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*Public Service Labour Relations  
and Employment Board Act and  
Public Service Labour Relations Act*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

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BETWEEN

**CANADIAN FEDERAL PILOTS ASSOCIATION**

Bargaining Agent

and

**TREASURY BOARD**

Employer

Indexed as

*Canadian Federal Pilots Association v. Treasury Board*

In the matter of a policy grievance referred to adjudication

**Before:** Bryan R. Gray, a panel of the Public Service Labour Relations and Employment Board

**For the Bargaining Agent:** Jennifer M. Duff, counsel

**For the Employer:** Pierre-Marc Champagne, counsel

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Heard at Ottawa, Ontario,  
November 4 and 5, 2015.  
(Written submissions filed February 10, 2016).

## REASONS FOR DECISION

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### **I. Background**

[1] The Canadian Federal Pilots Association (“the bargaining agent”) grieves how their flight followers in the Aircraft Operations (AO) Group at Transport Canada are compensated for after-hours and weekend work. In its policy grievance, the bargaining agent alleges that the Treasury Board (“the employer”) is violating the overtime, call-back, and standby provisions of the agreement between the Treasury Board and the CFPA for the AO Group that expired on January 25, 2015 (“the Agreement”).

[2] A flight follower is responsible for enhancing the safety of flight crews operating Transport Canada’s Flight Operations Service aircraft by conducting regular checks from the ground of flights’ progress. If contact with a flight is lost, the flight follower will ensure that no more than a predetermined amount of time passes before measures are taken to ascertain the whereabouts of the aircraft. Many of the flights they monitor operate over the North Atlantic Ocean and are outside the range of terrestrial radar and radio communication. Therefore, air traffic control does not manage the flights, or at least parts of them, thus making the flight follower an important supplementary safety mechanism for flight crews.

[3] A flight follower’s duties are prescribed in detail by a written policy and a procedure manual, the Aircraft Services Directorate Operations Manual (“the Manual”) that requires them to check every 30 minutes for a computer-generated email containing a flight status report that uses satellite and GPS communication data from systems onboard the aircraft. The flight follower must also be ready at any time during a flight to receive a call on his or her smartphone from the aircraft’s satellite phone in case the crew reports a route alteration or needs assistance. If at any time the automated flight status reports are not available or if they report that the aircraft is off course from the flight plan, the flight follower is to check the flight’s status by means of a separate GPS-based satellite tracking system that uses web-based mapping to show the route flown and the aircraft’s current location.

[4] The employer uses the standby article of the Agreement to task flight followers with after-hours or weekend flights. It pays them the standby fee and the overtime rate for any time worked doing their mandated flight status checks every 30 minutes plus for any time worked receiving calls from flight crews. The employer considers the intervals between each 30-minute flight status check as standby time. The bargaining agent grieves this method of assignment and payment and submits that once a flight

follower is on active duty from approximately one hour before a flight takes off until the crew has safely landed at base and has called in its status to the follower, that time should be paid as overtime rather than being broken up into intervals of standby and work.

[5] The bargaining agent carries the burden in this grievance of showing that the employer is in breach of the relevant sections of the Agreement. The determining issue in this grievance will be finding whether the flight followers are working scheduled overtime during the duration of the flight or whether they are on standby except for brief periods of time worked checking regular emails or accepting a phone call. The issue must be determined by interpreting the relevant provisions of the Agreement.

[6] The policy grievance that has been referred to adjudication was presented to the employer on August 6, 2014. On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the Board”) to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) before November 1, 2014, is to be taken up and continue under and in conformity with the Act as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

## **II. Facts**

[7] The bargaining agent referred its policy grievance to adjudication on February 9, 2015, under the authority of section 220 of the Act. Subsection 220(1) states as follows:

*220 (1) If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.*

[8] The employees in question perform flight follower duties and are members of the AO Group. Articles 19, 43, and 44 of the Agreement are at issue and deal with overtime, call-backs and standby duty, respectively and shall be examined in detail below.

[9] Pierre Senneville, the regional manager of flight operations for Transport Canada, described flight follower duties as to “collect data and monitor [the] progress” of a flight to ensure the flight proceeds as set out in the flight plan filed before take-off. Mr. Senneville began his career with Transport Canada in 1984 and said that he takes one flight follower shift each month as part of his commitment to be connected to all aspects of flight operations and to give the other staff performing that job a break from their work schedules.

