

Date: 20140505

File: 166-2-30998

Citation: 2006 PSLRB 48



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

UMBERTO TAMBORRIELLO

Grievor

and

**TREASURY BOARD
(Department of Transport)**

Employer

Indexed as

Tamborriello v. Treasury Board (Department of Transport)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Léo-Paul Guindon, adjudicator

For the Grievor: Phillip G. Hunt, counsel for the Canadian Federal Pilots
Association

For the Employer: Simon Kamel, counsel

Heard at Montreal, Quebec,
November 21 and 22, 2005.

REASONS FOR DECISION

Grievance referred to adjudication

[1] The grievance filed by Umberto Tamborriello (the grievor) on January 30, 2001 reads as follows:

[Translation]

Refusal to pay Extra Duty Allowance pursuant to clause 46.01 of the collective agreement and schedule "A" of the TP 73068.

[2] The grievor requested to be paid pursuant to the stipulations stated in his grievance.

[3] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

[4] The parties requested permission to proceed with the hearing in English. The request was granted and simultaneous translation services were provided by the Board.

Summary of the evidence

[5] An "Agreed Statement of Facts" was filed by the parties and reads as follows:

...

1. *Mr. Tamborriello is currently an employee of the Department of Transport Canada. He is a Civil Aviation inspector at the AO-CAI-02 group and level at Dorval Airport in Montreal, QC.*
2. *The relevant collective agreement in this matter is the Aircraft Operations collective agreement signed on December 6, 1999, with the expiry date of January 25, 2001. A copy of the collective agreement is attached at TAB A to this Agreed Statement of Facts.*
3. *The relevant article to the grievance is the Extra Duty Allowance found in Article 46.*

4. *More specifically, article 46.01 (b) establishes that the requirement for eligibility to receive Extra Duty Allowance and the timing of payments shall be the same as those contained in "Transport Canada Professional Currency Programs for Civil Aviation Inspectors".*
5. *Although the title differs from the collective agreement, the applicable policy is the Professional Currency dated October 27, 1998. The Professional Currency has two programs one for medically fit Civil Aviation Inspector [sic] and the other for medically unfit Civil Aviation Inspectors.*
6. *The applicable policy to Mr. Tamborriello's situation is the Policy on Professional Currency of Medically Fit Civil Aviation Inspectors. A copy of the applicable portions of the Professional Currency Programs policy document is attached at TAB B to this Agreed Statement of Facts.*
7. *The collective agreement language referenced in paragraphs 3 and 4 above was revised from the predecessor collective agreement which called for the Extra Duty Allowance to be paid "once every six (6) months", provided differential levels of allowance to be paid to the different levels within the AO-CAI classification, and required that claims for Extra Duty Allowance be "processed upon completion of the required flying activity". A copy of the predecessor collective agreement signed January 17, 1990 with the expiry date of October 25, 1992, is attached at TAB C to this Agreed Statement of Facts. However, such considerations appear in the Policy that was drafted in 1998/TP73068.*
8. *The predecessor collective agreement referenced Treasury Board Minute 731660, which was eventually replaced by the Professional Currency policy (which is referenced in Article 46.01 (b) of the collective agreement) dated October 27, 1998. A copy of Treasury Board Minute 731660 is attached at TAB D to this Agreed Statement of Facts.*
9. *The term "annualized" for the Extra Duty Allowance of \$6,300 was added to the collective agreement (TAB A) to take in to account the new Policy (TAB B). Management continued to administer the traditional or default 48 hours Professional Currency Program on the basis that CAI's in that program would submit their claims for Extra Duty Allowance twice in the fiscal year, as per management's interpretation of the Policy.*

