

Cited as:
**NAV Canada and Canadian Air Traffic Control Assn.
(Doerksen
Grievance)**

IN THE MATTER OF an Arbitration
Between
NAV Canada (The Employer), and
Canadian Air Traffic Control Association (The Association)
Re: Doerksen Grievance - Article 13.01(b) Break Time

[1998] C.L.A.D. No. 531

**Canada
Labour Arbitration
T. Jolliffe, Arbitrator**

Supplementary hearing: Winnipeg, Manitoba, August 11, 1998
Supplementary Decision: September 9, 1998
(15 pp.)

[Ed. note: Original decision in this case can be found in
this database at [1998] C.L.A.D. No. 246. Second supplementary
decision, released February 28, 2000, is also available in this
database at [2000] C.L.A.D. No. 56.]

Appearances:

Patricia Brethour, for the Employer.
Peter Barnacle, for the Association.

SUPPLEMENTARY AWARD

¶ 1 The Association through its branch chairperson, David Doerkson, filed a grievance alleging that the staffing in place at the Winnipeg Air Traffic Control Centre (ACC) calling for one controller to be scheduled in a control specialty during midnight shift does not allow for breaks thereby creating an unsafe and unhealthy environment and also constituting a violation of the collective agreement. The grievance was said to be based on an alleged violation of the wording of article 13.01(b) of the collective agreement which reads as follows:

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

¶ 2 It was agreed that the matter should be considered in the nature of a policy grievance specific to the Winnipeg ACC with the Association seeking appropriate corrective action in the event the grievance was successful.

¶ 3 There was a great deal of evidence adduced over the nine days of hearing held in Winnipeg and Ottawa speaking to the perceived inability of single controllers working the midnight shift to realistically take reasonable or meaningful break time away from their assigned stations. It was found not to be a matter of the Employer reacting to unanticipated circumstances arising from time to time, but was seen to be a systematic approach aimed at limiting meal and relief breaks over the entirety of the midnight shift on an ongoing basis. The Employer's approach was not considered to be justifiable under the collective agreement, nor was the system of monitoring by co-workers from their own nearby work stations thought to be workable as currently implemented.

¶ 4 The concluding paragraphs of my award issued on April 10, 1998 are set out below as follows:

I am of the view that the current monitoring structure in place in the Winnipeg ACC for covering single controller positions at any time during the night shifts when controllers are required to briefly leave for reasons of personal exigencies or to seek some rest, constitutes an ongoing denial of the meal and relief break language under article 13.01(b) of the collective agreement. However, I am not satisfied that it is a case for simply directing the Employer to increase staffing in order to provide controllers with more comfort, by unalteringly having extra bodies brought into the building qualified in the various specialties to provide break relief, at least not yet. The Employer's staffing parameters, concerning which there was much evidence entered over the course of the hearing, should be respected as a management right, insofar as the Employer can bring the single controller night shift scenario within its article 13.01(b) break time obligations.

I conclude that acceptable methods must be put in place by the Employer, whether that be initially through re-aligning manpower, or combining work stations, or suitable cross-training some controllers in formalized realistic monitoring duties, or even by finding some other means, to ensure that single controllers on midnights are provided adequate meal and relief breaks during their shifts for the normal purpose of taking some rest and relaxation away from their duties. The means chosen by the Employer to ensure meal and relief breaks falls within its authority and is open to negotiation between the parties. Nevertheless, given the background of this matter, and the policy grievance format as agreed upon, it is appropriate for me to remain seized pending implementation in the event that any further directions or clarifications are required while options are explored and applied.

¶ 5 A consultation process was convened by the parties following issuance of the award with a fundamental difficulty from the Employer's perspective being the Association's understood policy which mandated its objective as securing two controllers for each specialty on every night

shift, which the Employer does not see as an every day workable solution. The matter was eventually reconvened in Winnipeg on August 11, 1998 on the basis of this arbitrator having remained seized of the relief issues in the event the parties were unable to agree. This now appears to be the case inasmuch as they have explored some remedial options without success to this point, thereby leading to the request to continue the hearing. My role at this point is to provide some clarification or directions to complete the award in terms of fashioning a currently applicable remedy for breach of article 13.01(b). I have no mandate to fashion any appropriate long term solutions, whatever they might be. They are appropriately left with the parties presumably to be addressed in contract negotiations or perhaps within the Union/Management consultation process.

