

File: 166-2-4828
166-2-4829
166-2-4830
166-2-4831

JAN 24 1979

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

BETWEEN:

PHILLIP M. RANDALL
VICTOR BOYMOOK
ROBERT G. HINGLEY
LUCIEN D. RITCHIE,

grievors,

- and -

TREASURY BOARD
(Transport),

employer.

DECISION

Before: Lorne O. Clarke, Board Member and Adjudicator.

For the Grievors: Ms. C. MacLean, counsel.

For the Employer: Pierre Hamel, counsel.

Heard at Halifax, December 11, 1978.

ART 13
CODE
402/78

MEAL & RELIEF BREAKS

1. At the beginning of the hearing of this reference to adjudication counsel of the employer raised two preliminary objections bearing upon the nature of the remedy sought by these grievors. Counsel of the grievors objected at the failure of the employer to provide earlier notice of its intention to raise these preliminary issues. Eventually it was agreed that as to the first preliminary objection of the employer, the remedy to be considered by the adjudicator will be whether the grievors are entitled to a declaration that the employer breached the provisions of the collective agreement with regard to the grievance made the subject of the complaint of these grievors. By framing that part of the remedy sought in these terms seems to present no continuing problem to counsel on that point.

2. The second aspect of the remedy sought by the grievors is a declaration that in the future the employer will be ordered to refrain from doing that which is made the subject of the present complaint. To this counsel of the employer continues his objection which he argues falls within the nature of a preliminary objection.

3. During the early part of the hearing, counsel recessed for their mutual consideration of the objections of the employer. The first wing of the remedy sought by the grievors was agreed to stand and to be placed in issue in the manner I have described in the first paragraph of this award. The second request for remedy which I have described in the second paragraph above was left in issue for adjudication. Both counsel agreed the hearing should not be severed for a resolve of the preliminary issues advanced by counsel of the employer prior to hearing the merits.

4. Counsel of the employer then requested that the following words be entered in the record,

"I want it recorded that proceeding with the hearing and the introduction of the evidence will not prejudice the success of the employer's objection".

5. The response to this latter issue appears in paragraph 17 of this award.

6. The issue on merits arises from the provisions of Article 13.02(d) of the collective agreement.

Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.

7. The grievors are four controllers employed at the Halifax Tower. The complaint relates to the times they were on duty during each of the days of February 20, 21 and 22, 1978. They allege the employer failed to provide them with meal and relief breaks during times permitted by operational requirements.

8. A regular day shift is 8 hours plus 15 minutes of briefing at its commencement. A day shift begins at 7:15 a.m. with a briefing session. Positions are assumed at 7:30 a.m.. The usual pattern of breaks are these: a qualified supervisor will take the place of the controller so that each of the two controllers will get a coffee break of 15 to 20 minutes duration, generally between the hours of 9:00 a.m. and 10:30 a.m.. This procedure is repeated between the hours of 11:30 a.m. and 1:00 p.m. so that each controller will get 30 to 35 minutes for a lunch break. Again, in the range of 2:00 p.m. to 3:00 p.m. the procedure

is repeated so that each controller will receive a relief break. The evidence respecting the nature and conditions of the work and the responsibilities falling within the work jurisdiction of the grievors satisfies me of the obvious necessity of such relief so that persons such as the grievors can maintain their physical and mental alertness in the performance of their exacting tasks. The evidence also indicates that at times when emergencies exist it is not possible for such breaks to be given. My use of the word emergency may not be entirely precise because it must be considered and measured in each case in the context of whether "operational requirements permit". For example, if an aircraft is lost or weather conditions are marginal, or the staff of controllers is short for unexpected and unanticipated reasons or bomb scares exist, then these are situations where by the very nature of the compelling circumstances, meal and relief breaks may of necessity be delayed or foregone. The normal and usual pattern for the provision of relief is that the supervisor on duty is qualified to assume the position of the operating controller while the latter is on a rest or meal break. This is a part of the work performance expected of the supervisor: it seems to work well.

9. Danny MacDonald is such a qualified supervisor. During the days in issue and for some reason not given in evidence but accepted by the parties, he suffered from one disability: he was still a supervisor but he was shorn of his qualifications to replace the operating controllers.

10. February 20, 1978

During the period from 6:00 p.m. to 11:30 p.m.

(5 1/2 hours) no relief was available. The controllers were not permitted to relieve one another. Two of the grievors were on duty during this period. There were 327 flight movements requiring the attention of the Halifax Tower during that day. The evidence does not indicate the exact number of flight movements involved during the specific period of time no qualified relieving supervisor was available. The evidence is that the bulk of these movements occurred between the hours of 8:00 a.m. and midnight. The general import of the evidence is that there is a considerable volume of ordinarily scheduled traffic moving through the early evening hours. The employer describes the local traffic on this day and at these times as "moderately heavy" for that period of the year. The result is that for 5 1/2 hours the two controllers in the Halifax Tower were not provided relief because there was no qualified supervisor on duty.

11. February 21, 1978

Danny MacDonald was the supervisor scheduled to be on duty. He reported sick. Francis T. Stanislow is a qualified supervisor. It was his day off. Upon discovery that D. MacDonald would not be at work, the employer called Mr. Stanislow in for work and he arrived about 8:30 a.m.. The evidence is that the grievors were not denied relief breaks on February 21, 1978 for the reason that Mr. Stanislow, a qualified supervisor was present and was able to provide the necessary relief to the controllers. Accordingly there can now be no complaint with respect to this day. It surely does not matter to these controllers and grievors whom of the qualified supervisors the employer may designate to be present on a given shift for the purposes of the

present issue.