10. *On December 5, 2000, Mr. Tamborriello filled in a "Demande d'indemnité pour services aériens d'un pilote". The form was designed for the six month period from April 1, 2000 to September 30, 2000. Mr. Tamborriello included entries through to November 21, 2000. On the form, Mr. Tamborriello indicated that he had accumulated 24.8 hours flying time as at November 21, 2000. A review of the cumulative hour entries made by Mr. Tamborriello also confirms that he had accumulated a total 12.8 flying hours as at September 29, 2000. The purpose of the form is to detail for local management, the particulars of the flights taken. Management also used the form to verify what flights were taken in the 6 month period, pursuant to management's interpretation of the Policy. A copy of the form is attached at TAB E to this Agreed Statement of Facts.*
11. *On December 7, 2000, Mr. Tamborriello submitted an Extra Duty Report requesting payment of 24 hours of Extra Duty Allowance, which equates to \$3,150.00. The purpose of the form is to submit the claim for Extra Duty Allowance to the pay office, and thereby to initiate Extra Duty pay. A copy of the Extra Duty Report form is attached at TAB F to this Agreed Statement of Facts. The documents at TABs E and F were submitted together to Mr. Tamborriello's manager.*
12. *On January 11, 2001, Mr. Tamborriello's Extra Duty Allowance was denied. The denial is the subject matter of this grievance and reference to adjudication. In denying the claim, the employer acknowledged an obligation to pay 1/3 of the claimed amount ($\$3,150/3 = \$1,050$), purportedly pursuant to the provisions of the Policy on Professional Currency for Medically Fit Civil Aviation Inspectors. With Mr. Tamborriello's concurrence, no amount has been paid pending the disposition of the grievance.*
13. *On January 30, 2001, Mr. Tamborriello presented his grievance.*
14. *On March 14, 2001, Mr. Tamborriello completed a "Demande d'indemnité pour services aériens d'un pilote", and an Extra Duty Report respecting the balance of his flying hours during the fiscal year ending March 31, 2001. Mr. Tamborriello's claim for the second installment of the Extra Duty Allowance, in the amount of \$3,150.00, was honoured in full. Copies of the Demande form and the Extra Duty Report are attached at TAB G to this Agreed Statement of Facts.*

...

[6] Article 46 of the agreement between the Treasury Board and the Aircraft Operations Group Association (Code: 401/99, Expiry Date January 25, 2001) reads as follows:

****ARTICLE 46**

EXTRA DUTY ALLOWANCE

46.01

- (a) *Subject to clause (b) of this Article, Civil Aviation Inspectors shall be paid an Extra Duty Allowance of \$6,300 annualized.*
- (b) *The requirements for eligibility to receive Extra Duty Allowance and the timing of payments shall be the same as those contained in "Transport Canada Professional Currency Programs for Civil Aviation Inspectors" and the "TSB Policy on CAI Professional Aviation Currency" and may be changed after consultation with the Union.*

...

[7] The explanatory note for the Professional Currency Programs for Civil Aviation Inspectors (the policy) provided that the civil aviation inspectors (CAI's) will follow a professional currency program based on flying aircraft or will pursue an approved alternate professional currency program (Tab B, article 2). Article 6 of the policy stated that a minimum of 48 flying hours in an aircraft is necessary to receive extra duty allowance and that they will be paid as it was in the past. For the inspectors following the alternate professional currency program, they will receive the Extra Duty Allowance (EDA) in full on completion of the program.

[8] The policy replaced the eligibility requirements to receive the EDA contained in the Treasury Board Minute 731660 for CAI's (Tab B, paragraph 2.2).

[9] Schedule "A" of the policy provides as follows (Tab B, pages 9 to 11):

APPLICABLE EXTRA DUTY ALLOWANCE

Note 1: *Table 1 of this schedule replicates the amount of Extra Duty Allowance payable to a CAI every six (6) months if they meet the proficiency requirements set out in this policy. Where there*

is any conflict between the amounts set out below and the amounts specified in the Agreement between the Treasury Board and the Aircraft Operations Group Association (commonly known as the "AOGA Contract"), the latter amounts prevail.

...