[10] Pilot Mike McDermott testified that for scheduled weekday morning flights, the crew share the flight plan with the flight follower between 8:00 and 8:10, approximately one hour before take-off. A meeting at the flight operations office takes place with the flight follower as part of the crew’s pre-flight preparation.

[11] Further evidence from Mr. Senneville established that flight followers do “not perform air traffic control” functions; nor do they provide an emergency search-and-rescue dispatch function. All flights are equipped with emergency equipment that would transmit a distress call to the specialized Joint Rescue Coordination Centre (JRCC), which monitors aviation safety satellite frequencies and dispatches an emergency response when required.

[12] The flight followers are based on both Canada’s east and west coasts and may be tasked with flights based out of Ottawa that serve Canada’s arctic region. Flight Operations also performs flight missions up the St. Lawrence River through the Great Lakes as far inland as Thunder Bay, Ontario. The evidence before me at the hearing focused on the Atlantic operations, based in Moncton, New Brunswick. Neither party submitted that the issues at the hearing were different in the other regions.

[13] The majority of the flights assigned to flight followers operate during normal office hours, Monday through Friday, but several late departures are scheduled each month, and a flight may also be scheduled on weekends. Most flights assigned to flight followers conduct “National Air Surveillance Program” (NASP) duties. It was also stated that on rare occasions flight followers monitor missions tasked for urgent and

emergency missions with little or no notice. No evidence was presented as to the exact number of such missions nor their duration.

[14] NASP has flights in the air 361 days a year performing tasks such as identifying ice floes and detecting and photographing pollution from shipping traffic. NASP flights over the Atlantic Ocean typically operate for approximately five hours at up to 400 km off the coast. The flights rely upon multiple independent satellite-based navigational and communication systems that their assigned flight followers monitor.

[15] Each flight follower has a smartphone that receives satellite calls from flight crews and regular “MSS 6000” computer-generated emails every 30 minutes showing aircraft latitude and longitude, airspeed, and altitude. A separate GPS satellite-based computer system, “Guardian - SilverEye”, provides a web-based mapping system that is displayed in the flight operations office on a large screen and, if desired, on a flight follower’s smartphone or home computer. The flight systems also generate a text message that is received on the flight follower’s smartphone, which indicates take-off or landing when a plane drops below 50 feet of altitude or slows to such a speed that it is unlikely that it can remain airborne.

### **III. Analysis**

[16] My task in this case is to interpret the Agreement and determine if there has been a breach in how it is applied to remunerating flight followers’ after-hours duties.

[17] The single relevant and determining issue is whether the flight followers are working overtime or are on standby and are called back to duty, as described in article 43 of the Agreement, and whether, once called back to duty, the work effectively continues uninterrupted for the duration of the flight.

[18] The bargaining agent argued that I should consider the after-hours and weekend work assigned to the flight followers as being governed by the provisions of article 19, “Overtime”.

[19] The employer argued that flight followers are tasked with standby duty (article 44), then are assigned authorized work under the call-back article (article 43), and are compensated pursuant to clauses 43.01(a) and (b).

[20] The difference as to which article of the Agreement governs the after-hours and weekend work of the flight followers is significant. If the work is indeed standby with brief periods of call to duty as suggested by the employer, then it effectively allows for payment for standby plus payment for piece-work each time the flight follower checks email or receives a phone call.

[21] If, on the other hand, the work is overtime, then the work will attract payment at the overtime rate for the full duration of the mission.

**A. Do flight followers constantly monitor the progress of flights?**

[22] In support of its submission that flight followers should be paid at the overtime rate for the full duration of each after-hours flight mission, the bargaining agent led evidence in an effort to establish that flight followers provide virtually constant monitoring of flights' progress due to the inherent hazards of conducting missions over the Atlantic Ocean. The bargaining agent called Mr. McDermott to testify as to the requirements of the flights being monitored. It became apparent during his testimony that the bargaining agent would not call a flight follower to provide evidence as to his or her duties, so Mr. McDermott testified to the best of his personal observations as to flight followers' work.

