

File Nos: 166-2-3698
166-2-3699
166-2-3700

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

BETWEEN:

J.J. CORBETT,
D.E. JOHNSTON,
R.S. DEYOUNG,

Grievors,

AND:

THE TREASURY BOARD
(Department of Transport)

Employer.

ART 13
CODE 402/78

DECISION

Before: D.H. Kates, Deputy Chairman.

For the employer: Robert Cousineau, counsel.

For the grievors: John Nelligan, Q.C., counsel.

UNILATERAL CHANGE of Shift cycles changed for Refresher courses

Heard at Ottawa, August 1, 1978.

Grievances dismissed

DECISION

1. This is a reference to adjudication pertaining to three individual grievances filed pursuant to section 91(1)(a) of the Public Service Staff Relations Act.

2. At the outset of the proceedings the parties submitted an agreed statement of fact outlining the circumstances giving rise to the three grievances. The Canadian Air Traffic Control Association (hereafter referred to as "the trade union") seeks a declaration that the employer has violated its commitment to adhere to the grievors' shift cycles negotiated pursuant to Article 13 of the collective agreement.

3. The applicant trade union alleges that the employer contrary to Article 13.02(b) of the collective agreement altered the shift cycle of each of the grievors upon the posting on January 4, 1978, of their work schedules covering the period of forty-five days commencing on January 23rd. At all material times each grievor as is the case of all "operating employees" at the Halifax International Airport was assigned a shift cycle determined by the parties' agreement to be based upon five days on duty, four days off, five days on, four days off, five days on, four days off, and six on and three off. (i.e. 5/4, 5/4, 5/4 and 6/3). It is clear the the grievors' complaint is that the employer cannot disrupt the sequence anticipated in an employee's shift cycle in the scheduling of work no matter what may be the nature or urgency of the prevailing circumstances.

4. The parties agreed that during this forty-five day period the employer scheduled the grievors' shifts in such a way that it disrupted their anticipated shift cycle. It is unnecessary to set out the extent of the disruption (for that is also agreed by the parties) except to

indicate that the disruption in the anticipated sequence of days worked and days free was necessitated by the demands made of the employer in the arranging of the grievors' annual refresher training course. These departures from the shift cycles were required in order to accomodate amongst other things the course trainers who give their instruction during the course of the normal five day week. It is the employer's position that an isolated disruption of the shift schedule having regard to the mutual obligations assumed by the parties under the subsisting collective agreement should not constitute a change in the "standard" provided by the shift cycle negotiated pursuant to Article 13.02(b). The trade union acknowledges that the reason for the disruption was occasioned by the employer's obligation to extend to its "operating employees" an annual refresher training course pursuant to Article 8.02 of the collective agreement. That Article reads as follows:

- 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 procedures prior to their introduction and refresher training where appropriate.
- (b) In addition to the training referred to in 8.02(a), controller shall be provided refresher training as follows:
- (i) IFR Controllers, VFR Controllers, Performance Development Officers, Data Systems Co-ordinators 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 each training will not require the payment of overtime

- (c) In addition to the training referred to in 8.02(a), and for the purpose of retaining operational familiarization, experience in an Area Control Centre and/or Control Tower shall be provided as follows:

ARCO Co-ordinators, ARCO Supervisors - five (5) working days each year

TCTI and Regional Instructors - fifteen (15) workings days each year

5. Counsel for the trade union pointed out that Articles 1(7) and (8) and 13.02(b) were recently introduced into the collective agreement as a result of an award by this Board denying the applicant's grievance in similar circumstances to the situation presented before me. (See; The Douglas Elkins et al Case - File No. 166-2-3046). In that case the Adjudicator, J.D. O'Shea, determined that because the grievor's claim was based upon the interpretation and application of a letter of intent appended to the body of the collective agreement, no derogation of management's discretion under the management rights clause to schedule shift work to meet the obligations dictated by Article 8.02 could be discerned. As a result, the trade union submits that the new provisions that were agreed to under the present agreement were negotiated with a view to meeting the very complaint that was denied in the past. The employer, in this regard, submits that the broad language of the collective agreement, notwithstanding the negotiated amendments, does not permit the entitlement that the grievors seek. The relevant articles of the collective agreement dealing with "shift cycle" and "shift scheduling" read as follows:

Unless specified elsewhere in this Agreement, the following definitions will apply throughout this Agreement:

- (7) "Shift Cycle" means the recurring sequence of an employee's days of work and days of rest.
- (8) "Shift Schedule" means the Employer's advance posting of shifts to be worked by employees with their shift cycle.

Article 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:

- (a) to plan, direct and control operations, to determine the methods, processes, equipment and other matters concerning the Air Traffic Control Service, to determine the location of facilities and the extent to which these facilities or parts thereof shall operate;
- (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.