1. FORTY-EIGHT (48) HOUR PROGRAM

The payment of the applicable Extra Duty Allowance for a medically fit CAI engaged in a professional currency program which requires the CAI to fly aircraft for a minimum of forty-eight (48) flying hours annually as a pilot crew member or as an inspector conducting an inflight inspection, a pilot flight test, or a flight test of an aircraft shall be as follows:

- (a) one third (1/3) of the Extra Duty Allowance for more than eight (8) hours but less than sixteen (16) hours of flight time;
- (b) two thirds (2/3) of the Extra Duty Allowance for sixteen (16) hours but less than twenty-four (24) hours of flight time; or
- (c) three thirds (3/3) of the Extra Duty Allowance for twenty-four (24) hours or more of flight time,

which allowance shall be paid once every six (6) months upon completion of the required flying activity.

2. ALTERNATE PROFESSIONAL CURRENCY PROGRAM

The payment of the applicable Extra Duty Allowance for a medically fit CAI engaged in an approved alternate professional currency program which does not require the CAI to fly a minimum of forty-eight (48) flying hours annually shall be as follows:

- (a) two times (2x) the Extra Duty Allowance (i.e., the total **annual** Extra Duty Allowance):

...

which total annual amount shall be paid upon successful completion of the CAI's instrument rating and, if applicable, pilot proficiency check.

TABLE 1**MAXIMUM AMOUNTS OF EXTRA DUTY ALLOWANCE
(EDA) PAYABLE EVERY SIX (6) MONTHS**

AO-CAI-01	\$2100
AO-CAI-02	\$2100
AO-CAI-03	\$2100
AO-CAI-04	\$1500
AO-CAI-05	\$1200

[10] The predecessor collective agreement between the parties (Code 401/90; Expiry Date: October 25, 1992) and continued in force until October 25, 1999, stated (Tab C):

ARTICLE 46**EXTRA DUTY ALLOWANCE****46.01**

(a) *Subject to clause (b) and (c) of this article, Civil Aviation Inspectors shall be paid an Extra Duty allowance once every six (6) months based on the sub-group and level prescribed in the employee's certificate of appointment, as follows:*

...

(b) *Employees shall have their claims for Extra Duty Allowance processed upon completion of the required flying activity.*

(c) *The requirements for eligibility to receive Extra Duty Allowance shall be the same as those contained in T.B. Minute 731660 and may be changed after consultation with the Union.*

...

[11] The Treasury Board Minute 731660 provides that the requirements for eligibility to receive EDA are (Tab D):

The Board, pursuant to section VII of the Financial Act,

approves payment effective October 1, 1974, to qualified officers . . . of extra duty pay, where such officers

...

(b) *maintain a standard of pilot proficiency. . . .*

...

REMARKS: (1) The amount of pay with respect to the Class and number of hours flown during a six (6) month period to remain as detailed in Treasury Board Minute 689097.

...

The Board, pursuant to Section 7 of the Financial Administration Act,

(1) approves payment effective April 1, 1969, to qualified officers . . . who hold and maintain a valid "Instrument Rating Certificate" and who fly, during a continuous six-month period, in the course of their duties . . . of extra duty pay, as detailed hereunder:

Amount of pay if flying time in 6-month period

...

<u>Over 8 hours but less than 16 hours</u>	<u>16 hours or over but less than 24 hours</u>	<u>24 hours or over</u>
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...

\$300	\$600	\$900
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...

[12] The evidence showed that the grievor performed the following flying hours in the annual period from April 1, 2000, to March 31, 2001:

From Exhibit at Tab E:

Date J/M	IMMATRI- CULATION	TYPE DE VOL	DE	À	À	TEMPS	TEMPS CUMULÉ
02/05	F-JCZ	Inspection	YUL	YQB	YZV	2:6	02:6
31/07	F-MFM	Entraînement supervise	YUL	YUL		2:2	04:8
04/08	F-JCZ	Entraînement supervise	YUL	YUL		1:6	06:4
29/09	F-MFM	Inspection	YUL	YGL	YUL	6:4	12:8
16/10	F-JCZ	Inspection	YUL	YGL	YUL	7:8	20:6
06/10	F-JCZ	Inspection	YUL	YUY		2:0	22:6
21/11	F-JCZ	Entraînement supervise	YUL	YGL		2:2	24:8

...