¶ 6 It can now be noted that even prior to the issuance of my award the Employer had already published an amended policy directive 104 relative to midnight shift responsibilities. It is reproduced below as follows:

104 MIDNIGHT SHIFT RESPONSIBILITIES

104.1 GENERAL

Centre Shift Managers (CSM) are not scheduled to cover the quiet hours from 11:45 p.m. to 6:00 a.m. local time. Their hours of operation are:

Days 06:00 a.m. - 15:00 p.m.
Days 08:00 a.m. - 17:00 p.m. (Admin. hours)
Eves 14:45 p.m. - 11:45 p.m.

During the hours that a CSM is not scheduled to work, a "Senior Controller" will be in charge of the Operation. A list of Senior Controllers will be posted at the CSM desk.

Sick calls during this period shall continue as per the unit policy. The 983-8338 line will be call-forwarded so as to be answered by the Senior Controller during those periods when the CSM is not on duty. The CSM will provide the Senior Controller with a list of available staff for the 07-15 shift for overtime call-ins required.

The name and home phone number of the early day CSM will not be posted on the overtime call-out list. The evening CSM will be on stand-by from 2345 to 0300 local and the early day CSM will be on standby from 0300 to 0600 local. Any major reportable occurrences (ie: hijack; bomb threat; operation irregularity; etc.) that occurs during this period **REQUIRES A MANAGEMENT RESPONSE AND SHALL BE REPORTED TO THE STAND-BY SHIFT MANAGER** as soon as practicable. Reportable occurrences that do not require an immediate response shall be logged and brought to the attention of the early day Shift Manager at the start of his shift.

ELT reports shall be relayed to RCC by the Senior Controller via long distance (705) 494 6011 extension 6450 (Canada West sector).

Aircraft accident reports shall be received by the OSS staff using the 983-8338

line.

The evening CSM shall:

- a) transfer the 983-8338 line to the Senior Controller's work position prior to the midnight shift.
- b) prepare the overtime call-in sheet for the Senior Controller.

The early day CSM will be responsible for:

- a) obtaining the list of sick calls from the Senior Controller and call in replacements as required.
- b) respond to major reportable occurrences as appropriate.

Any difficulties or suggestions to improve these procedures should be derived to the MACCO in writing.

104-2 MIDNIGHT RELIEF BREAKS

Midnight shift meal and relief breaks are to be taken when operational requirements permit. During quiet periods, a controller shall have a controller from another specialty monitor the position for calls, however immediate recall should be possible. Controllers shall monitor control positions in other specialties when requested to do so unless they are the sole controller on shift in the specialty and are precluded from doing so due to excess workload. Under no circumstances will a control position be left unmonitored.

The monitoring controller should not apply control procedures within that specialty but rather accept calls from aircraft or agencies which do not involve the application of specific control procedures. If control procedures do become necessary, the qualified controller for that Specialty is to be recalled. Should an emergency occur, good judgement should dictate the amount of assistance provided in any given situation.

¶ 7 The Association submits at this point that there are three questions which need to be addressed on the issue of appropriate implementation. Firstly, does my award permit a gap in coverage on midnight shift where only one controller is scheduled on a specialty and if so to what extent? Secondly, does the Employer's amended monitoring policy provide for meaningful meal and relief break for single controllers? Thirdly, if not, what step would constitute the kind of meaningful meal and relief breaks contemplated by the award?

¶ 8 At point of reconvening the hearing the Employer indicated it was agreeable to explore in this format those steps implemented to date by the Employer and what has been proposed by it both as an interim and long term solution.

¶ 9 On behalf of the Employer, Ms. Brethour provided a breakdown of the Employer's approach since issuance of the award. She explained that within two weeks the Employer had double staffed every specialty Monday through Friday night, leaving only Saturday night and

Sunday night where single staffing remained. She said that having regard to the increased traffic flow during the summer months in 1998 the Employer went to a second controller on Saturday night in both Saskatchewan and Winnipeg Enroute specialties leaving Sunday night with still just one controller. The double staffing during the week days night shift was presented as the Employer's current approach which may or may not become the long term solution depending on traffic flow.

