

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)**

Employer

and

CANADIAN ASSOCIATION OF PROFESSIONAL RADIO OPERATORS

Intervenor

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

Before: P. Chodos, Deputy Chairperson

For the Bargaining Agent: Peter Barnacle, Counsel, Fazal Bhimji

For the Employer: Harvey Newman, Counsel, Ross Munro

For the Intervenor: Phillip Hunt, Counsel, J.P. Duclos

Heard at Ottawa, Ontario,
February 26 and 27, 1997.

DECISION

The bargaining agent has filed a reference under section 99 of the *Public Service Staff Relations Act* concerning the enforcement of a Letter of Understanding (4-91) (LOU (4-91)) which forms part of the collective agreement currently in force between the parties (Code: 402/91). Prior to the completion of the hearing of this matter, counsel for the intervenor advised that the Canadian Association of Professional Radio Operators (CAPRO) had reconsidered its position and wished to withdraw from these proceedings; this request was granted, and accordingly the Canadian Association of Professional Radio Operators is no longer a party to this decision.

LOU (4-91) provides as follows:

This is to confirm an understanding reached during the current negotiations in respect of assignment of controllers' duties.

Functions which are now performed by members of other bargaining groups will not normally be assigned to members of the Air Traffic Control group nor will functions which are presently only performed by members of the Air Traffic Control group be assigned to members of other bargaining groups.

Where because of operational requirements either party deems it desirable to deviate from this understanding, the parties agree to enter into discussions to consider such proposals of either party and may mutually agree to make exceptions to the foregoing.

It is also agreed that this letter will in no way prejudice the positions of either party, or interfere in any way with commitments already made, in relation to the performance by ATC assistants of estimate copying, flight data posting and mission plotting.

In essence it is the bargaining agent's allegation that effective May 1, 1996 the employer introduced a new method of operation which constituted an assignment of a traditional air traffic control function to members of another bargaining unit, that is Flight Service Specialists (FSS) who are part of the Radio Operation bargaining unit represented by CAPRO. According to the Canadian Air Traffic Control Association (CATCA), this new arrangement is evidenced by an agreement between the Moncton Area Control Centre (MACC) and Fredericton Flight Service Station (hereinafter referred to as Fredericton Airport) which became effective on May 1, 1996

(Exhibit B-6). It is not in dispute that the May 1st agreement was supplanted by a similar agreement between the two units referred to above, to be effective October 30, 1996 (Exhibit B-10). As this agreement is at the core of the dispute between the parties, it is reproduced in full as an appendix to this decision.

The bargaining agent also submits that the inter-unit agreement in question is in effect a test case which will become a model for similar arrangements between FSS served airports and other area control centres throughout the country, as evidenced by a document entitled "System Safety Review" dated August 1996 (Exhibit B-5).

The employer acknowledges that the procedures reflected in Exhibit B-10 are currently in place and may be introduced in other locations. However, it is the employer's contention that these procedures are merely a streamlining of the old procedures, and do not constitute a transfer of any air traffic control functions to the FSS. As the interpretation and implementation of Exhibit B-10 is at the core of this dispute, it is reproduced in full as an appendix to this decision.

Fredericton is an uncontrolled airport, that is, it does not have any Air Traffic Controllers on site; instead aircraft are in communication with FSS personnel who are located at Fredericton Airport. The clearance procedures at issue concern IFR (Instrument Flight Rules) clearances as opposed to VFR (Visual Flight Rules) clearances.

Mr. Art Bateman, an Air Traffic Controller employed at Moncton Area Control Centre (MACC) who is also the CATCA Chairman for the MACC Branch, testified that under IFR pilots are required to obtain clearances from air traffic control in order to fly the aircraft; IFR is required in certain designated air spaces and allows for separation from other aircraft by following directions from Air Traffic Control. Any flight changes would require a clearance while flying under IFR. MACC is responsible for, among other things, the Fredericton air space. Mr. Bateman stated that upon arrival at an uncontrolled airport, such as Fredericton, the pilot would taxi to a gate (there is no clearance operation on the ground); according to Mr. Bateman, prior to May 1, 1996 when the aircraft was ready for departure the pilot would contact FSS personnel in Fredericton and request IFR clearance either prior to, during or after taxiing to the runway of his choice; that is, there would be no clearance for taxiing at