From Exhibit at Tab G:

Date J/M	IMMATRI-CULATION	TYPE DE VOL	DE	À	À	TEMPS	TEMPS CUMULÉ
21/11	F-JCZ	Entraînement supervisé	YGL	YUL		2:3	02:3
29/11	F-MFM	Inspection	YUL	YBG		1:3	03:6
30/11	F-MFM	Inspection	YBG	YUL		1:1	04:7
15/12	F-JCZ	Transport	YUL	YOW		0:8	05:5
15/02	F-JCZ	Inspection	YUL	YQM	YBG	3:0	08:5
16/02	F-JCZ	Inspection	YBG	YUL		1:4	09:9
23/02	F-MFM	Inspection	YUL	YBG	YUL	2:4	12:3
05/03	F-JCZ	Inspection	YUL	YZV	YUL	5:2	17:5
08/03	F-MFM	Inspection	YUL	YTS	YUL	4:2	21:7
09/03	F-JCZ	Inspection	YUL	YMT	YQB		
		Inspection			YUL	3:2	24:9

...

Summary of the arguments

For the grievor

[13] The interpretation principle is that if the wording of the collective agreement is clear and non-ambiguous it should receive application. If, on the contrary, the collective agreement is ambiguous, the ambiguity can be resolved by searching out the intent of the parties in the previous collective agreement. In the new collective agreement signed in December 1999, no reference was made to a calendar year or to a six-month period to complete hours of flying. The chronology of changes will help to resolve the ambiguity.

[14] The collective agreement applicable to the grievor and signed in January 1990 (Tab C) stated in subclause 46.01(a) that the EDA shall be paid once every six months. But the wording of subclause 46.01(a) in the new collective agreement (Tab A) stated that the EDA is of \$6,300 annualized.

[15] The requirements for eligibility to EDA in the old collective agreement are the same as those in Treasury Board Minute 731660 and can be claimed on completion of the required flying activity (subclauses 46.01(c) and (b), Tab C). In Treasury Board Minute 731660 (Tab D) the remarks (1) states that the amount of pay with respect to

number of hours flown during a six-month period remains as detailed in Treasury Board Minute 689097. The Treasury Board Minute 689097 stated that the extra-duty pay is approved for employees of three categories who fly, during a six-month period, at:

- \$300 (1/3 of the total amount) for over 8 hours but less than 16 hours
- \$600 (2/3 of the total amount) for 16 hours or over but less than 24 hours
- \$900 (3/3 of the total amount) for 24 hours or more

[16] The Treasury Board Minute 731660 was replaced by the policy in 1998 (Tab B). In that policy, the Professional Currency Program (PCP) is based on a minimum of 48 flying hours or an approved Alternate Professional Currency Program (APCP) (Tab B, Article 6). Article 6 of the APCP provides that the EDA will continue to be paid as it was in the past; meaning that the Treasury Board Minute 731660 is still applicable.

[17] The statement that Treasury Board Minute 731660 still applies is in conflict with the 48 flying hours required by the APCP because the Treasury Board Minute 731660 required two times 24 flying hours inside a six-month period to receive EDA. That conflict has to be resolved by giving the preference to the collective agreement as provided in the note 1 of schedule "A" of the policy.

[18] The collective agreement provided that the EDA is of \$6,300 annualized. The requirements for eligibility to receive EDA is 48 flying hours annually as provided in the policy. These stipulations of the collective agreement prevail over the two times "24 flying hours inside a six-month period" provided in Treasury Board Minute 731660.

[19] The grievor fulfilled the requirement of 48 flying hours annually and is entitled to the full amount of \$6,300 provided for in the collective agreement. To conclude that the grievor needs to fulfil the 24 flying hours within six months distorts the requirements of the collective agreement and it is adding to it.

[20] The grievance should be granted, the employer has applied the "24 flying hours inside a six-month period" requirement against the 48 flying hours annually required in the collective agreement.