[23] Mr. McDermott testified that while on duty during normal office hours, the flight followers provide virtually constant flight progress monitoring on a large, wall-mounted screen that shows the SilverEye mapping service. The same satellite tracking and mapping service is available on desktop computers and can be monitored from anywhere with cell data service or Wi-Fi on the flight followers' smartphones. If the SilverEye mapping service loses the GPS satellite data link, it will show a dotted line on the map projecting a route based on the last known data rather than the normal green line that maps a flight's route.

[24] Mr. McDermott testified that he would like to think the flight follower is constantly monitoring us in case of a crash. He further explained that if the flight followers only checked the flight's status every 30 minutes, it could take that long before they discovered that the crew was in trouble. Mr. McDermott stated that on average, once a week during the previous summer, the MSS 6000 automated GPS satellite tracking and email status update was non-functional.

[25] Mr. McDermott recounted a recent experience when he was over the Atlantic Ocean near the coast of Greenland, and his crew lost its satellite GPS tracking data link. Almost immediately, the crew received a satellite phone call from the flight follower who had observed that the tracking data ceased transmitting; the flight follower inquired as to their status to ensure their safety.

[26] The employer led evidence that in addition to the three independent satellite communications links on each aircraft, GPS satellite-linked emergency transmitter beacons are also fitted on planes that will trigger on ground or sea impact and that can be activated manually. The same beacons are found on each crew member's water survival suit and are fitted to an inflatable life raft onboard each aircraft. Those emergency beacons are the fourth independent satellite communication system on each flight. They will transmit a distress signal, including GPS location, to the JRCC, which monitors emergency communications and dispatches rescues.

[27] When asked about the flight followers' work habits on evening or weekend missions, Mr. McDermott testified that it was his "belief" that the flight followers continued to conduct virtually constant monitoring via the SilverEye satellite mapping service as they do during normal working hours at the office.

[28] Although I find Mr. McDermott to be a diligent employee who gave credible testimony as to his knowledge and observations, the fact is that he is not a flight follower and cannot personally substantiate their precise hours of work on weekends and days of rest.

[29] Mr. Senneville who testified as to his working one flight follower shift each month stated that the duties require him to be available to answer calls from the flight crew on the satellite phone and that he checks his email every 30 minutes for the automated flight status email from the MSS-6000 system.

[30] Stephen Buckles, the director of Flight Operations and the former chief pilot for the Aircraft Service Directorate ("ASD"), Transport Canada, responded to the proposition that flight followers continuously monitor flights by stating "I applaud flight followers if they are continuously monitoring the SilverEye satellite mapping of their flight, but that is not required of them."

However, given my findings below, I need not rule on this matter of whether the flight followers conduct continuous work and whether that work is “authorized”.

**B. Are the flight followers entitled to overtime remuneration**

[31] To determine this issue, it is important to consider some relevant provisions of the Agreement, namely articles 19, 43 and 44, which state the following:

ARTICLE 19

OVERTIME

In this Article:

“**Overtime**” means in the case of a full-time employee, authorized work performed in excess of the employee’s normal scheduled hours of work.

19.01 When an employee is required to work overtime on a scheduled work day, the employee shall be compensated on the basis of:

(a) time and one-half (1 ½) for each hour worked in excess of thirty-seven decimal five (37.5) hours in any one work week;

and

(b) double-time (2) for all hours worked in excess of seven decimal five (7.5) hour of overtime worked at time and one-half (1 ½) within any contiguous period.

19.02 When an employee has been required by the Employer to work overtime on his or her normal day of rest, the employee shall be compensated on the basis of:

(a) time and one-half (1 ½) for the first seven decimal five (7.5) hours worked;

and

(b) double-time (2) for all hours worked thereafter within any contiguous period;

(c) except, an employee shall be compensated on the basis of double (2) time for each hour worked on the second (2<sup>nd</sup>) and each subsequent day in an unbroken series of consecutive and contiguous calendar days of rest.

Second (2<sup>nd</sup>) or subsequent day of rest means the second (2<sup>nd</sup>) or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest.



19.03 For the purpose of clauses 19.01 and 19.02, all calculations for overtime shall be based on each completed one-half (1/2) hour.

