

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

CANADIAN AIR TRAFFIC CONTROL ASSOCIATION

Bargaining Agent

and

TREASURY BOARD
(Transport Canada)

and

NAV CANADA

Employers

RE: Reference under Section 99 of the
Public Service Staff Relations Act

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Bargaining Agent: Peter J. Barnacle, Counsel, and D. Lewis, President,
Canadian Air Traffic Control Association

For the Employers: Harvey A. Newman, Counsel, Treasury Board, and
Patricia Brethour, Counsel, Nav Canada

Heard at Ottawa, Ontario,
June 4 and 5, 1997.

INTERIM DECISION

On July 9, 1996, Mr. Fazal Bhimji, Vice-President, Labour Relations, filed on behalf of the Canadian Air Traffic Control Association (CATCA) the following reference under section 99 of the *Public Service Staff Relations Act (PSSRA)*:

Statement

The Canadian Air Traffic Control Association seeks to enforce the following obligation that is alleged to arise out of the Collective Agreement (Code 402/91):

Article 2.02, Article 4 and Letter of Understanding (1-91)

Particulars:

1. *The employer has failed to provide the current salary information for a six year period as required under Article 2.02 and Letter of Understanding (1/91).*
2. *Pursuant to Article 4, the employer has failed to check off and remit dues at the appropriate salary levels over the past six years for controllers in at least the following categories:*
 - (a) *controllers reclassified as a result of classification exercises;*
 - (b) *controllers receiving acting pay in pool and/or training positions;*
 - (c) *controllers in acting positions; and*
 - (d) *controllers obtaining promotions.*
3. *Under the AI collective agreement, dues are checked off and remitted based on a percentage of monthly salary. During the past six years, two different rates were in place: 1991-93 - 1.75%, post-1993, 1.5%.*
4. *The situation came to the attention of the Association early in 1996 as a result of a discovery that a controller reclassified from AI-04 to AI-05 in 1991 was still paying dues based on his 1991 salary.*
5. *The Association immediately advised the employer of the situation by letter dated February 14th, 1996. (Copy attached)*

6. *Officials of the Association and the employer met on February 27th, 1996 and the employer conceded that its salary information to the Association had been incorrect or incomplete for a period of at least six years. The problem was identified to include dues for controllers other than those who had been reclassified, such as those controllers falling within the other categories noted in paragraph 2 above.*
7. *By letter dated March 1st, 1996, the Association sought the cooperation of the employer in identifying and reimbursing the Association for all losses. (Copy attached) A follow up letter was dated March 28th, 1996. (Copy attached)*
8. *A meeting was held between the parties on April 4th, 1996, in which the employer advised it was not able to reconstruct its records to determine the exact extent of losses to the Association.*
9. *Since April 4th, 1996, the parties have held further discussions, but been unable to resolve the matter.*
10. *The full losses to the Association have yet to be determined. We will require further information from the employer. Examples and estimates include:*

(a) Reclassification

*Reclassification of approximately 1000 controllers from the AI-04 to AI-05 level took effect in August, 1991. While retroactive to January, 1991, increased dues are not retroactive in those circumstances. Based on the dues rates for the period 1991 - 1996, the loss to the bargaining agent for each individual controller in the six year period is approximately **\$163.42**, based on the average difference in monthly salary between AI-04 and AI-05 at the mid increment level.*

*An estimate of losses in this category would therefore be 1000 x **\$163.42** for a total of **\$163,420.00**.*

(b) Trainees

Approximately 360 trainees were active in ATC units across the country in each of the last six years. On graduation from TCTI, these trainees are classified as AI-00. While all during this period are recruited in the IFR, some trainees would have been put in VFR units for varying lengths of time. Once qualified in VFR units, these controllers will have received pay at the classification level consistent with the grade level of their Tower (1, 2, or 3). Once in Grade 4 or 5 Tower,

or an IFR unit, either directly out of TCTI or by way of a Tower, each trainee would have been paid at the AI-02 or AI-03 level during the remainder of their training period.