For the employer

[21] The employer agreed that a clear and non-ambiguous stipulation of a collective agreement should receive application and that extrinsic evidence can be a help to interpretation only if the stipulation is unclear or ambiguous. Subclause 46.01(b) of the collective agreement signed in 1999 provides that the requirements for eligibility to receive EDA and the timing of payment shall be the same as those contained in the policy (Tab B). Those stipulations must be applied.

[22] The requirements for eligibility stated in the policy are that the 48-hour program is performed inside two periods of six months. In each of those periods the EDA is payable to the inspector if he flies a certain number of hours. The hours of flying are divided in three possibilities corresponding to one-third of 24 flying hours (Tab B, article 1, page 10).

[23] The incorporation of the policy in the collective agreement simply reiterates the “old concept of two six-month periods” of the Treasury Board policies. In other words, the six-month period scheme is transferred from the old Treasury Board policies to the new collective agreement by the incorporation of the policy.

[24] The amount payable yearly for the EDA was changed to \$6,300, but not the requirements for entitlement or the mode of payment, which stayed the same. The yearly requirement of 48 flying hours per year stays the same and the policy provides clearly for a requirement of 24 flying hours inside a six-month period. The inspector is still entitled to half of the annual EDA amount per six-month period, divided in three parts depending on if they fly one-third, two-thirds, or three-thirds of the requested 24 flying hours as in the past. There is no divergence between the new collective agreement and the policy.

[25] The interpretation of the collective agreement should start with subclause 46.01(a), which provides \$6,300 annualized EDA. The requirements for eligibility to EDA and the amount and timing of payments are specified in the policy pursuant to subclause 46.01(b). Schedule “A” of the policy stated that a minimum of 48 flying hours are required annually to maintain the professional currency.

[26] The amounts provided for in Table 1 of schedule “A” are for a six-month period and the maximum total annual amount of EDA is two times the ones provided in Table 1. The \$6,300 provided in the collective agreement as annual EDA shall be paid in two

parts of \$3,150 (1/3 x \$6,300) on completion of 24 flying hours or more inside a six-month period. Portions of the total six months EDA are payable, in brackets separated in third of the 24 flying hours. The policy payable scheme is the same (EDA payable in portions of one-third, for a six-month period) as the one provided in the old Treasury Board Minutes 731660 and 689097. The annual maximum EDA was increased to \$6,300 in the new collective agreement and this amount prevails on the ones stated in Table 1 of the policy, as provided in note 1 of schedule "A" of the policy.

[27] The 48 hours to be performed in two periods of six months is a clear and logical scheme provided in the policy for the medically fit transport inspectors. The APCP is also described in the policy and does not require the inspectors to fly a minimum of 48 hours, but provides that the total annual EDA amount shall be paid upon successful completion of the program (article 2 of the policy). Distinct modes of payment are provided in the policy of the two professional currency programs.

[28] If the bargaining agent believes that it is unfair to have two distinct modes of payment, it can initiate negotiation with the employer on that issue to change the clear terms of the collective agreement. The adjudicator should apply clear and unambiguous provisions of a collective agreement. He can only use extrinsic evidence to clarify ambiguity in a collective agreement. In the present grievance, the wording of the collective agreement is clear and not ambiguous and the adjudicator should deny the grievance.

[29] The employer submitted the following decisions to support its argumentation: *Doyon v. Public Service Staff Relations Board and The Queen*, [1978] 1 F.C. 31; *Re Selkirk v. St. Andrews Regional Library and Canadian Union of Public Employees*, Local 336 (2003), 119 L.A.C. (4th) 141; *Brunelle and Shanks v. Treasury Board (Transport Canada)*, 2003 PSSRB 108; *Comeau v. Treasury Board*, 2001 PSSRB 112; and *Gregory v. Treasury Board (Transport Canada)*, 2001 PSSRB 51.

Rebuttal for the grievor

[30] In reply, the grievor submitted that the old Treasury Board Minutes imposed a specific requirement of flying time to be completed within six months. Those requirements are not duplicated in the policy on Professional Currency. The new policy provided for an annual requirement of 48 flying hours to be entitled to the EDA of \$6,300 annualized. The old six-month period scheme was abandoned for an annual

one and the grievor fulfilled the 48 flying hours required to be eligible to the annual \$6,300 EDA.

