter, Exhibit 6. Barely legible, it appears to read as follows:

Mr. Slade verbally refused the opportunity for a position in ARCO 14/1/75.

The initials and other figures following the note are not clear, but Mr. Ellwood thought the initials were those of Mr. J.P. Walmsley, unit chief at the time.

Exhibit 6 was of course written during the period between December, 1974, and December, 1975, when Mr. Slade was drawing his salary pursuant to the "Letter of Understanding," and the same would be true of the offer and refusal said to have occurred on January 14, 1975.

On the evidence outlined above, I must find that Mr. Slade had "performed active control duties for a period of five years" or more, that he was subsequently "removed from active control duties for medical reasons," and that thereafter he suffered "no loss of his basic salary for a minimum period of one year" --- i.e. from December, 1974, to December, 1975. On those findings, it becomes clear that the employer has carried out the obligation stated in the "Letter of Understanding 5/74," Exhibit 1A.

Mr. Nelligan has argued that the employer also had an obligation to place the grievor in a non-operating Al-5 position. It has been conceded that there are certain Al-5 positions which do not require an operating licence such as the one Mr. Slade lost. Article 20.02 (quoted earlier) required the employer to give "all reasonable consideration to continued employment of a Controller who loses his licence for medical reasons." The employer, or some of the employer's officials, appear to have acknowledged at least a moral obligation to find other useful employment for Mr. Slade. They complain, however, that co-operation from him was not forthcoming. No answer to that complaint has been tendered on his behalf.

A more difficult aspect of the matter is that of "tenure," touched upon by Mr. Nelligan in argument. This is of course a somewhat distant echo of the problem in Kelly (166-2-1831 and 168-2-96). That case had a protracted history, commencing with an adjudication decision in April, 1975, which was followed by a Board

decision (under section 23 of the Act then applicable) in December, 1975, a complaint under section 20 by the bargaining agent that the decision had not been implemented, an application for review (under section 25) several months after the Board's decision, which was denied, an application to the Federal Court of Appeal which referred the review back to the Board, where it was again denied, and finally notification by the employer that the review would not be challenged again. As these proceedings appear to have been exhausted, it appears that the original decision stands.

In brief, it was decided in Kelly that the grievor could not be placed on involuntary sick leave and deprived of his status as an indeterminate appointee under the Public Service Employment Act simply on the basis of a medical opinion that a latent health problem made him unfit to perform some --- if not al --- the duties of a firefighter.

There is, however, a vital distinction between Kelly and this case. Here it was expressly contemplated by the parties (in their "Letter of Understanding") that a controller denied renewal of his operating licence on medical grounds would be continued with full salary for at least one year, apart altogether from his entitlement to sick leave with pay. It was further expressly contemplated by the parties (in their collective agreement) that there would be non-operating employees as well as operating employees in the AI group. Neither of these two distinctive features existed in respect of the firefighters' bargaining unit of which Mr. Kelly was a member.

It can be inferred from the scheme of things as they relate to Mr. Slade that an AI-5 employee who cannot hold his licence should be placed in an AI-5 position where a licence is not required. If that inference is correct, then it must be said that the employer played its part in maintaining the grievor's status: he was

assigned first to instructional duties in Ottawa, then to non-operating functions in Toronto, but both seem to have been unacceptable to him and also his superiors. Finally, on being informed work was available in ARCO, he declined, according to uncontradicted testimony. Moreover, evidence is entirely lacking from him or elsewhere that he took any initiative or made any serious effort over a period of more than three years, from September, 1973, to January, 1977, to remedy the problems brought to his attention by medical officers and others.

Although the facts are very different, the principle common to both Kelly and this case is that if an employee is thought to be incapable of performing his duties, the only lawful means of terminating his employment (or demoting him) is a recommendation to the Public Service Commission under section 31, the Public Service Employment Act. It cannot be done by resorting to such dubious devices as "involuntary sick leave."

The principle is clear, but I am not asked to uphold it in this case. The grievor has asked for "reinstatement to my position of Al-5, Air Traffic Controller, Toronto Area Control Centre effective December 4, 1975." This is impossible. It is beyond dispute that the grievor could not have served in an operating position without a valid licence, and that imperative was recognized by the employer and the bargaining agent in the Letter of Understanding frequently referred to in this decision.

Alternatively, the grievor has not shown that he was able and willing to take advantage at material times of suggestions that he be employed in other capacities within the Al group. From time to time he expressed interest in working at Sault Ste. Marie, but he appears to have declined an opportunity to go there as an Al-4 in February, 1974: Exhibits 7 and 8.

This was a reference of a "contract grievance," not a grievance against disciplinary action. Thus it was incumbent upon the aggrieved employee to establish that a provision or provisions of the applicable collective agreement had been improperly interpreted or applied in respect of him. My conclusion is that he has failed to do so.

A secondary issue raised by the grievance and the request for corrective action was that of alleged delay in processing Mr. Slade's "applications" for disability insurance. There is no evidence of any substance to support that allegation and no clause of the collective agreement was cited.

In my opinion the loss of an employee with the grievor's experience and qualifications is most regrettable. It is suggested that the employer should re-assess his capacity to perform useful duties, and he on his part would do well to consider what he could do to improve his prospects.

For the foregoing reasons, this reference must be dismissed.

For the Board,

Edward B. Jolliffe,
Deputy Chairman.

OTTAWA, March 28, 1978