The ultimate success rate of trainees varies, as does the time spent in training positions as the various AI pay levels. If the changes in classification during training are not reported to CATCA then the dues lost are substantial. For example, the loss for a trainee over a one year period based on the difference in monthly pay at the base increment level between AI-00 and AI-02, would be **\$262.58**.

(c) Promotions

Promotions in ATC arise out of the seniority bid program or supervisor position competitions. The difference in salary level will vary, depending on whether the controller goes from a VFR facility to an IFR unit or between units at different grade levels with either IFR or VFR. We will require particulars from the employer on the approximate number of promotions in each of the last six years.

However, for a controller going from a Grade 2 tower (therefore classified as AI-02) to a Centre (AI-05), the difference in dues at the mid increment level is **\$203.76** annually.

(d) Acting Pay

Acting pay opportunities vary from year to year. We will require particulars from the employer with respect to acting positions filled by controllers over the past six years for whom dues check off did not reflect monthly salary levels.

The difference between dues payable at the mid increment range between an AI-03 and AI-04 would be approximately **\$70.08** annually.

11. The Association reserves the right to provide further particulars and/or evidence.

Order Sought:

The bargaining agent seeks an order of the Board:

- 1. declaring the employer in violation of the terms of the collective agreement, specifically Article 2.02, Article 4 and Letter of Understanding (1/91);*
- 2. directing the employer to cease and desist such violations;*
- 3. directing payment by the employer to the Association of an amount equal to the Association's losses arising from the breach of the collective agreement; and*
- 4. providing such other relief as may be requested or necessary to make the bargaining agent whole.*

In this reference, CATCA named the Treasury Board as the employer.

On July 18, 1996, Mr. R. Munro, on behalf of the Treasury Board, denied that it had provided erroneous information to CATCA and asked that the bargaining agent demonstrate the allegations contained in the reference.

On November 27, 1996, Mr. Jacques A. Emond replied on behalf of Nav Canada to CATCA's request that it be added as a party to this matter. On November 1, 1996, Nav Canada became the employer of all Transport Canada employees designated as Nav Canada employees by the Minister of Transport and placed on a list by November 1, 1996 and who had received offers of employment from Nav Canada and had accepted such offers of employment. Thus, Nav Canada agreed to be added as a party to this reference in order to facilitate the collection of dues for those employed in the air traffic control bargaining unit.

The matter was scheduled to be heard February 26 and 27, 1997. However, at the request of CATCA, the matter was postponed. It was then rescheduled and heard on June 4, 1997.

The parties agreed that the dues in dispute amount to \$43,195.43. The issue to be determined is whether the two employers are responsible for this amount and are obliged to remit it to CATCA.

In the interest of expediency and to avoid any further prejudice to CATCA, it was decided that I should render an interim decision to avoid any further losses and delay in collecting most of the monies owed. Thus, on June 5, 1997, I rendered orally the following interim order:

1. *The total discrepancy in dues that ought to have been remitted to the Applicant over the period January, 1991 to November, 1995 is declared to be as follows:*

<i>From Employees not transferring to NAVCANADA</i>	<i>\$ 4,417.74</i>
<i>From Employees who transferred to NAVCANADA</i>	<i><u>\$38,777.69</u></i>
<i>Total</i>	<i>\$43,195.43</i>

2. *Pursuant to Article 4 of the Collective Agreement, the Employers are ordered to deduct the dues owing per para. 1 from the monthly pay and/or training allowance from any current employees affected and remit to the Applicant.*
3. *Subject to any undue hardship established by an employee so affected, the Employers shall conclude the process of deduction and remittance of dues owing by current employees in accordance with para. 2 no later than June 30, 1998.*
4. *The Board will issue its decision in the normal course with respect to the liability for any dues that cannot be recovered by the Employers pursuant to Article 4 of the Collective Agreement.*

I will be rendering the decision on the merits in the near future concerning what legal obligations, if any, Transport Canada and Nav Canada have to remit to CATCA any monies claimed.

**Muriel Korngold Wexler,
Deputy Chairperson**

OTTAWA, July 14, 1997.