the airport. The Flight Service Specialist would contact Moncton ACC by telephone which would issue the clearance to the FSS, who would read back *verbatim* to the Moncton controller the terms of the clearance. The FSS would then relay the clearance *verbatim* to the pilot. The pilot would then read back the clearance to the FSS. Depending on the content of the clearance, that is, if there were no restrictions on departure, the aircraft could depart as soon as it received clearance. Mr. Bateman referred to section 443 of the ATC Manual of Operations (MANOPS) which is attached as Appendix C to Exhibit B-5. Section 443.1B provides that, if there are reasons for not authorizing the aircraft to depart, the FSS must specify that in the clearance. The contingency can only be a reference to a specific time or event which the aircraft can positively determine; they would not necessarily have to verify the event or time with the controller; that is, if the event or time is in accordance with the direction in the clearance, the pilot would not have to check back with the Air Traffic Controller prior to departure. Mr. Bateman noted that section 443.2 provides that, if the clearance cannot be issued by reference to an event or time, then clearance cannot be given. He observed that the rules set down in the MANOPS are mandatory and failure to follow those rules could result in the controller being subjected to discipline.

Mr. Bateman compared the above-noted procedure with the procedure in place as of May 1, 1996, as set out in Exhibit B-6. The pilot would request clearance from FSS, as before; however the FSS would issue IFR clearance without speaking with the area controller if the specialist had a printed strip concerning that flight. The printed strip contains flight data information emanating from operational support staff at Moncton, who are in the General Technical bargaining unit and are not air traffic controllers. When the strip is prepared, it is simultaneously distributed to the Moncton area controller and to the FSS in Fredericton, via a printer. The information on the strip comes from the flight plan filed by the pilot. According to Mr. Bateman, controllers have no involvement with respect to the flight plan information.

Mr. Bateman testified that the original agreement (Exhibit B-6, paragraph 2.4) provided that the FSS clearance would include the phrase "Clearance validation required prior to departure"; Mr. Bateman noted that in the ATC MANOPS this kind of communication is not authorized at an uncontrolled airport; it is used only at a controlled airport in communications between the IFR controller and the control tower.

Mr. Bateman also stated that Exhibit B-7, a memorandum from Mr. Robert Côté, the Acting Director, Air Traffic Services, to the Moncton Air Traffic Control Chief sent on September 26, 1996 directed that as a result of the System Safety Review Report (Exhibit B-5) the inter-unit agreement of May 1st was to be cancelled. Notwithstanding this, the procedure provided in the May 1, 1996 inter-unit agreement continued without interruption; a memorandum dated October 4, 1996 under the signature of Mr. T.R. Fudakowski, Director, Air Traffic Services rescinded the memorandum from Mr. Côté and amended portions of the inter-unit agreement of May 1. This was followed by another memo (Exhibit B-9) dated October 7, 1996 from the manager of the Moncton Area Control Centre which also provided for some amendments to the agreement; in particular, it notes that the clearance will include a reference to "ATC CLEARS", and the final paragraph is to read: "STANDBY FOR DEPARTURE INSTRUCTIONS". This ultimately led to Exhibit B-10 which was effective October 30, 1996 and replaced the May 1, 1996 agreement. Paragraph 2.3 of Exhibit B-10 states that:

2.3 FSS shall issue an IFR Clearance for those aircraft for which a printed strip has been generated by the ACC. The clearance will include:

(a) Pre-taxi clearance:

...

(6) The Phrase "DO NOT DEPART UNTIL DEPARTURE INSTRUCTIONS RECEIVED"

(b) Taxiing clearance:

...

(6) Departure/release instructions, as specified by the ACC.

It is this document which is currently in force at Fredericton Airport. Mr. Bateman maintained that it is inappropriate for the Flight Service Specialists to issue clearances without the prior approval of Moncton ACC. He acknowledged in cross-examination that under both the new and old procedure FSS personnel would be contacted by the pilot for enroute clearance. Mr. Bateman insisted that prior to the change when the FSS would contact him over the phone, he would examine the flight data information, among other things, and would issue the clearance based on the information from the

strip; however, he would frequently amend that information when issuing a clearance. He observed that currently the FSS in effect issues the data on the strip in the form of a clearance. He insisted that it is misleading for FSS to state: "ATC CLEARs" and then issue the data strip in the form of a clearance. He also maintained that the reference to "STANDBY FOR DEPARTURE INSTRUCTIONS" is misleading as, in his view, a pilot does not need clearance for departure at an uncontrolled airport but rather only needs an enroute clearance. He acknowledged that paragraph 2.4 of Exhibit B-10 makes reference to Moncton ACC issuing departure instructions and clearance validation and that the FSS does call him for departure instructions.