Reasons

[31] The requests for EDA filed by the grievor show the following facts (Tab E and Tab G):

- *in the first six months (from April 2000 to September 30, 2000) the grievor performed 12.8 flying hours (Tab E);*
- *in the second six months (from October 2000, to March 31, 2001) the grievor performed 36.9 flying hours as follows:*
 - *12 flying hours from October 16, 2000 to November 21, 2000 (Tab E), plus*
 - *24.9 flying hours from November 21, 2000, to March 31, 2001 (Tab G)*
- *for a total of 49.7 flying hours for the fiscal year 2000/2001.*

[32] The EDA payment of \$6,300 annualized shall be paid to the grievor if he meets the requirements stated in subclause 46.01(b) of the collective agreement. In the present case, the requirements for eligibility to receive the EDA and the timing of payment shall be the same as those contained in the policy on “Transport Canada Professional Currency Programs for Civil Aviation Inspectors” (the policy) and on the “TSB Policy on CAI Professional Aviation Currency” pursuant to subclause 46.01(b).

[33] The policy replaces the eligibility requirements to receive EDA contained in Treasury Board Minute 731660 as stated in clause 2.2 (Tab B). In order to maintain professional currency and to qualify to receive EDA provided in the collective agreement, the policy requires that CAI's shall annually demonstrate professional competency (clause 4.1 of the policy). The policy provided two options to satisfy the requirement: flying a departmental aircraft or pursue an approved APCP (clause 4.4). Note 3 of schedule “A” of the policy provided that a minimum of 48 flying hours annually have to be completed in order to qualify for the payment of EDA, when the first option is applied.

[34] The evidence showed that the grievor completed 49.7 flying hours within the fiscal year starting on April 1, 2000 and ending on March 31, 2001 (Tab E and Tab G), qualifying for the payment “of the applicable EDA.” The policy defines the “applicable Extra-Duty Allowance” as the amount of money payable as set out in schedule “A” to the policy.

[35] Schedule “A” sets out at Table 1 the maximum amounts of EDA payable every six months from \$1,200 to \$2,100. Note 1 of schedule “A” provides that where there is conflict between the amount and the ones set out in the collective agreement, the latter amount prevails. Consequently, the amount of “\$6,300 annualized” of the collective agreement should prevail, in accordance with Note 1.

[36] For the 48 flying hours’ program, the policy provided that the payment of the applicable EDA shall be paid once every six months upon completion of the required flying activity. The flying activity is divided in three possibilities (article 1, schedule “A”):

- *one third (1/3) of the Extra Duty Allowance for more than eight (8) hours but less than sixteen (16) hours of flight time;*
- *two thirds (2/3) of the Extra Duty Allowance for sixteen (16) hours but less than twenty-four (14) hours of flight time; or*
- *three-thirds (3/3) of the Extra Duty Allowance for twenty-four (24) hours or more of flight time.*

[37] Schedule “A” clearly sets up a payment process for the EDA on a six-month period within which the inspector is requested to complete a specific number of flying hours for the 48 flying hours program (article 1). Article 2 provides for the APCP that two times the EDA (considered as the total annual EDA) shall be paid on successful completion of the program. Those provisions do not, in my view, result in an unfair treatment for two categories of CAI’s on the basis of the currency program they opt for, but clearly set up two distinct methods of payment, one for each program. Separating the CAI’s in two groups and allocating a different mode of payment depending on which professional currency program they are on is not creating an unfair situation: it is what the parties negotiated. In *Gregory*, the adjudicator came to a similar conclusion when interpreting a collective agreement which gave different allowances to two distinct groups.

[38] I disagree with the submissions of the grievor concerning the “annualized” \$6,300 stated in subclause 46.01(a) of the collective agreement. The argument that the intent of the parties when they “annualized” the amount of EDA was to change the scheme of payment from a six-month pattern to a yearly one cannot stand in my view, for the reasons that follow.