12. February 22, 1978

During this day the time frame within which no relief by a qualified supervisor was available was from 7:15 a.m. to 11:00 a.m.. As indicated the first 15 minutes is a briefing session so that the actual tower duty time without a supervisor qualified to provide relief was 3 1/2 hours. The total number of flight movements for the day (8:00 a.m. to midnight) was 227.

13. While recognizing that "controlling traffic requires a high degree of concentration" the position of the employer is that the collective agreement provides no guarantee for meal and relief breaks. Counsel of the employer further argues that there is no evidence the grievors asked for any breaks and that the heavy operational requirements did not permit breaks to be made available. The evidence of the employer is that there have been other occasions when controllers such as the grievors have been on duty with no qualified relieving supervisor available and in those earlier instances no complaint was registered by fellow controllers. Further the employer says that in many ways the economic situation was the principal motivating factor in not providing qualified relief. That is to say that under the circumstances which prevailed on the days in question, the provision of qualified supervisory relief would have required the employment of a qualified supervisor on an overtime basis which in fact was done on February 21, 1978.

14. The issue in this reference narrows to the days of February 20 and 22, 1978. The evidence satisfies me there can be no complaint with regard to February 21, 1978 for the

reason that Mr. Stanislow was present, qualified and provided relief to the grievors. The apprehension that relief might not be available is insufficient cause to complain when in fact it was provided. The designation of the person of the qualified supervisor should not be a concern of the grievors. This is a matter of choice for the employer.

15. It seems to me that little turns on the fact the grievors did not ask for relief at the relevant times on February 20 and 22. It is a small unit consisting of highly trained people who know their trade well. The evidence is also clear that if they had asked for relief it could not have been provided when requested. Little is required by inference from the evidence to arrive at that conclusion. The collective agreement does not specifically state the times, in the sense of precise hours, the operating employees will be provided with meal and relief breaks. Something of a pattern which I have already described exists at the Halifax Tower. The evidence indicates that from day to day and shift to shift there may be some variations due principally to the variety of operational requirements which are handled through this tower. Many of them are unscheduled operations in that they cannot be determined well in advance as is the case of scheduled air line passenger flights. The evidence does not indicate that qualified supervisory relief could not be obtained on an overtime basis. While it is obvious that it costs more to employ a person at overtime rate rather than at regular rate one must also be concerned about the sensitive position occupied by these grievors and the need that they be at all times physically and mentally alert. Counsel of the employer suggests the traffic volume on February 20, 1978 imposed rather heavy

operational requirements upon the tower. From the variety and detail of the data on flight movements through the Halifax Tower on February 20, 1978, I am inclined to agree. Whether it be moderately heavy or heavy, there is no evidence that any of it developed as a result of special or acute circumstances. It was regular traffic. But for the reason that the employer did not chose to pay the overtime rate to provide a qualified supervisor, the grievors would have been provided with meal and relief breaks. I find on the facts that operational requirements did permit the employer on February 20, 1978 to provide the operating grievors with meal and relief breaks and that it should have done so during the time frame of the complaint.

16. So far as the circumstances surrounding February 22, 1978 are concerned, the time span of 3 1/2 hours by itself is not, in an ordinary setting, especially unusual. The question is whether this is an ordinary setting in the sense of a business, office or industrial work place. While no precise hours are here established for a meal or relief break, the evidence indicates to me that a relief break during the hours of the day in issue is a customary and expected feature of the working relationship, barring the existence of the kind of operational requirements which would make it impractical. It seems that in the absence of such circumstances, a relief period is considered an accepted break from the concentration required in the performance of the work. The overall movement of traffic was lighter that day than on February 20. The total movements between 8:00 a.m. and midnight on February 22 was 227 compared to 327 on February 20 and 364 on February 21. I am unable to ascertain from the evidence the exact volume of movements

compressed within these 3 1/2 morning hours, save to say that the period encompasses one of the times during the day when the movement of scheduled traffic is heavier at the Halifax Tower. The effect of the timing is that the accustomed morning relief break was effectively missed because at the time qualified relief became available it would have run a break period into a meal relief period. The relief period in the circumstances of this work may indeed be somewhat more important to the well being of the employee than it would to an office or industrial employee. If for example the grievors were informed at the beginning of their shift that a relief break would not be available until 11:00 a.m., then the consequences upon their psychological behaviour might not have been of any serious consequence. There is no evidence that they were so informed. Nor is there any evidence that their work was any the less efficiently performed during these hours. However it is my judgment from the overall burden of the evidence that with no contrary explanation provided other than the financial cost of the overtime experience and where as I find, operational requirements otherwise permitted, the employer ought to have provided a relief break. In so finding I am not discounting the fact of the overtime cost to the employer. The finding is to a considerable extent over-shadowed by the general circumstances and setting of this work environment which by the evidence commands compelling concentration.

17. Finally I return to the preliminary issue raised by counsel of the employer concerning the prospective application of declaratory relief, to which earlier reference is made in paragraph 5 of this award. An examination of the

collective agreement as it relates to this issue leads me to the conclusion that whether operational requirements permit is indeed a question of fact to be determined in each case. For that principal reason I consider it unwise, imprudent and unnecessary to make a declaration which is prospective in its nature and character.

18. AWARD

The award is that,

(a) A declaration will issue that within the times complained in these grievances on each of February 20, 1978 and February 22, 1978 the employer acted in violation of Article 13.02(d) by failing to provide these operating employees with either meal or relief breaks, or both, where operational requirements permitted the same to be provided.

(b) The violations alleged by the grievances respecting February 21, 1978 are dismissed.

For the Board,

Lorne O. Clarke,
Member and Adjudicator.

DATED AT TRURO, January 15, 1979.