Mr. Thomas Fudakowski is presently employed with NAV Canada as Director of Air Traffic Services; he had the same responsibility with Transport Canada for two and a half years. He is the functional head of all activities respecting air traffic control services including system performance, development of rules, procedures, and standards; as well, he monitors the performance of the system. He is familiar with the procedures used at the Fredericton Airport.

Mr. Fudakowski testified that the procedures currently in place with respect to Fredericton provide precise and strict rules concerning the issuance or relaying of clearances to an aircraft, where an IFR departure from Fredericton has been filed. He maintained that clearances are issued on the basis of the authority of Moncton ACC as enumerated in the inter-unit agreement. He noted that in accordance with paragraph 2.3(a)(6) there is a reference to the phrase: "DO NOT DEPART UNTIL DEPARTURE INSTRUCTIONS RECEIVED". He stated that any pilot who did not respect this direction would be subject to sanction. He also noted the reference in 2.3(b)(6) to "Departure/release instructions, as specified by the ACC". He stated that this refers specifically to immediate routings and altitudes to be flown by the pilot issued by ACC, that is by the IFR controllers. He also referred to paragraph 2.4 which, he maintains, provides that if circumstances warrant the IFR controller may issue an alternative clearance. In Mr. Fudakowski's view, the FSS cannot give approval for departure without the ultimate approval from Moncton; the discretion rests only with the IFR controller at Moncton ACC. He acknowledged that under the new procedure the FSS does not have to call Moncton ACC; Mr. Fudakowski observed that the FSS is merely relaying clearances pursuant to a "blanket authorization" written into the inter-unit agreement. However these "clearances" are subject to validation or changes

by the IFR controllers. He acknowledged that the FSS is not required to speak with a controller before issuing a clearance. He noted that the reference to "ATC CLEARs" demonstrates that the FSS is still issuing clearances from the controllers. Mr. Fudakowski also stated that, if anything other than the printed strip applies, the controller will modify the clearance.

Argument

Counsel for CATCA submitted that the purpose of LOU (4-91) is to preserve the integrity of the bargaining unit by protecting the work performed by members of the Air Traffic Control bargaining unit. Mr. Barnacle maintained that the issuance of clearances is a function of the IFR controller and that the employer acknowledged this in its response to CATCA's grievance, in particular its concurrence with paragraph 8 of the bargaining agent's reference to the Board. The issue to be addressed here is whether air traffic control functions have been assigned in contravention of the letter of understanding; a subsidiary question is whether the controllers are exclusively responsible for issuing clearances. Mr. Barnacle argued that the documentation respecting the inter-unit agreements confirm that the Flight Service Specialists are indeed issuing clearances as of May 1, 1996. Counsel noted that Exhibit B-10 contains three key elements: 1) the FSS "shall issue IFR clearances"; 2) the FSS preface the issuance of clearances by noting that "ATC CLEARs", which will leave no doubt in a pilot's mind that this is an air traffic control clearance; 3) departure instructions are given which may or may not vary the terms of departure; these are not clearances but instructions. Mr. Barnacle submitted that the issue here is not the content of the clearance but rather that clearances are being given by the Flight Service Specialist and not the controllers.

Counsel also argued that the May 1st agreement was a fundamental change in that previously there would be verbal contact with a controller prior to the FSS responding to a request for clearance from the pilot; that is, the FSS was not issuing a clearance, but was merely relaying a clearance issued by the controllers. Under the new procedure, a clearance can be issued without the intervention of an IFR controller. The issuance of a clearance by a Flight Service Specialist, who relies on the printed strip generated by the operational support specialists, is in fact in contravention of

the employer's own manual of operations as well as being a contravention of the letter of understanding.

Mr. Barnacle noted that the bargaining agent is seeking a cease and desist order, as well as a declaration. He submitted that such an order is necessary, given the employer's acknowledgement that it intends to introduce this procedure in other locations. Counsel also argued that a cease and desist order in these circumstances would be capable of being applied without further adjudication of the facts. Alternatively, Mr. Barnacle requested that the Board reserve its jurisdiction in order to remain seized of the matter in the event of a further violation by the employer, or should NAV Canada fail to recognize the full authority of the Board's decision.

