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File No.: 166-2-8713

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

BETWEEN:

R.J.A. LAUZON,

Grievor,

AND:

TREASURY BOARD  
(Transport Canada),

Employer.

DECISION

Before: J.-Maurice Cantin, Q.C., Vice-Chairman.

For the grievor: Y.N. Aubry.

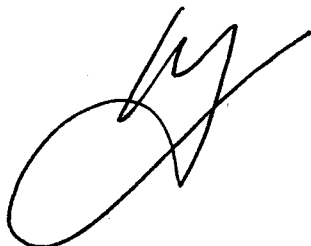
For the employer: Pierre Hamel, counsel.

AR 78  
CODE 402/79

*Refresher course — (1 day) Sick leave*

*Upheld : - grievor will be  
given the one day  
missed at a later  
date.*

Heard at Ottawa, July 25, 1980.



DECISION

I have before me a grievance filed by R.J.A. Lauzon. This grievance is dated November 21, 1979 and reads as follows:

On November 20, I asked the employer to reschedule one day of refresher training which I had missed on November 14 because of illness. The employer replied that I was not entitled to this day of refresher training for 1979. This decision is contrary to clause 8.02(b).

The grievor requests the following corrective action:

I request that I be granted five days of refresher training for 1979.

EVIDENCE

Evidence was limited on both sides to the submission, prior to the hearing of the case, of a joint statement of facts. During the hearing, the parties also made an admission which I cite later in this decision.

I believe that it is useful, in order to help to understand this decision, to cite the joint statement of facts signed on July 7, 1980 by the Canadian Air Traffic Control Association and Treasury Board. The statement refers to the grievor as the complainant and reads as follows:

JOINT STATEMENT OF FACTS

1. The complainant is an air traffic controller who, at all material times

was employed by the Ministry of Transport as an IFR controller at the Montreal regional control centre.

2. In this capacity, he was a member of the Air Traffic Control Group, and his terms and conditions of employment were governed, *inter alia*, by the Collective agreement between the Treasury Board and the Canadian Air Traffic Control Association, code 402/79, in effect from January 1, 1979 to December 31, 1980 inclusive, and by Letters of Understanding 1 to 12 for 1979, which are appended to the said agreement.
3. The complainant was to receive "refresher training", in accordance with clause 8.02(b) of the collective agreement, on November 5, 13, 14, 15 and 30, 1979.
4. On November 14, 1979, the complainant telephoned the Montreal regional air traffic control training school to report that he was ill and that he would therefore not report to class or for training on the simulator that day, and in fact did not appear.
5. The complainant was subsequently granted one (1) day of sick leave with pay and submitted to the employer a medical certificate (Health and Welfare Form 500).
6. On November 20, 1979, the complainant requested in writing that he be granted one (1) other day of refresher training to replace the day (November 14, 1979) on which he had been ill.

7. This request was refused in writing on November 20, 1979 by Mr. P. Gauthier.
8. On November 21, 1979, the complainant filed his grievance, which is the subject of these adjudication proceedings, requesting that he be granted one (1) day of refresher training to replace the day on which he had been ill and unable to report to class or for training on the simulator.

The present statement is made without prejudice to the right of either party to present new facts at the hearing into the present case.

The parties also made the following admission:

The grievor could have completed the training course missed in 1979, specifically after November 21, 1979. The same courses were still being given at that time.

#### ARGUMENTS

The grievor's representative cited clause 8.02(b)(i) of the collective agreement. He argued that under this clause, the grievor was entitled to five days of refresher training. He received only four days because of his illness on November 14, 1979. He subsequently asked the employer to grant him the day of refresher training which he had missed, but this request was refused. Clause 8.02(b)(i) was clear and it was apparent that the employer had violated the agreement. The English text of the clause was even clearer. It is important to accommodate an employee wishing to attend refresher training in order to continually improve the quality of air traffic control service.

The grievor's representative wondered what would happen if an air accident occurred precisely because the employee had missed a particular refresher course.

Counsel for the employee replied that the question posed by the grievor's representative was purely hypothetical and should be disregarded. There was only one relevant question, namely, did the employer violate clause 8.02(b)(i)? This clause conferred a right on the employee and at the same time imposed an obligation on the employer. The employer simply had to make available to the employee five working days a year to enable him to take refresher training. As soon as the employer made the five days in question available to the employee, its obligation was fulfilled. The English text of clause 8.02(b)(i) stipulated that "... controllers shall be provided refresher training ... five working days each year". The word "provided" was defined in Webster's as "to make available, to supply". The same word, according to the Oxford dictionary meant "to make due preparation for, to supply, to furnish". The employer fulfilled this obligation. In any event, according to counsel for the employer, I could not grant a fifth day of refresher training for 1979 because the year in question had expired. If I granted this fifth day in 1980, I would then be granting a sixth day because the grievor was already entitled to five days of refresher training in 1980 and I would therefore be granting more than the collective agreement specified. I would be departing, as it were, from the terms of the collective agreement. According to counsel for the employer, I could make a declaration to the effect that the employer violated the collective agreement but I had no authority to grant an additional day of refresher training in 1980.