¶ 10 Ms. Brethour also indicated that management had taken additional steps in the form of combining work stations during midnight shift through re-aligning video terminals and frequencies. For example, Ontario, Winnipeg Enroute and Saskatchewan specialties are now placed side by side during midnight shift. The midnight re-aligning of work stations was set out on a diagram of the work floor which was placed in evidence. The idea remains, now perhaps more easily able to be implemented, that frequencies can be transferred during breaks to an adjacent specialty for monitoring purposes. The memorandum issued to shift managers and affected staff outlining this current approach during the summer 1998 reads as follows:

As a result of the midnight adjudication decision and after consulting with the Association, the following procedures have been developed to assist controllers in their position monitoring duties on lone midnight shifts. These procedures are effect July 26, 1998 and shall be used on any midnight shift where there is only one controller scheduled to work in either Winnipeg Enroute, Ontario, or Saskatchewan.

When staffing is reduced due to workload requirements or unavailability of staff in any or all of the three mentioned specialties, the three specialties will be located in the Winnipeg Enroute specialty suite to assist in the monitoring of positions for meal and relief breaks. Planning is underway and will be completed by July 26th to move the Saskatchewan midnight operation into the Winnipeg West sector position and the Ontario midnight operation in the Dryden sector position. Sector specific information will be available in each of the positions utilizing the CVIDS System.

In the event of an IM failure, sectors will be available in the Lumsden, and Marathon positions and also the TRSA position for Winnipeg Enroute. Temporary IM "yokes" will be purchased to list adjacent frequencies as well as adhoc information. Additional information such as sector binders or cap charts will be to be brought over as required. Winnipeg Terminal will remain located in the arrival position but will transfer their frequencies to the Winnipeg Enroute controller whenever a relief break is required. If this does not provide to be a workable solution other measures will need to be taken. Direction for the monitoring of positions on midnight shifts may be referred to in Operations Letter paragraph 104-2.

¶ 11 In brief, Ms. Brethour indicated that the affected controllers during midnight shift were now working side by side but close enough to hear and visualize each other's scopes and "chat" during their shifts. During the approximate four weeks during the implementation period prior to reconvening the hearing on August 11, the shift manager was using a "try it and see" approach while looking for feedback from the affected controllers. She said that management has never

viewed the individual controllers as being insufficiently trained to monitor their co-worker's screens, so long as they were in close proximity enough to make this approach successful. She said that by her understanding the Saskatchewan specialty controllers were happy enough even before the move to closer proximity during midnight shift, but that at least one Winnipeg Enroute controller has indicated that despite the re-alignment he was not about to monitor a co-worker's specialty in which he was not trained. Inasmuch as there was evidence in the initial hearings speaking to cross-border communications difficulties occasionally allowing for unannounced entries into Canadian air space, an agreement had been entered into with Minnesota air traffic control which would include Winnipeg in its computer generated flight strip system. According to Ms. Brethour, this approach should allow for better communication between the air traffic control centres, amounting to a computerized sharing of information. Ms. Brethour also said that it was a matter of providing a better comfort level and that the Employer was agreeable to providing a specific training on the monitoring function as distinct from complete cross-training on all aspects of another specialty. She acknowledged that fulfilling the monitoring function required cooperation on the part of controllers. By the Employer's view a properly structured monitoring process would be sufficient to even allow suitable break time in the area of 15-30 minutes given the traffic levels and the Employer's ability to stagger shift commencement times to achieve overlap.

¶ 12 Mr. Brethour also indicated that despite the continuing staffing shortage at Winnipeg and elsewhere within the Employer's air traffic control system, it remains committed outside the parameters of this arbitration proceeding to increasing staffing to 105 percent of need across Canada by the year 2000. Winnipeg is currently staffed at approximately 83 percent of needs.

¶ 13 Notwithstanding the remarks by Ms. Brethour on the "reasonableness" of co-worker monitoring during slow periods to cover relief time (a much explored hypothesis during the main hearing), she said that the Employer has also stated its willingness to incorporate into the schedule a two day per week 7:00 p.m. to 3:00 a.m. evening shift to provide "overlap" for those employees working the single controller Saturday and Sunday midnight shifts. This would require the midnight controllers to work alone only during the resulting three hour time gap until the 6:00 a.m. appearance of the day shift. The traffic flow materials placed in evidence during the main hearing indicated that 3:00 - 6:00 a.m. was generally the slowest time of the night. The Employer asserts that a properly instituted monitoring policy from adjacent specialties placed in convenient alignment would provide suitable back up coverage for personal exigencies which might occur from time to time during the time gap. The normal meal and relief breaks would be scheduled during double coverage. Lest there be any complaint based on the contractual shift scheduling language, the Employer points out that the collective agreement provides under article 13.06 only that shifts not be less than seven hours and under article 15.04 that they not exceed twelve hours except in an emergency. These provisions read as follows:

13.06 Every reasonable effort shall be made by the Employer:

- (a) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift,
- (b) not to schedule shifts of less than seven (7) hours' duration,
- (c) to advise employees affected by changes in their shift schedule as soon as

practicable.