13.01 Non-Operating Employees

- (a) Thirty-seven and one-half (37½) hours exclusive of lunch period shall constitute the normal work week for non-operating employees.
- (b) Consistent with the operating requirements of the service, management may authorize each non-operating employee to vary the normal schedule of daily and weekly hours to be worked over each four (4) week period. In doing so, the maximum number of straight time hours scheduled on any given work day will not exceed eight (8) hours and twenty (20) minutes.
- (c) In applying paragraph (b) above, the employee and his supervisor will make every reasonable effort to reach agreement on the appropriate number of days and hours of work and rest.

13.02 Operating Employees

- (a) Thirty-four (34) hours, inclusive of a mandatory fifteen (15)-minute period in which the employee shall prepare himself to assume his work duties prior to the commencement of each shift, shall constitute the work week for operating employees; except that when hours of work are scheduled on a rotating or irregular basis, employees will work thirty-four (34) hours per week averaged over a period of time not to exceed seventy (70) days.

(b) Standard Shift Cycle

The parties further agree that it is both appropriate and desirable that in the interests of the employees, shift cycles within these hours are worked to be standardized.

Accordingly, at those air traffic control facilities or portions thereof where through local consultation between management and the Association, a mutually agreed upon shift cycle is now in effect, such cycle will remain in effect for the term of this agreement unless through local consultation between management and the Association, a different shift cycle is agreed to.

- (c) It is further agreed that if new air traffic control facilities or portions thereof (except those whose advertised hours of operation are less than fifteen (15) hours per day), come into operation during the life of this agreement, the shift cycle within which these hours are worked shall be five days on, four days off, five days on, and three days off, unless through local consultation between management and the Association, a different shift cycle is agreed to.
- (d) Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.
- (e) An employee's days or rest shall be consecutive and not less than two (2).

6. It is significant to observe that no changes were made to the collective agreement that affected the employer's obligation to provide operating employees with annual refresher training courses for the periods of time set out in Article 8.02(b) and (c). I particularly take note that the annual refresher training course must last a minimum of five (5) working days but could take as long as a maximum of fifteen (15) working days. Moreover, there is no dispute that under the terms of the collective agreement recourse by employees to vacation and sick leave could in appropriate circumstances result in the disruption of an employee's "shift cycle" having regard to the employer's responsibility in such contingencies to schedule the necessary operating personnel to monitor the nation's airports.

7. The trade union maintains that although nothing in the collective agreement is intended to mitigate the employer's duty to schedule its operating personnel, it nevertheless is obliged, irrespective of the competing obligations under other provisions of the collective agreement, to adhere to an employee's predetermined shift cycle. In counsel's view an employee's "shift cycle" as determined by the parties agreement is immutable and must be preserved by the employer in the scheduling of work. Any disruptions of the sequence anticipated by the shift cycle ought to be concluded to be a violation of the employer's commitment to assure an employee sufficient time to arrange in advance their private affairs. It follows that in having regard to the manner in which the grievors were scheduled they were deprived of the benefits anticipated under Article 13.02(b). The practical difficulties placed upon the employer in arranging for a course programme under Article 8.02 cannot be viewed as justification for evading its responsibilities to adhere to "the shift cycle" in the scheduling of work. The trade union could not perceive any demonstrable reason why the employer could not accommodate its obligations to schedule the grievor's annual refresher training courses within the framework of the shift cycle negotiated between the parties.

8. Counsel for the employer submits that management ought not to be seen to have violated its commitment when Article 13.02(b) merely because of an isolated disruption of the shift cycle particularly when occasioned by circumstances contemplated by other provisions of the collective agreement. The "shift cycle" as defined under the agreement is intended solely to be "a norm" or "a standard" upon which an employee can anticipate the character of his work schedule for the immediate future. Reference is made to the introductory phrase in Article 13.02(b) where it is indicated that "the parties further agree that it is both appropriate and desirable that ... shift cycles within which these hours are worked are to be standardized". It does not follow that a disruption of the cycle for reasons anticipated by the operation of correlative provisions of the collective agreement ought to justify the notion that the general norms of the shift cycle have been improperly violated or compromised. In other words there is no evidence before the Board in these circumstances to support the conclusion that the norms have been altered contrary to Article 13.02(b). Counsel suggested that other situations contemplated under the collective agreement may also arise that may require the employer in the scheduling of its employees to make adjustments affecting an employee's shift cycle. For example an employee's resort to sick leave may require adjustments to the scheduling process that may very well upset a colleagues shift cycle. It ought not to follow that upon the happening of that event the employer has reneged upon its commitment to a predetermined shift cycle. In brief the standards set by the shift cycle are not carved in stone and adjustments thereto may occur in the scheduling of work where bona fide reasons exist particularly having regard to the employer's obligations to meet other commitments negotiated by the parties.