In rebuttal, the grievor's representative argued that I most certainly could grant the fifth day to which clause 8.02(b)(i) referred. Since it was impossible to grant this day in 1979, it would have to be granted in 1980. Clause 8.02(b)(ii) stipulated that a controller is entitled to an additional five days of job-related training each year subject to certain conditions.

REASONS FOR DECISION

The facts of this case are not contested. The grievor is an IFR air traffic controller. He was, at a certain point, to undergo refresher training which was scheduled for November 5, 13, 14, 15 and 30, 1979. On November 14, 1979, the grievor was unable to report for training because of illness. The employer granted him a day of sick leave but refused to grant another day of refresher training to replace the day which had been missed. This action gave rise to the present grievance.

The relevant collective agreement is the one which is in effect from January 1, 1979 to December 31, 1980 and which bears code 402/79.

Clause 8.02 of the agreement reads in part 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 instruction on equipment and procedures prior to their introduction and refresher training where appropriate.

- (b) In addition to the training referred to in 8.02(a), controllers 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 such training will not require the payment of overtime.

It is also important to note clauses 1.02 and 9.04 of the agreement:

1.02 The parties to this Agreement share a desire to improve the quality and to increase the efficiency of the Air Traffic Control Service and to promote the well-being of its employees so as to provide safe and efficient services to the public.

9.04 An employee is not eligible for sick leave with pay during any period in which he is on leave of absence without pay or under suspension.

The parties definitely intended, through clause 1.02, to recognize the importance of continually improving the quality of the air traffic control service. The parties also intended to increase the safety of persons using air transport. I fail to see why, in the circumstances, the employer wishes to dig in its heels, so to

speak, over one clause and interpret it so rigidly that it cannot grant all of the five working days during which the refresher training was being given.

Adjudicators have always hesitated to substitute themselves for the employer in the case of a breach of security by an employee. In such a case, adjudicators have always tended to deal more harshly with the employee. This is what emerges from the decisions in MacLean (166-2-757), Dealbuquerque (166-2-4836) and Osborn (166-2-5202). I rendered a decision to this effect in Lamoureux (166-2-7810). This question of the severity of a penalty can, in my opinion, also work to the disadvantage of the employer. If in the course of ensuring the safety of the public, an employee neglects his duties, adjudicators certainly have an obligation to draw attention to this fact. Similarly, if the employer fails, either directly or indirectly, to contribute to this same end, adjudicators also have an obligation to note this fact.

In the case at bar, the grievor was unable to attend one day of refresher training. He produced a medical certificate and obtained sick leave apparently without any difficulty. The employee demonstrated, in my opinion, his sense of responsibility by asking the employer for permission to attend another day of refresher training in order to make up for the day which had been lost. When the employer refused, the grievor filed a grievance with all the inconvenience that this action can entail. Although the grievor did not suffer any financial loss, he obviously felt that his training would suffer. In my opinion, the grievor's conduct is praiseworthy.



Counsel for the employer argued that as soon as the employer informed the employee of the days on which he could take refresher training, its obligation was fulfilled. It must be concluded from counsel's argument that the employer has no obligation to ensure that the days scheduled for refresher training are acceptable to the controllers and that the latter are available to take the training. To cite an extreme example, I can conceive of the employer scheduling refresher training over a period of two weeks when the employee concerned is recovering from an illness. Regardless of whether the employer acted in good faith, it seems to me that the employee could then ask to attend refresher training on other days. I really do not see how the employer could refuse to grant this request by taking refuge behind clause 8.02(b)(i). I can conceive of an employee suddenly becoming ill the day before the start of the five days of refresher training. Does this mean that the employer would then be relieved completely of its obligation to provide this employee with refresher training? Surely that is not what the parties intended by concluding the collective agreement because the goal enunciated in clause 1.02 would not then be achieved and might very well never be.

I conclude in the circumstances that in 1979, the grievor was justified in asking the employer to schedule another day of refresher training in order to replace the day which he had lost because of his illness. I also conclude that the employer violated the collective agreement when it refused to grant the employee's request. According to the evidence, the day of refresher training which was lost could have been granted in 1979, and since it was not, it will have to be granted in 1980, in which case it will be

considered as the fifth day of refresher training to which the grievor was entitled in 1979.

I therefore allow the grievance.

For the Board,

J.-Maurice Cantin, Q.C.,  
Vice-Chairman.

Ottawa, August 1, 1980.

Certified true translation

Denis Sabourin