15.04 Except in an emergency, no operating employee shall work more than twelve (12) consecutive hours or more than nine (9) consecutive days.

¶ 14 Presumably also, the Employer would have to have regard to article 13.01(a) pertaining to total weekly hours which reads as follows:

13.01 Operating Employees

- (a) Thirty-four (34) hours, inclusive of a mandatory fifteen (15) minute period in which the employee shall prepare himself or herself to assume his or her 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 one (1) year period commencing April 1 of each year and ending on March 31 of the following year.

¶ 15 The scheduling materials placed in evidence indicate that the spectrum of arguable long term solutions is not limited by "jigging" start times to achieve suitable overlapping or by extending the length of regularly scheduled shifts to accomplish the same purpose. The Employer has indicated that the various meal and relief breaks options suggested by it as open for discussion contain ten headings by way of dealing with what it perceives to be a national problem. The Employer prefers to stagger starting times as opposed to extending regularly scheduled shifts, perhaps with a structured monitoring component at one end, but will look at the extension alternative if requested by the Association to do so.

¶ 16 On behalf of the Association, Mr. Barnacle asserted that differentiating between interim and long term solution was an "artificial distinction", keeping in mind that any direction on remedy would always in any event be subject to future contracted obligations or adjustments over time. Nevertheless, the parties should be seen to require assistance in implementing an immediate solution to the long standing lack of reasonable break time problem. The future presents only conjecture whereas the Association is through this reconvening of the hearing seeking application of a suitable remedy now.

¶ 17 At this point the Association sees no point in rehashing the huge reservations its membership has over the implementation of any comprehensive co-worker monitoring plan to systematically cover meal and relief breaks, even in slow traffic periods. The Employer's position on that issue, after all, was rejected at the main hearing. The Association perceives there to be any manner of difficulties inherent in the concept of utilizing controllers with reduced qualifications for any purpose, whether they be making control decisions or only reporting to provide monitoring coverage. It holds to the position that any controller at all times should have a full and complete understanding of all duties for the specialty in which he is assigned, even if only momentarily there on a monitoring basis.

¶ 18 Further, the Association does not view the staggering or extending of shifts in order to achieve overlap as a reasonable solution. By Mr. Barnacle's analysis there are already seven nights double coverage on the North specialty, six nights double coverage on Winnipeg Enroute and Saskatchewan specialties, and five nights double coverage on the remaining specialties, totalling 364 currently scheduled shifts at the Winnipeg ACC. Providing double coverage across the board would currently require only six more shifts after the recent adjustments implemented by the Employer (eighteen additional shifts at the time the grievance was filed). The Association fails to see why the Employer is prepared to go through "incredible" scheduling gymnastics for the sake of a few shifts. Obviously there will manpower coordination and scheduling difficulties encountered in any "re-jigging" of shifts, exacerbated by the fact that for some time the Winnipeg ACC controllers' schedules have been based on a 5-4, 5-4, 5-4, 6-3 shift rotation pattern which contemplates a seven hour work day. Further, the Association perceives that any solution resulting in a gap in coverage requiring monitoring will also raise the inevitable professional concerns of the controllers that their duties are not being properly covered in the event they are momentarily absent from their stations while working alone. Realistically even a short period of less qualified coverage should be considered less attractive, possibly even unworkable as a solution. Even a three hour gap could be seen to ignore the same human factors which were explored during the main hearing. It being apparent to the Association that the Employer was still attempting to fall back on its position that monitoring was appropriate, I was urged to conclude that it had not proposed any appropriate remedy compatible with the findings and conclusions reached in my award.