Counsel for the employer characterized the dispute as a "tempest in a teapot"; Mr. Newman maintained that no functions were assigned to members of another bargaining unit; he submitted that both prior to and after the May 1st inter-unit agreement the Flight Service Specialists were involved in transmitting clearances, and nothing changed other than the modality of giving information; the ultimate responsibility for clearances continues to rest with the Air Traffic Controllers. According to Mr. Newman, the FSS are a conduit, that is, they have no discretion with respect to issuing clearances. He noted that pilots cannot fly out of Fredericton unless instructions are formulated or approved by a controller in Moncton; the FSS follow precisely laid out instructions and convey specific information received from Moncton through the medium of a printout. FSS are "issuing" clearances only in the sense of communicating them; they do not have any responsibility for clearances *per se*. Mr. Newman stated that the real factual issue here is who has authority to change the flight plans; that rests exclusively with the Air Traffic Controllers.

With respect to a possible remedy Mr. Newman argued that, in the event the grievance is upheld, the remedy should be confined to a declaration. He noted that the Board has never exercised its authority to issue a cease and desist order; to do so in this case would presume bad faith on the part of the employer, which is unwarranted in the circumstances of this case.

Reasons for Decision

The parties are in agreement that the determination of this case turns on whether, as a matter of fact, the May 1, 1996 inter-unit agreement and its successor, the amended agreement of October 30, 1996, transferred responsibility for issuing departure clearances at Fredericton Airport from controllers employed at Moncton Area Control Centre to the Flight Service Specialists located at Fredericton Airport. It is not in dispute that, had there been such a transfer of function, it would contravene LOU (4-91), as the Flight Service Specialists are members of another bargaining unit, and there has been no agreement between CATCA and the employer approving such a change.

It would appear that the chief distinction between the old and new procedures is that with the introduction of the printer at Fredericton, instead of Moncton ACC reading off the flight information data strips, the strip is sent to Fredericton and read off to pilots by the Flight Service Specialists. As a consequence, the Flight Service Specialists need no longer phone Moncton ACC to get this same information from the controllers at Moncton. Support for the conclusion that the substantive change brought about by the inter-unit agreement is in fact the communication of flight information data via the printer is found in paragraphs 2.6 and 2.7 of Exhibit B-10 which provides that:

2.6 When the printer at the FSS is unserviceable, the ACC will be responsible for initiating IFR clearances.

2.7 IFR Clearances for aircraft for which the FSS has no flight plan information shall be initiated by the ACC.

That is, paragraphs 2.6 and 2.7 in effect state that, where the printer is inoperative or the information conveyed by the printer is unavailable, the system reverts back to pre-May 1st procedure.

There is no dispute that Air Traffic Controllers are responsible for air traffic control. However, in accordance with the inter-unit agreement (Exhibit B-10) the “final” clearance communicated by FSS is subject to approval by Moncton ACC; hence the directions in Exhibit B-10, subparagraph 2.3(a)(6): “*DO NOT DEPART UNTIL DEPARTURE INSTRUCTIONS RECEIVED*”, and in subparagraph 2.3(b)(6) for taxiing clearance: “*Departure/release instructions, as specified by the ACC*”. Furthermore,

paragraph 2.4 of the same document also demonstrates that the controllers retain overall responsibility for clearances at Fredericton: *“As part of the clearance validation process, the ACC will specify the departure runway and issue appropriate departure instructions ... and clearance validation as applicable.”*

There is no dispute that CATCA members are responsible for air traffic control throughout Canadian air space and that clearance procedures are a vital part of the means by which air traffic control is exercised. A superficial examination of the inter-unit agreement may convey the impression that FSS are in fact usurping part of the clearance “function”. In my view however the evidence as a whole does not support this conclusion. The communication of information directly from a printed strip, as opposed to reading off the same information by an Air Traffic Controller to the Flight Service Specialist, does not constitute a delegation of clearance responsibilities to the FSS; that responsibility continues to reside with MACC under the agreement and pursuant to the current practice. In my view, management’s characterization of the May 1, 1996 changes as a “streamlining” is essentially accurate. There may well be a point beyond which changes of this kind would indeed constitute a transfer of functions from the Air Traffic Controllers to the Flight Service Specialists, thereby contravening LOU (4-91). However, the changes contemplated by the inter-unit agreement do not in my view cross that boundary.

Accordingly, for all these reasons this grievance is denied.

**P. Chodos,
Deputy Chairperson.**

OTTAWA, April 18, 1997.

Agreement

*Between: Moncton Area Control Centre (ACC)
and
Fredericton Flight Services Station (FSS)*

Effective: Oct. 30, 1996

Cancels: Agreement of May 1, 1996

1.0 PURPOSE

1.1 To establish clearance and coordination procedures applicable to IFR aircraft operating within the Fredericton Control Zone.