(...)

#### ARTICLE 43

#### CALL-BACK

43.01 If an employee on a designated holiday or a day of rest or after he or she has completed his or her work for the day and has left his or her place of work and is called back to work and returns to work he or she shall be entitled to the greater of:

- (a) compensation at the applicable overtime rate for any time worked,
- (b) compensation equivalent to four (4) hours' pay at the straight-time rate except that this minimum shall only apply once during a single eight (8) hour period, starting when the employee first commences the work and provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

Time spent by an employee reporting to work or returning to his or her residence shall not constitute time worked.

43.02 An employee who receives a call to duty or responds to a telephone data line call on a designated holiday or a day of rest or after he or she has completed his or her work for the day, may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid the greater of:

- (a) compensation at the applicable overtime rate for any time worked,
- or
- (b) compensation equivalent to one (1) hour's pay at the straight-time rate, which shall apply only the first time an employee performs work during an eight (8) hour period, starting when the employee first commences the work and provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

#### ARTICLE 44

#### STANDBY

44.01

- (a) An employee will be considered to be on standby when the Employer requires that employee to be available at a known telecommunications link number and able to perform authorized work, during off-duty hours for his or her designated period of standby duty.
- (b) An employee on standby shall be compensated at the rate of one (1) hour for each eight (8) consecutive hours or portion thereof that the employee has been designated as being on standby duty.
- (...)
- (e) An employee on standby who receives a call to duty and who performs authorized work shall be credited with compensatory leave in accordance with Article 43 and shall continue to receive compensation under this clause for the balance of the period of standby duty in which he or she is called to duty.
- (f) Upon recommencement of standby duty following a period in which an employee has been recalled to work or received a call to duty subject to paragraph 44.01(e) he or she will recommence to earn standby compensation under the provision of paragraph (b) of this clause.

(...)

[32] Mr. Senneville explained how a schedule is prepared six months in advance to assign flight followers weekend missions. The schedule for July to December 2014 was tendered as an exhibit at the hearing. He described this as a standby schedule and explained that a week in advance, Flight Operations will know whether the mission on the next weekend will actually fly. If not, he said that the assigned flight follower is “released” from their assignment and does not receive any remuneration for that weekend.

[33] Mr. Senneville also explained that “sometimes” the scheduled NASP flight is cancelled at the last minute and if so, the flight follower is released from his or her assignment and receives no pay. He elaborated that in the rare case where a flight follower is released from a weekend mission and then an urgent short-notice flight arises, a flight follower will be called and if none are available that he or another manager will perform the flight following duties themselves.

[34] These cancellations or last minute changes are clearly the exception, however. I am satisfied on the evidence that the work of the flight followers for weekend NASP flights is scheduled in advance.

[35] The employer referred to two decisions to demonstrate the distinction between standby and overtime: *Province of British Columbia v. British Columbia Government Employees' Union*, [1987] B.C.C.A.A.A. No. 406 (QL), and *Frank de Boon and the Government of the Province of B.C.*, 2013 CanLII 20187 (BC LRB). In *de Boon*, the Vice Chair of the B.C. Labour Relations Board considered a complaint by an employee against his union for an alleged failure to represent him in a grievance he had filed which in part had contested the employer's decision not to compensate conservation officers any longer for the use of their home telephone. This decision considered the issues of standby, call-back and overtime.

[36] At paragraph 34 in *de Boon*, Arbitrator Chertkow stated, "When at home monitoring the radio and answering telephone calls an officer was not at work. That changed when an officer was required to immediately respond and carry out his prescribed duties."

[37] Arbitrator Chertkow essentially reached the same conclusion in *Province of British Columbia*, pointing out at paragraph 73 that "... [i]t is my view that a Duty Officer who is at home on standby monitoring the radio and being prepared to answer the telephone is not engaging in work" (emphasis added). The Arbitrator continued, finding that the mere response to a call that required only a log entry would not be "work" and that such duty would attract only standby pay, adding that the frequency of such calls received is not a proper criterion to determine when standby ceases.