[39] It is clear, from clause 2.2 (purpose of the policy), that the amount of \$6,300 stated in subclause 46.01(a) should prevail on the ones of Table 1 of schedule “A” of the policy. The amounts listed in Table 1 are payable every six months and, if we need a correlation to annualize them, we have to multiply each amount by two as it is the case for the alternate program. The “total annual EDA” payable would then vary from \$4,200 (\$2,100 x 2) to \$2,400 (\$1,200 x 2). Subclause 46.01(a) prevails and the effect of that provision is to change the situation where an EDA was payable by step based on classification level to one where only one amount will be payable to all CAI’s regardless of their classification. This amount will be \$6,300 “annualized” instead of ranging from \$4,200 to \$2,400 as set out in the policy.

[40] The term “annualized” used by the parties to qualify the amount stated in subclause 46.01(a) cannot be construed as replacing the rule of eligibility (on the basis of number of flying hours in a six-month period) or the timing of the payment (once every six months) provided in the policy. If I were to accept the argument that it did, it would bring me to conclude that the parties had no reason to state in subclause 46.01(b) that the requirement for eligibility for EDA and the timing of the payment “shall be the same” as those in the policy. In fact, I would have to ignore that provision of the collective agreement. This goes against the rule of interpretation that a term of a collective agreement has to be interpreted in a way to have some meaning. Furthermore, the collective agreement should be read as a whole; therefore, words and provisions must be interpreted in light of the entire agreement, including in this case the Professional Currency Programs Policy, which is incorporated by reference to the collective agreement by subclause 46.01(b). This generally accepted principle, stated in *Collective Agreement Arbitration in Canada* (Third Edition), Palmer and Palmer, by Butterworths, reads as follows:

B. THE COLLECTIVE AGREEMENT TO BE READ AS A WHOLE

4.14. It is widely accepted by arbitrators that the collective agreement is to be construed as a whole.

Therefore words and provisions must be interpreted in light of the entire agreement. As a result:

It is elementary that all the terms of the agreement must be read together and that any board of arbitration should be highly skeptical of an interpretation of one article which would nullify or render absurd the effect of another article.

[41] Consequently, the requirements for eligibility to receive EDA shall be the one provided in the “Transport Canada Professional Currently Programs of Civil Aviation Inspectors” (the policy) insofar as the timing of payments is concerned. The policy states clearly and without ambiguity that the EDA is payable to an inspector upon completion of the required flying activity within a six-month period. Applying the new amounts to the grid set out in section 1 of Schedule “A” of the policy, the inspector is thus entitled to receive a portion of the EDA, or of half the annual amount stated in subclause 46.01(a) ($\$6,300 / 2 = \$3,150$) under completion, in a six-month period, of the following flying activities:

- (a) one-third of \$3,150 or \$1,050 for more than eight hours but less than sixteen hours of flight time;*
- (b) two-thirds of \$3,150 or \$2,100 for more than sixteen hours but less than twenty four hours of flight time;*
- (c) three-thirds of the Extra Duty Allowance of \$3,150 for twenty-four hours of more flying time.*

[42] For all of the reasons stated above, the grievor is entitled, for the six-month period from April 1 to September 30, 2000, to one-third of \$3,150 or \$1,050 for completion of 12.8 flying hours. The evidence has also shown that that grievor was, appropriately, paid an amount of \$3,150 for the six-month period from October 1, 2000, to March 31, 2001, based on his right to receive the EDA for the completion of 24 hours of flying time or more.

[43] The grievor is not eligible to receive the total annualized amount of \$6,300 provided in subclause 46.01(a) because he did not fulfil the requirement of completing 24 hours or more of flying time in the six-month period from April 1 to September 30, 2000, as specified above. The meaning of the words “annual”, “annually”, “annualized” is commonly understood to make reference to the fiscal year

(from April 1 of any calendar year to March 31 of the next calendar year) and is not in dispute in the present grievance.

[44] Consequently, for all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[45] The grievance is denied.

May 5, 2006

**Léo-Paul Guindon,
adjudicator**