1.2 To describe responsibilities with respect to Special VFR (SVFR) flight handling.

1.3 To describe coordination procedures applicable to aircraft which have received IFR clearance from the ACC via a peripheral frequency (PAL).

2.0 RESPONSIBILITIES

2.1 Moncton ACC is responsible for the provision of IFR service within the Moncton FIR, including the Fredericton Control Zone.

2.2 Moncton ACC may authorize SVFR within the Fredericton Control Zone for a specified time period. FSS shall be responsible to advise the ACC if more than one aircraft is involved.

2.3 FSS shall issue an IFR Clearance for those aircraft for which a printed strip has been generated by the ACC. The clearance will include:

(a) Pre-taxi clearance:

(1) Aircraft identification

(2) Clearance limit (Destination airport)

(3) Route of Flight (Either Flight Planned Route or Centre Stored)

(4) Transponder code assignment.

(5) The phrase "EXPECT (SID)"

(6) *The Phrase “DO NOT DEPART UNTIL DEPARTURE INSTRUCTIONS RECEIVED”*

(b) *Taxiing clearance:*

(1) *Aircraft Identification*

(2) *Clearance limit (Destination airport)*

(3) *(SID)*

(4) *Route of flight (Either flight planned route or centre stored)*

(5) *Transponder code assignment*

(6) *Departure/release instructions, as specified by the ACC.*

2.4 *As part of the clearance validation process, the ACC will specify the departure runway and issue appropriate departure instructions (which may be the expected SID or detailed instructions), and clearance validation as applicable.*

2.5 *This clearance delivery procedure may be suspended by the ACC if equipment unserviceabilities (Radio, Radar) require alternate procedures.*

2.6 *When the printer at the FSS is unserviceable, the ACC will be responsible for initiating IFR clearances.*

2.7 *IFR Clearances for aircraft for which the FSS has no flight plan information shall be initiated by the ACC.*

2.8 *TIME (4 figures) used in clearances will be up to, but not include, the time indicated. (EG: “CLEARANCE CANCELLED IF NOT AIRBORNE BY TIME 1436” means the clearance is cancelled at 1436.00).*

3.0 *PROCEDURES*

3.1 *FSS shall use the following phraseology when requesting clearance validation:*

“REQUEST DEPARTURE INSTRUCTIONS (Aircraft Ident)(Runway)”

3.2 *The ACC, on receipt of a request for departure instructions and clearance validation from the FSS, will issue the departure runway, and, as appropriate:*

1. An applicable SID; or

2. Detailed departure instructions; and,

3. Clearance validation instructions.

Examples:

1. *“CLEARANCE VALID (A/C Ident)
FREDERICTON 1 DEPARTURE RNWY 33”*
2. *“(A/C Ident)FREDERICTON 1 DEPARTURE
RNWY 33, DO NOT DEPART UNTIL (A/C Ident)
IS ON OR HAS CANCELLED IFR”*
3. *“UNABLE IFR VALIDATION (Reason) EXPECT
VALIDATION AT (Time)”*

3.3 *The ACC shall, at least once before transferring inbound aircraft to the Mandatory Frequency, advise FSS of the position of the inbound aircraft relative to the airfield, the type of approach to be conducted, the runway to be used, any required time revisions and any other information deemed necessary. If an “Airport” clearance is given, ATC will determine the pilots intentions and include this information when coordinating with FSS.*

3.4 *The ACC may, when traffic conditions warrant, designate an “active IFR runway” for a specified period or for specified airport to achieve more efficient traffic planning. FSS, when advised that an “active IFR” runway has been designated, shall include this information as part of the Airport Advisory. When pilots indicate their intentions of using, or requesting, a runway different from the “active IFR” runway, coordination will be carried out with the ACC before an IFR Departure Clearance is issued.*

3.5 *IFR Departure Clearances will not normally be issued on PAL Frequencies. Should circumstances dictate that a clearance be issued in this manner, the ACC will advise FSS of the details of the clearance and instruct the aircraft to return to the Mandatory Frequency prior to departure.*

4.0 *COMMUNICATIONS TRANSFER*

4.1 *Arrivals - Arriving aircraft shall be changed to the Mandatory Frequency by the ACC, prior to the aircraft entering the M/F area, unless otherwise coordinated.*

4.2 *Departures - All IFR aircraft shall be changed to the ACC frequency as soon as practicable on departure, unless otherwise coordinated.*