[38] I have carefully reviewed all the cases tabled and in particular those passages from *B.C.G.E.U.* and *de Boon* noted by the employer about employees not being considered at work while monitoring a radio or phone. The employer's authorities can be distinguished from the present case, however, because they deal with employees who were on call for potential work that was not certain to occur or scheduled in advance, such as fighting forest fires, dealing with problem or injured wild animals, containing environmental spills, etc. Both *B.C.G.E.U.*, at paragraph 74, and *de Boon*, at paragraph 34, make the distinction that the facts before them dealt with unplanned work arising while staff were on standby.

[39] In contrast, in the present case, flight followers are scheduled to work weeks in advance and, as I found earlier, only exceptionally does this scheduled work not take place. Flight followers are being assigned to perform the same tasks that they fulfill

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Monday to Friday, but these flights have been scheduled in advance to occur outside of normal working hours.

[40] Although not cited by either party, subsequent to the hearing I wrote to the parties requesting their submissions on the arbitral decision of *Helm v. Treasury Board (Health Canada)*, 2003 PSSRB 96. *Helm* dealt with work that the grievor knew six weeks in advance needed to be performed outside of his normal work hours. In the circumstances of that case, the grievor wanted this work to be designated as “call-back” rather than overtime, as it would have yielded him higher remuneration. The arbitrator found, however, that where the requirement to work is known well in advance, it cannot be considered call-back work; it constitutes overtime work.

[41] In its written submissions on *Helm*, the employer confirms that flight followers are advised in advance that they will be on standby, but suggests that the flight followers are on standby “in case a flight proceeds as scheduled.” In other words, the employer argues that because there is a risk the scheduled NASP flights might cancel they are not really scheduled. I do not accept the rather tenuous logic upon which this argument rests. There is no evidence before me of any significant number of scheduled NASP missions being cancelled.

[42] Article 44 of the Agreement in the case before me states that an employee is on standby when the employer requires that employee to be “available” at a known telecommunications link number and “able” to perform authorized work during off-duty hours for his or her designated period of standby duty. Being available for work necessarily implies that the work at the date or time specified is not certain to occur. This is the case in the *B.C.G.E.U.* and *de Boon* decisions I note above where a person is on standby in case, for instance, a forest fire is discovered. Such is not the case in the facts before me. Flight followers know a week or more in advance that they will monitor a NASP flight taking off at 9:00 AM the following weekend. The fact that there is potentially a risk the flight may be cancelled for operational, mechanical or weather related problems does not alter the fact that it is a planned flight resulting in planned work for the flight follower.

[43] Overtime work means authorized work performed in excess of the employees’ scheduled hours of work (article 19 of the Agreement). On a plain reading of this provision, the scheduled NASP missions result in flight followers being assigned

overtime work when the work occurs outside of normal scheduled hours or are on a normal day of rest. Such work is scheduled in advance and cannot not be considered standby duty, within the meaning of article 44, with a call-back every 30 minutes. This scheduled work begins one hour before take-off as set-out at paragraph 4.4.2 of the Manual and concludes upon the flight crew reporting their safe landing at the conclusion of the mission.

#### **IV. Conclusion**

[44] I have determined that flight followers work overtime when monitoring flights outside of normal working hours. For the reasons noted above, the evidence does not allow me to conclude that flight followers' work is continuous.

[45] Given the uncontested evidence that flight followers are, at a minimum, required to check smartphone or computer for at least two minutes each 30 minute interval during a flight, I find clause 19.03 operates to give the flight followers pay for the full duration of the flight. Clause 19.03 states, that for the purposes of clauses 19.01 and 19.02, all calculations for overtime shall be based on each completed one-half (1/2) hour. The effect of this provision is that since flight followers perform at least several minutes of overtime work each half-hour interval, and their work time is rounded up to half-hour increments, they are effectively considered to be working overtime for the entire flight, as if they were in fact continuously working, whether or not that is in fact the case.

[46] Accordingly, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[47] The grievance is allowed.

[48] I order that the employer abide by the interpretation of the agreement and in particular, Article 19 Overtime as it applies to flight follower duties, as set out in this decision. I will remain seized of this matter for 60 days should the parties not be able to agree to resolution of their grievance.

June 02, 2016.

**Bryan R. Gray,  
a panel of the Public Service Labour  
Relations and Employment Board**