¶ 19 The Association tabled its own discussion paper which included a section on the feasibility of cross-training co-workers, concluding that it is "quite apparent that there are just too many to problems". Its review of the possibility of extended shifts led to the position that the approach disregarded relevant human factors and that "it is completely unreasonable to expect people in such a safety sensitive occupation as air traffic control to work such long shifts, or have start and end times at such unreasonable hours". It also dismisses the possibility of the Winnipeg TCU closure or amalgamation of sectors as unworkable. At this time the Association sees double staffing in each open specialty throughout the entirety of the night shift as the only appropriate remedy. It continues to assert that the monitoring of one's work stations provides no basis for a single controller to ever walk away from his screen with any confidence, whether during a seven hour single controller night shift or during the three hour gap suggested by the Employer.

¶ 20 The Association, in suggesting that the remedy issue presented a relatively straight forward increased staffing solution, tabled a recent memorandum from Arbitrator Christie to the parties on July 27, 1998 summarizing his decision reached in NAV Canada and CATCA (full reasons to shortly issue) indicating that in a situation of being contractually bound to provide summer vacation relief, it was no answer to assert that there was insufficient staffing available whether the resulting absences be covered by overtime shifts or by reference to some other staffing solution.

¶ 21 As pointed out by Ms. Brethour in reply, the parties still find themselves at philosophical loggerheads, with the Association asserting throughout this arbitration proceeding that for its membership double staffing of every midnight position, no matter how low the traffic flow,

remains the only workable solution. For the Employer, as also indicated at outset, it is steadfast in its view that there should be no double staffing throughout the entirety of the shift purely for purposes of providing a break and without any consideration for low to non-existent traffic flow during some hours of the midnight shift.

¶ 22 As hereinbefore indicated, this hearing was reconvened on the basis of my having already ruled that the Employer must put some acceptable method in place to ensure that single controllers on midnight shifts are to be provided adequate meal and relief breaks as contemplated under the collective agreement. The solution to the Employer fulfilling its obligations under article 13.01(b) is not so straight forward as requiring a direction that the Employer simply double staff the entirety of every midnight shift whatever traffic flow requirements are perceived to exist. If that were the only solution, given the mounds of evidence presented at the main hearing, I would have made this direction without requiring the Employer to explore suitable solutions.

¶ 23 However strong the feelings of the Association and its membership over never wanting to be absent from their assigned work stations for a moment without ensuring fully trained continuing coverage, the grievance and eventual arbitration award does not discount the possibility of a controller having to work alone for some part of the midnight shift. My award does not impugn that approach just so long as the contract language of article 13.01(b), requiring meal and relief breaks during the shift, is respected. Further I should point out that the award does not limit the Employer's ability to make staffing or scheduling decisions as might normally be done as a matter of management rights, just so long as the employees' rights for appropriate break time are respected. Nor can I be overly concerned with doubts respecting the long term viability of any current solution given the availability of the consultative process and contract negotiations.

¶ 24 In terms of providing further clarification and direction, the Employer is obligated to respect article 13.01(b). At this point, in answer to the Association's first question, I am not prepared to declare that the implementation of a viable current solution precludes establishing a schedule on some or other midnight shifts which requires controllers to work alone for some period of time at their stations. There is as yet no compelling evidence that working alone for three hours, on its face, prevents a controller from having taken sufficient meal and relief breaks during the other hours of the shift when double coverage exists. With respect to the second question posed by the Association, whether the amended monitoring policy provides the kind of meaningful meal and relief breaks contemplated by the award, I do not yet see the relevance to the remedial issue at hand so long as the Employer maintains scheduled double coverage sufficient to allow for the breaks, with monitoring applicable only during the single controller gap times to cover for a person unexpectedly called away from his station. Thirdly, the issue of unreasonable gap time, I expect, would have to be addressed by evidence on a case by case basis. Once again, the award speaks to the necessity of allowing reasonable breaks as contemplated by article 13.01(b) and not to the narrower issue of the Employer now seeking to utilize single controllers for some period of time during a scheduled shift as a matter of management rights. In my view the Employer is entitled to schedule meal and relief breaks on either side of a mid-shift gap. It is a separate issue from any monitoring concerns which might

arise if unusual or unexpected circumstances serve to take a controller away from his work station momentarily during the gap period when there is no assigned double coverage.

¶ 25 I leave it up to the parties to advise whether there need be any delay in implementation as a result of the statutory freeze in working conditions arising from their current contract negotiations situation, which if becoming an issue can presumably be adequately addressed by way of telephone conferencing. I continue to remain seized of the matter for the purposes of issuing suitable directions to complete the award.

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