9. In reviewing the submissions of counsel in the light of the circumstances presented to me in the parties' agreed statement of fact I am of the opinion that the employer's argument ought to prevail. In doing so, I am not unmindful of the trade union's disappointed expectations having regard to the amendments made to the subsisting collective agreement. Nevertheless I am bound by the precise wording of the collective agreement and must interpret Article 13.02 in context with the overall intentions of the parties. In this regard, it seems to me that when parties negotiate a collective agreement with a view to changing a pre-existing circumstance they ought to be deemed to know the existence of provisions in the collective agreement that may be at variance with their perceived intentions. I cannot find on a plain reading of the language of Article 13.02(b) an intention by the parties to upset the procedures applied in past years for the grievors' annual refresher training course. It is clear that the grievors are obliged to take and the employer is obliged to provide on an annual basis a refresher training course for a minimum of five days. Indeed it is contemplated in some circumstances that these courses may last for as long as fifteen days. There does not appear to be any attempt by the employer or the trade union, having regard to the amendments made to the agreement, to alter or change the provisions of Article 8.02 to justify the very narrow view taken by counsel for the trade union in its interpretation of Article 13.02(b). I am of the view that the new provisions introduced into the agreement have not altered the priority recognized by the parties in extending refresher training courses in accordance with the time periods determined in Article 8.02(b) and (c). And when such times periods are scheduled the parties' must surely have anticipated difficulties would arise that could disrupt the standards established by an employee's shift cycle.

10. The commitment assumed by the employer under Article 13.02(b) was to a standardized shift cycle for "operating employees" at the Halifax International Airport and ought to be read in context with and, indeed, subject to the pre-existing obligations that appear to have been continued after the present agreement was consummated. The generality of the terms of Article 13.02 in the absence of express and specific language to the contrary seem to support the notion that the scheduling of course work for the durations anticipated under Article 8.02 are to prevail when in conflict or indeed at variance with the employee's shift cycle. Contrary to the views expressed by the trade union I discern an intention by the parties to be flexible and not restrictive in its approach to resolving difficulties in the scheduling process that in the normal routine of the work environment may require some co-operation between them. I cannot appreciate, having regard to the nature of the work place described to me by both counsel how the trade union could have expected the employer on the basis of the language contained in Article 13.02(b) to have bound itself to a scheduling of its work force with the precision it suggests and still accomodate the competing and unanticipated contingencies provided for under the balance of the agreement. I might also indicate that nothing stated herein is intended to preclude the trade union from requesting in future negotiations that the employer be required to pay "operating employees" a premium for the inconvenience occasioned by a disruption to their shift cycle. Such a provision is clearly lacking in the collective agreement before me.

11. The employees "shift cycle" is clearly a commitment that cannot arbitrarily or in a mal fides manner be upset under the guise of management's right to schedule shift work. In my opinion the shift cycle is intended to be a standard which the employer ought to adhere to in scheduling its work force and cannot be undermined without sufficient

and compelling cause. Indeed, the consultation procedure provided under Article 13.02(b) contemplates that alterations of the shift cycle when presumably caused by consistent and predictable aberrations from the negotiated norm would necessitate the concurrence of the trade union. In short, aberrations of this nature could result in the conclusion that the norms are being imperceptibly but effectively altered. This result could not in accordance with the parties' agreement be brought about without the consent of the trade union. But in the present situation, each party by virtue of its agreement, has made sacrosanct the continuation of the refresher training courses without amendment to the specified working days for course instruction. As a result, I find that in order to overcome difficulties in the scheduling of the training courses there was an implicit attempt by the parties to exempt such disruptions from the grievor's shift cycle.

12. The Board makes no conclusive observation with respect to the extent to which the employer may with impunity schedule shift work that causes a disruption in an employee's shift cycle. It seems obvious that my ruling ought to be confined to the particular facts where the employer must in the scheduling of work adhere to the language and spirit of the negotiated provisions of the agreement. That is to say, the employer's commitments under Article 13.02(b) ought to be read in the circumstances of this case to conform with its obligations under Article 8.02. And the trade union in the absence of express language that deprives the employer of its prerogative should recognize the practical necessity in these circumstances for some flexibility in the scheduling process. In brief it ought to be emphasized that it does not follow from the comments made in this award that the employer may safely rely on its management rights under Article 3.01 to schedule, for whatever the reason, its work force in contravention of its commitment under Article 13.02(b).

13, As a result of the foregoing the declaration requested by the trade union is denied and the reference application is dismissed.

For the Board,

D.H. Kates,
Deputy Chairman.

OTTAWA, August 10, 1978.

