



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**JEAN BEAUREGARD, SYLVIE CÉCILE DUPÉRE AND SÉBASTIEN BOURGON**

Grievors

and

**TREASURY BOARD  
(Transport Canada)**

Employer

***Before:*** [Yvon Tarte, Vice-Chairperson](#)

***For the Grievors:*** [Peter Barnacle, Counsel, Canadian Air Traffic Control Association](#)

***For the Employer:*** [Mark Berlin](#)

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Heard at Ottawa, Ontario,  
May 8, 1996.

## DECISION

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These three grievances involve the interpretation of clause 14.03 of the collective agreement between the Treasury Board and the Canadian Air Traffic Control Association (CATCA) (Code 402/91). The clause in question deals with acting pay. Whereas the fact situations of these cases are similar, the issues raised in all three are identical.

The parties agreed to present evidence only in the case involving Sylvie Cécile Dupéré and that my decision herein would apply as well to Jean Beaugard and Sébastien Bourgon. Finally I was asked to reserve on the question of compensation should I find in favour of the grievors.

### THE COLLECTIVE AGREEMENT

Clause 14.03 reads:

#### *14.03*

- (a) When an employee is required by the Employer to perform the duties of a higher classification level for a period of at least four (4) consecutive days, the employee shall be paid the pay of the higher level, calculated from the date on which the employee commenced to perform the duties of the higher level.*
- (b) An employee required by the Employer to assume the responsibility for air traffic control duties requiring the possession of a valid air traffic controller licence, or letter of authority, and which duties are the responsibility of a position classified at a higher level, shall be compensated as established in (a) above.*
- (c) An employee who is required to perform the duties of a higher classification level will not be arbitrarily assigned and reassigned between his or her regular position and the acting position solely for the purpose of avoiding entitlement to acting pay in the higher level position.*

### THE FACTS

The facts giving rise to these grievances are largely undisputed. Three persons testified: Mr. Fazal Bhimji, the Vice-President, Labour Relations, CATCA, Ms. Dupéré and Ms. Robbie Johnson who is a training specialist for the employer at its headquarters in Ottawa.

The Air Traffic Control Group is divided into operational and non-operational sub-groups. The employer has prepared a Classification Standard (Exhibit G-5) which applies to both sub-groups. The grievors are all air traffic controllers in the operational sub-group. Controllers must go through a training process and "check out" at a level that is appropriate for the airport or unit where they will work.

Airports are rated according to several factors including volume and types of aircraft. Air traffic is controlled from a tower using visual flight rules (VFR) or from an area control centre using instrument flight rules (IFR). The employer's classification standard establishes five separate levels for airport control (VFR) positions (AI-1 to AI-5).

At the time of their grievances, all three grievors worked at the Ottawa Control Tower. Prior to coming to Ottawa, Ms. Dupéré had checked out at the Mirabel Control Tower as an AI-2. Messrs. Beauregard and Bourgon on the other hand were qualified at the AI-1 level. The Ottawa Control Tower requires AI-4 level qualification.

The grievors came to Ottawa on the understanding that they would have to train and "check out" at the AI-4 level.

The Ottawa Control Tower is organized into four work stations, three of which are staffed by AI-4 air traffic controllers. These three work stations are referred to as Airport, Ground and Clearance Delivery. The fourth station is normally staffed by operation support specialists (OSS) who are members of another bargaining unit represented by a different bargaining agent.

In order to get a full AI-4 licence an air traffic controller must "check out" in all four stations. The training of air traffic controllers at the Ottawa Control Tower is governed by a Unit Qualification Training Program (U.Q.T.P.) (Exhibit E-2) which sets out in some detail the various theoretical and practical steps which must be followed. Page 24 of the U.Q.T.P. manual contains the following:

*Qualification Training at Ottawa Control Tower should not exceed 105 Training Days for a VFR endorsed controller, and 140 Training Days for a non-VFR endorsed controller.*

*On-the-job training in the Ottawa Tower is divided into 2 phases. Phase I, which comprises the first assessment period, consists of reaching unit qualification standards in the*

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*OSS and Clearance Delivery positions. Phase 2, comprising the six remaining assessment periods, consists of reaching unit qualification standards in the Ground, Tower and Perimeter positions.*

*Phase 1 Training*

*It is a requirement at the end of Phase I that the Student meet the unit qualification standard in the Clearance Delivery position. At this time a letter of authority will be given authorizing the student to work independently and at the discretion of the Unit Manager.*

*After being issued that letter of authority, training days shall not be counted until the Student resumes training in Phase 2. The Student will remain in this independent work period, under the letter of authority, for a period not to exceed one year, or when a training slot becomes available in Phase 2, whichever is the earlier.*

*Phase 2 Training*

*After beginning Phase 2 training, the Student's letter of authority shall be withdrawn, and the Student shall no longer work the CD position independently. The Student shall resume training at the beginning of Assessment Period #1 of Phase 2, and shall train in the remaining assessment periods until full qualification occurs.*

*Note: It is a requirement that full qualification occurs at the end of the qualification program or the student will be cease trained.*

The three grievors successfully terminated Phase 1 of the Ottawa training program and were "checked out" at the AI-4 level in the OSS and clearance delivery positions. They were then given letters of authority to work alone at the clearance delivery position.

The time spent in clearance delivery under a letter of authority does not count as training. The air traffic controller trainee can work independently under a letter of authority for a period of up to one year. The actual duration of this work period will depend on the availability of a training slot in Phase 2 of the program. By way of example Ms. Dupéré worked independently in a clearance delivery position under a letter of authority for a period of approximately seven months. During this period which does not count as training, Ms. Dupéré received her AI-2 level salary. In the

clearance delivery position Ms. Dupéré performed all of the duties that would normally be performed by a fully licensed AI-4 air traffic controller at a clearance delivery station.

A fully licensed AI-4 air traffic controller can, however, work at any of the work stations of the Ottawa Control Tower which Ms. Dupéré could not do when she performed her seven month stint at the clearance delivery station under her letter of authority.

Mr. Bhimji, on behalf of the bargaining agent, expressed the view that independent work is not part of the training program and that air traffic controllers such as Ms. Dupéré are used as cheap labour to perform AI-4 duties. Ms. Johnson on the other hand believes that the independent work performed by the grievors was part of their training.

#### ARGUMENTS

##### For the Grievor

The evidence clearly shows that Ms. Dupéré and her colleagues worked for more than four consecutive days in a position that is classified at the AI-4 level. During the period of acting appointments, the grievors were paid at their substantive level (AI-1 or 2) in contravention of the acting pay provisions of the collective agreement.

The employer's argument that the grievors were trainees is completely irrelevant to any entitlement under clause 14.03 of the agreement. The U.Q.T.P. manual states clearly that independent work performed under a letter of authority does not count as training. While at the control delivery station under their letters of authority, the grievors performed all of the duties that a fully licensed AI-4 air traffic controller would in similar circumstances have performed.

The grievors were in fact parked by the employer in AI-4 positions while their training was suspended and in anticipation of the opening of a training slot.

It is interesting to note that the employer's classification standard (i.e. Exhibit G-5) specifically provides for underfilling as part of a training program but only for some Area Controller positions in the IFR stream.

In support of their argument the grievors' counsel referred to Brown and Beatty, Canadian Labour Arbitration, third edition, pages 5-31 to 5-42, Re International Nickel Co. of Canada Ltd. and United Steel Workers, Local 6500, 5 L.A.C. (2d) 87, Deley (Board file 166-2-289), Shanley (Board file 166-2-3044), Lalancette (Board file 166-2-3372) and Craven et al. (Board file 166-2-11958).

#### For the Employer

The three grievors knew when they came to Ottawa that they would not be classified at the AI-4 level until they successfully completed all of their training.

The employer recognized that the grievors performed all of the duties that would normally be executed by an AI-4 working at the clearance delivery station during their respective periods of independent work. The fact remains however that they were not at that time fully trained and could not have performed as AI-4 at the other stations.

The facts show trainees doing part of the job of a fully licensed AI-4 controller for extended periods of time for training purposes. It is the prerogative of the employer to determine how long this period of practical training will be.

Clause 14.03 requires that an employee perform the duties of a higher position. Similar language was the subject matter of a dispute in Lindeblom (Board file 166-2-26336). Since the grievors could only perform a portion of the duties of a fully licensed AI-4 controller, their grievances must fail.

#### REASONS FOR DECISION

It is clear from the evidence before me that the independent work performed by the grievors at the clearance delivery station between phases 1 and 2 of the U.Q.T.P. served no genuine training purpose.

The length of the period of independent work is not determined by assessable training criteria. Quite the contrary, the duration of independent work can go from one day to one year depending solely on the availability of training slots in the phase 2 portion of the program. In other words, a trainee may be forced to perform one year of clearance delivery work regardless of the person's needs for such a practical assignment simply because the employer is unable or unwilling to expedite the training flow.

The employer's training manual clearly states that independent work performed by a trainee pursuant to a letter of authority does not count as training. Since the grievors did not perform their independent work as part of their training program, I must now determine whether they are entitled to acting pay under clause 14.03 of the collective agreement.

The issue in these cases is not whether the grievors in fact performed all of the possible duties of the AI-4, air traffic controller position, nor whether they possessed the necessary qualifications to be appointed to the higher position but rather whether they performed the duties that would normally be carried out by a fully licensed AI-4 air traffic controller in similar circumstances.

The employer has acknowledged that the grievors executed all of the duties normally performed by an AI-4 controller assigned to the clearance delivery station. That being the case, I find that the grievors are entitled to acting pay at the AI-4 level for their respective periods of independent work between phases 1 and 2 of the training program.

The grievances are therefore allowed. The parties have two months from the release of this decision to agree to the amounts owing to the grievors, failing which either party may, within one week thereafter, refer the question to me.

**Yvon Tarte,  
Vice-Chairperson.**

OTTAWA, July 16, 1996.